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INTERNATIONAL URANIUM CARTEL

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HEARINGS
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS
FIRST SESSION

MAY 2; JUNE 10, 16, AND 17; AND AUGUST 15, 1977

Serial No. 95–39

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

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U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1977

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INTERNATIONAL URANIUM CARTEL

MONDAY, MAY 2, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 1:40 p.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Henry A. Waxman presiding [Hon. John E. Moss, chairman].

Mr. WAXMAN. The hearing will come to order.

Gentlemen, would you please be seated at the witness table?

We have before us a return of subpenas issued to John McElroy Atkisson and/or John R. Galloway.

The subpenas indicate you are hereby commanded to summon Mr. Frank Cotter, vice president, government affairs, Westinghouse Electric Corp., to appear before the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, and that he is to bring with him the documents described in the attachment to this subpena.

I would like to have the witnesses identify themselves for the record.

STATEMENTS OF FRANCIS P. COTTER, VICE PRESIDENT, GOVERNMENT AFFAIRS, WESTINGHOUSE ELECTRIC CORP.; JAMES M. JOHNSTONE, COUNSEL, ACCOMPANIED BY SARAH POWELL, COUNSEL

Mr. COTTER. I am Mr. Francis P. Cotter, vice president, government affairs, Westinghouse Electric Corp. I am a resident of Washington, D.C.

Mr. JOHNSTONE. My name is James M. Johnstone. I am an attorney with the firm of Kirkland, Ellis & Rowe, Washington, D.C., representing Westinghouse Electric Corp.

I am accompanied by Miss Sarah Powell, of the firm of Kirkland & Ellis, Chicago, Ill., also representing Westinghouse Electric Corp.

Mr. WAXMAN. Do you have possession of the documents subpenaed by the subcommittee?

Mr. JOHNSTONE. Yes, we do.

Mr. WAXMAN. I have before me copies of the subpenas which were issued to you. I ask you to authenticate the fact those are the subpenas you received and had served upon you.

Mr. COTTER. I would be the one to answer that. Mr. Atkisson served this subpena on me and it is a true copy.

Mr. WAXMAN. This subcommittee has jurisdiction over the matters subpenaed. Rule 10(l)(1), of the Rules of the House of Representatives, state that the jurisdiction of the Committee on Interstate and Foreign Commerce extends to "interstate and foreign commerce generally."

Subsection (6) adds that regulation of the interstate transmission of power, except the installation of connections between Government waterpower projects, is within the committee's domain.

Furthermore, the rules state:

> Such committee shall have the same jurisdiction with respect to regulation of nuclear facilities and of use of nuclear energy as it has with respect to regulation of nonnuclear facilities and of use of nonnuclear energy.
>
> In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight functions under clause 2(b)(1)), such committee shall have the special oversight functions provided for in clause (3)(h) with respect to all laws, programs, and government activities affecting nuclear energy.

Rule 3(h) states:

> The Committee on Interstate and Foreign Commerce shall have the function of reviewing and studying on a continuing basis, laws, programs and government activities relating to nuclear energy.

Without objection, I would place in the record both the relevant rules and the subpena.

Hearing no objection, it is so ordered.

[The subpena and the rules referred to follow:]

95-1-14

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To John McElroy Atkisson and/or John R. Galloway

You are hereby commanded to summon Mr. Frank Cotter, Vice President, Governmental Affairs, Westinghouse Electric Corporation, 1801 K Street, N. W., Washington, D. C. 20006 to be and appear before the Subcommittee on Oversight and Investigations (under the authority of Rules X and XI of the Rules of the House of Representatives, 95th Congress) of the Interstate and Foreign Commerce Committee of the House of Representatives of the United States, of which the Hon. John E. Moss is chairman, and to bring with him the documents described in the Attachment to this subpoena (personal appearance is not required if the described documents are made available forthwith to the said John Atkisson and/or John Galloway) in their chamber in the city of Washington, on Monday, May 2, 1977, Room 2323, Rayburn House Office Building, at the hour of 1:00 p.m. then and there to testify touching matters of inquiry committed to said Committee; and he is not to depart without leave of said Committee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 26th day of April, 19 77

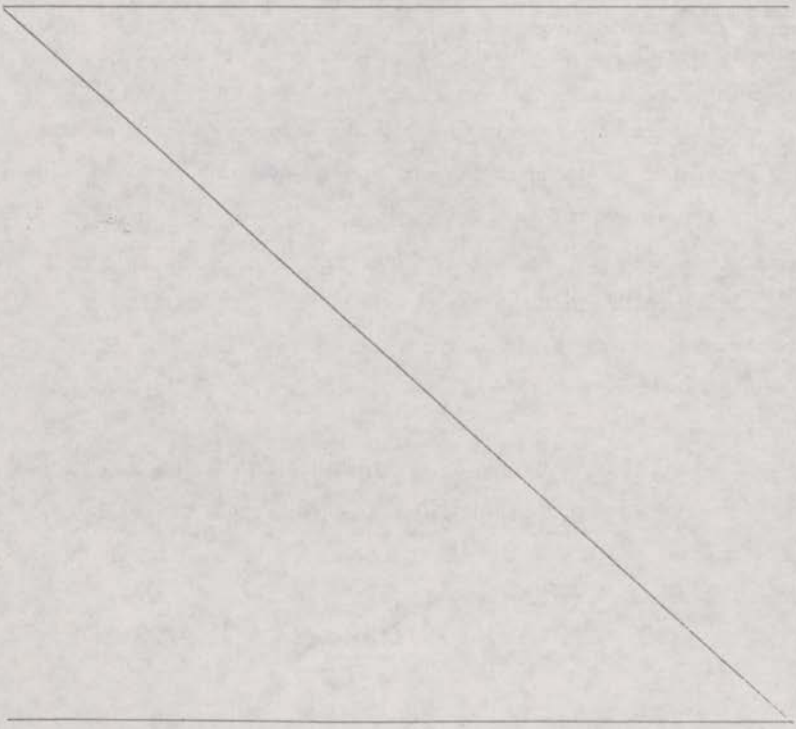
Harley O. Staggers
Chairman.

Attest:

Edmund L. Henshaw Jr.
Clerk.

ATTACHMENT TO SUBPOENA 95-1-14

Copies of all documents in your possession or control, whether received from third parties or otherwise, which were introduced or offered into evidence by Westinghouse in the matter of Duquesne Light Company v. Westinghouse Electric Corporation, in the Court of Common Pleas of Allegheny County, State of Pennsylvania, Civil Division, No. GD 75-23978, In Equity, relating to any allegations of any conspiracy existing among U. S. and foreign uranium producers to fix prices, to allocate markets, and to eliminate competition and competitors, including intermediaries in the uranium market such as Westinghouse; and copies of any testimony in your possession or control from the above described action relating to any introductions or offers of such evidence.



RULES FOR THE COMMITTEE ON INTERSTATE & FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

95th CONGRESS

1977–1978

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

RULES FOR THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES

95th CONGRESS

Rule 1. *Rules of the House.* The Rules of the House are the rules of its committees and its subcommittees so far as is applicable, except that a motion to recess from day to day is a motion of high privilege in committee and subcommittees. Written rules adopted by the committee, not inconsistent with the Rules of the House, shall be binding on each subcommittee of the committee. Each subcommittee of the committee is part of the committee and is subject to the authority and direction of the committee. Rule XI of the Rules of the House which pertains entirely to committee procedure, is incorporated and made a part of the rules of this committee, which are supplementary to Rules of the House.

Rule 2. *Time, Place of Meetings.* (a) The committee shall meet on the fourth Tuesday of each month and at such other times as determined by the chairman, or pursuant to subparagraph (b), in Room 2123 of the Rayburn House Office Building, at 9:45 a.m. for the consideration of bills, resolutions, and

other business, if the House is in session on that day. If the House is not in session on that day and the committee has not met during such month, the committee shall meet at such time and place on the first day thereafter when the House is in session.

(b) The chairman may call and convene, as he considers necessary, additional meetings of the committee for the consideration of any bill or resolution pending before the committee or for the conduct of other committee business. The committee shall meet for such purposes pursuant to that call of the chairman.

(c) If at least three members of the committee or subcommittee (whichever is applicable) desire that a special meeting of the committee or subcommittee (whichever is applicable) be called by the chairman or subcommittee chairman, those members may file in the offices of the committee their written request to the chairman or subcommittee chairman for that special meeting. Such request shall specify the measure or matter to be considered. Immediately upon the filing of the request, the clerk of the committee shall notify the chairman or subcommittee chairman of the filing of the request. If, within 3 calendar days after the filing of the request, the chairman or subcommittee chairman does not call the requested special meeting to be held within 7 calendar days after the filing

of the request, a majority of the members of the committee or subcommittee (whichever is applicable) may file in the offices of the committee their written notice that a special meeting of the committee or subcommittee (whichever is applicable) will be held, specifying the date and hour thereof, and the measure or matter to be considered at that special meeting. The committee or subcommittee (whichever is applicable) shall meet on that date and hour. Immediately upon the filing of the notice, the clerk or the committee shall notify all members of the committee or subcommittee (whichever is applicable) that such meeting will be held and inform them of its date and hour and the measure or matter to be considered and only the measure or matter specified in that notice may be considered at that specified meeting.

(d) If the chairman of the committee or subcommittee is not present at any meeting of the committee or subcommittee, the ranking member of the majority party on the committee or subcommittee who is present shall preside at that meeting.

(e) Each meeting of the committee or any of its subcommittees for the transaction of business, including hearings and the markup of legislation shall be open to the public except when the committee or subcommittee in open session and with a quorum present determines by rollcall vote that all or part of the

remainder of the meeting on that day shall be closed to the public. This paragraph does not apply to those special cases provided in the Rules of the House where closed sessions are otherwise provided.

Rule 3. *Agenda.* The agenda for each committee or subcommittee meeting (other than a hearing), setting out the date, time, place, and all items of business to be considered, shall be provided to each member of the committee by delivery to his office at least 36 hours in advance of such meeting.

Rule 4. *Procedure.* (a) (1) The date, time, place, and subject matter of any hearing of the committee or any of its subcommittees shall be announced at least 1 week in advance of the commencement of such hearing, unless the committee or subcommittee determines in accordance with such procedure as it may prescribe, that there is good cause to begin the hearing sooner.

(2) (A) The date, time, place, and subject matter of any meeting (other than a hearing) scheduled on a Tuesday, Wednesday, or Thursday when the House will be in session, shall be announced at least 36 hours in advance of the commencement of such meeting.

(B) The time, place, and subject matter of a meeting (other than a hearing or a meeting to which subparagraph (A) applies) shall be announced at least 72 hours in advance of the commencement of such meeting.

(b) Each witness who is to appear before the committee or subcommittee shall file with the clerk of the committee, at least two working days in advance of his appearance, fifty (50) copies of a written statement of his proposed testimony and shall limit his oral presentation at his appearance to a brief summary of his argument, unless this requirement, or any part thereof, is waived by the committee or subcommittee chairman presiding.

(c) The right to interrogate the witnesses before the committee or any of its subcommittees shall alternate between majority and minority members. Each member shall be limited to 5 minutes in the interrogation of witnesses until such time as each member who so desires has had an opportunity to question witnesses. No member shall be recognized for a second period of 5 minutes to interrogate a witness until each member of the committee present has been recognized once for that purpose. While the committee is operating under the 5-minute rule for the interrogation of witnesses, the chairman shall recognize in the order of appearance members who were not present when the meeting was called to order after all members who were present when the meeting was called to order have been recognized in the order of seniority.

(d) No bill, recommendation, or other matter reported by a subcommittee shall be

considered by the full committee unless the text of the matter reported, together with an explanation, has been available to members of the committee for at least 36 hours. Such explanation shall include a summary of the major provisions of the legislation, an explanation of the relationship of the matter to present law, and a summary of the need for the legislation. All subcommittee actions shall be reported promptly by the clerk of the committee to all members of the committee.

Rule 5. *Waiver of Notice, Agenda, and Layover Requirements.* Requirements of Rule 3, 4(a)(2), and 4(d) may be waived by a majority of those present and voting (a majority being present) of the committee or subcommittee, as the case may be.

Rule 6. *Quorum.* Testimony may be taken and evidence received at any hearing at which there are present not fewer than two members of the committee or subcommittee in question. In the case of a meeting other than a hearing, the number of members constituting a quorum shall be one-third of the members of the committee or subcommittee, except that a matter may not be reported by the committee or a subcommittee unless a majority of the members thereof is actually present.

Rule 7. *Proxies.* No vote by any member of the committee or any of its subcommittees with respect to any measure or matter may

be cast by proxy unless a proxy authorization is given in writing by the member desiring to cast a proxy, which authorization shall assert that the member is absent on official business or is absent due to personal illness and is thus unable to be present at the meeting of the committee or subcommittee and shall be limited to a specific measure or matter and any amendments or motions pertaining thereto. Each proxy to be effective shall be signed by the member assigning his/her vote and shall contain the date and time of the day that the proxy is signed. No proxy shall be voted on a motion to adjourn or shall be counted to make a quorum or be voted unless a quorum is present.

Rule 8. *Journal, Rollcalls.* The proceedings of the committee shall be recorded in a journal which shall, among other things, show those present at each meeting, and include a record of the votes on any question on which a record vote is demanded and a description of the amendment, motion, order or other proposition voted. A copy of the journal shall be furnished to the ranking minority member. A record vote may be demanded by one-fifth of the members present or in the apparent absence of a quorum by any one member. No demand for a rollcall shall be made or obtained except for the purpose of procuring a record vote or in the apparent absence of a quorum. The result of each roll-

call vote in any meeting of the committee shall be made available in the committee office for inspection by the public, as provided in Rule XI, clause 2(e) of the Rules of the House.

Rule 9. *Filing of Committee Reports.* If, at the time of approval of any measure or matter by this committee, any member or members of the committee give notice of an intention to file supplemental, minority, or additional views, that member shall be entitled to not less than three (3) calendar days (exclusive of Saturdays, Sundays, and legal holidays) in which to file such views in writing and signed by that member or members with the committee. All such views so filed shall be included within and shall be a part of the report filed by the committee with respect to that measure or matter.

Rule 10. *Subcommittees.* There shall be such standing subcommittees with such jurisdiction and size as determined by the majority party caucus of the committee and, in addition, a Subcommittee on Oversight and Investigations. Such subcommittees shall, to the maximum extent practicable, be of equal size. The Subcommittee on Oversight and Investigations shall coordinate its work with the work of the other standing subcommittees and shall maintain regular communication with the standing subcommittees and the chairman of the full committee in order to obtain advice on subjects for investigation. The

standing subcommittee shall maintain regular communication with the Subcommittee on Oversight and Investigations to advise the Subcommittee on Oversight and Investigations of subjects for investigation.

Rule 11. *Powers and Duties of Subcommittees.* Each subcommittee is authorized to meet, hold hearings, receive testimony, markup legislation, and report to the committee on all matters referred to it. Subcommittee chairmen shall set hearing and meeting dates only after consultation with the chairman of the full committee with a view toward assuring availability of meeting rooms and avoiding simultaneous scheduling of committee and subcommittee meetings or hearings wherever possible.

Rule 12. *Reference of Legislation and Other Matters.* All legislation and other matters referred to the committee shall be referred to the subcommittee of appropriate jurisdiction immediately unless, by majority vote of the members of the full committee within five (5) legislative days, consideration is to be by the full committee. In the case of legislation or other matter within the jurisdiction of more than one subcommittee, the chairman of the committee shall have the same authority to refer such legislation or other matter to one or more subcommittees as the Speaker has under clause 5(c) of Rule X of the House of Representatives to refer a matter to one or

more committees of the House. Such authority shall include the authority to refer such legislation or matter to an ad hoc subcommittee appointed by the chairman, with the approval of the committee, from the members of the subcommittees having legislative or oversight jurisdiction.

Rule 13. *Ratio of Subcommittees.* The majority caucus of the committee shall determine an appropriate ratio of majority to minority party members for each subcommittee and the chairman shall negotiate that ratio with the minority party, provided that the ratio of majority party members on each subcommittee shall be no less favorable to the majority than that of the full committee, nor shall such ratio provide for a majority of less than two majority members.

Rule 14. *Subcommittee Membership.* (a) Subject to the requirements of the Manual of the Democratic Caucus of the House of Representatives, each majority member other than the chairman of the full committee or the chairman of a subcommittee shall in order of committee seniority be entitled to membership on two subcommittees of said member's choice. A member (other than an ex officio member) may serve on more than two subcommittees only if such service is necessary in order to comply with Rule 13. Proceeding in order of seniority on the committee, each majority member, other than the chairman of

the full committee and the chairmen of the several subcommittees, shall be entitled to select one subcommittee position each. The subcommittee selection process shall then continue in sequence of committee seniority, including the chairmen of the several subcommittees, for succeeding rounds of selection until all subcommittee positions are filled. The subcommittee selection process shall be conducted at a meeting of the majority party caucus of the committee held prior to any organizational meeting of the full committee. Subcommittee selections of each member shall be recorded by the clerk as made and shall be available for examination by the members.

(b) Minority subcommittee membership shall be selected as determined by the minority.

(c) The chairman and ranking minority member of the committee shall be ex officio members with voting privileges of each subcommittee of the committee of which they are not assigned members.

Rule 15. *Subcommittee Chairmen.* (a) Majority members of the committee shall have the right, in order of full committee seniority to bid for subcommittee chairmanships. Any such request shall be subject to approval by a majority of those present and voting, by secret ballot, in the majority party caucus of the committee. If the caucus rejects a subcommittee chairmanship bid, the next senior

majority member may bid for the position as in the first instance. The subcommittee chairmen shall be elected by the full committee from nominations submitted by the majority party caucus of the committee.

(b) Subcommittee chairmen shall manage legislation reported from their subcommittees on the House floor.

Rule 16. *Committee Professional and Clerical Staff Appointments.* (a) Whenever the chairman of the committee determines that any professional staff member appointed pursuant to the provisions of clause 6 of Rule XI of the House of Representatives, who is assigned to such chairman and not to the ranking minority member, by reason of such professional staff member's expertise or qualifications will be of assistance to one or more subcommittees in carrying out their assigned responsibilities, he may delegate such member to such subcommittees for such purpose. A delegation of a member of the professional staff pursuant to this subsection shall be made after consultation with the subcommittee chairmen and with the approval of the subcommittee chairman or chairmen involved.

(b) Professional staff members appointed pursuant to clause 6 of Rule XI of the House of Representatives, who are assigned to the ranking minority party member of the committee and not to the chairman of the committee, shall be assigned to such committee

business as the minority party members of the committee consider advisable.

(c) In addition to the professional staff appointed pursuant to clause 6 of Rule XI of the House of Representatives, the chairman of the committee shall be entitled, subject to the approval of the majority party members of the committee, to make such appointments to the professional and clerical staff of the committee as may be provided within the budget approved for such purposes by the committee. Such appointees shall be assigned to such business of the full committee as the chairman of the committee considers advisable.

(d) Subcommittee chairmen, subject to the approval of the majority party members of the committee, shall be entitled to make such appointments to the professional and clerical staff of the committee as may be provided in the budgets approved for such purposes by the subcommittees and incorporated into the committee budget as provided for in rule 18 of these rules. Such professional and clerical appointees shall be delegated to the appropriate subcommittee for the purposes of assisting such subcommittee in the discharge of its assigned legislative responsibilities and may be removed and their compensation fixed by the subcommittee chairman subject to the approval of the majority members of the committee.

(e) The chairman of the Subcommittee on Oversight and Investigations, subject to the approval of the majority party members of the committee, shall be entitled to make such appointments to the professional and clerical staff of the subcommittee as may be provided in the budget approved for such purpose in accordance with rule 18 of these rules. Such professional and clerical appointees may be removed and their compensation fixed by the chairman of such subcommittee subject to the approval of the majority members of the subcommittee.

(f) In addition to appointments made pursuant to other subsections of this rule, (1) the subcommittee chairman of each of the committee's subcommittees is authorized to appoint, in accordance with such rules as the majority party caucus may prescribe, one staff person who shall serve at the pleasure of such subcommittee chairman, and (2) the ranking minority member of each such subcommittee is authorized to appoint, in accordance with such rules as the minority party caucus may prescribe, one staff person who shall serve at the pleasure of such ranking minority member. Remuneration of any staff person appointed under this subsection shall be governed by paragraph (d) of clause 5 of Rule XI of the House of Representatives.

(g) Any contract for the temporary services or intermittent services of individual

consultants or organizations to make studies or advise the committee or its subcommittees with respect to any matter within their jurisdiction shall be deemed to have been approved by a majority of the members of the committee if approved by the chairman and ranking minority member of the committee and, if funded by a subcommittee, by the chairman and ranking minority member of that subcommittee. Such approval shall not be deemed to have been given if at least one-third of the members of the committee request in writing that the committee formally act on such a contract, if such request is made within 10 days after the latest date on which such chairman or chairmen, and such ranking minority member or members approve such contract.

Rule 17. *Supervision, Duties of Staff.* (a) The professional and clerical staff of the committee delegated to subcommittees of the committee pursuant to rule 16 shall be subject to the supervision and direction of the chairman of the subcommittee to which they are assigned with respect to matters before the subcommittee, who shall establish and assign the duties and responsibilities of such staff members and delegate such authority as he determines appropriate. The professional and clerical staff assigned to the minority shall be under the supervision and direction of the minority members of the committee

who may delegate such authority as they determine appropriate. Subject to subsection (b), the professional and clerical staff of the committee not delegated to a subcommittee pursuant to rule 16(d) or to the minority shall be under the supervision and direction of the chairman, who shall establish and assign the duties and responsibilities of such staff members and delegate such authority as he determines appropriate.

(b) The professional staff member who is assigned principal responsibility by a subcommittee chairman with respect to a matter before such subcommittee chairman's subcommittee shall continue to assume principal staff responsibility during any consideration before the full committee, the Rules Committee, the House, and Conference Committees of any matter which is reported by such subcommittee.

Rule 18. *Committee and Subcommittee Budgets.* (a) The chairman of the committee after consultation with the ranking minority member of the committee, shall for each session of the Congress prepare a preliminary budget for the committee. Such budget shall include necessary amounts for professional and clerical staff, travel, investigation, and miscellaneous expenses under his direction and supervision. The chairman of each standing subcommittee, after consultation with the members of the subcommittee, shall prepare

a preliminary budget which shall include funds for professional and clerical staff, travel, investigation, and miscellaneous expenses and which shall be adequate to fully discharge its responsibilities for legislation and oversight. Thereafter, the chairman of the full committee shall combine such proposals into a committee budget, which shall state separately the budgeted amounts for the full committee and for each of the subcommittees. Such budget shall be presented to the majority party caucus of the committee and thereafter to the full committee for its approval.

(b) The chairman shall take whatever action is necessary to have the budget as finally approved by the committee duly authorized by the House. No proposed committee budget may be submitted to the House Administration Committee unless it has been presented to and approved by the majority party caucus and thereafter by the full committee. The chairman of the full committee or the chairmen of the standing subcommittees may authorize all necessary expenses in accordance with these rules and within the limits of their portion of the budget as approved by the House.

(c) Committee members shall be furnished a copy of each monthly report, prepared by the chairman for the Committee on House Administration, which shows expenditures

made during the reporting period and cumulative for the year by committee and subcommittees, anticipated expenditures for the projected committee program, and detailed information on travel.

Rule 19. *Broadcasting of Committee Hearings.* Any meeting or hearing that is open to the public may be covered in whole or in part by radio or television or still photography, subject to the requirements of Rule XI, clause 3 of the Rules of the House of Representatives. At all such meetings or proceedings, coverage by radio, television or still photography will be allowed unless specifically forbidden by a record vote of the committee or subcommittee. The coverage of any hearing or other proceeding of the committee or any subcommittee thereof by television, radio, or still photography shall be under the direct supervision of the chairman of the committee, the subcommittee chairman, or other member of the committee presiding at such hearing or other proceeding and, for good cause, may be terminated by him.

Rule 20. *Comptroller General Audits.* The chairman of the committee is authorized to request verification examinations by the Comptroller General of the United States pursuant to Title V, Part A of the Energy Policy and Conservation Act (Public Law 94–163), after consultation with the members of the committee.

Rule 21. *Subpenas.* The full committee, or any subcommittee, may authorize and issue a subpena under clause 2(m)(2)(A) of Rule XI of the House of Representatives, if authorized by a majority of the members voting of the committee or subcommittee (as the case may be), a quorum being present. In addition, the chairman of the full committee may authorize and issue subpenas under such clause during any period for which the House has adjourned for a period in excess of three days. Subpenas may be issued over the signature of the chairman of the full committee, or any member of the committee authorized by such chairman and may be served by any person designated by such chairman or member.

84-317-h GPO

Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce U.S. House of Representatives

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95th Congress

1977-1978

Selected Provisions of the Rules of the House of Representatives and Other Provisions Applicable to the Activities of the Subcommittee on Oversight and Investigations

SELECTED PROVISIONS OF THE RULES OF THE HOUSE OF REPRESENTATIVES AND OTHER PROVISIONS APPLICABLE TO THE ACTIVITIES OF THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

RULE X. ESTABLISHMENT AND JURISDICTION OF STANDING COMMITTEES.

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned to it by this clause and clauses 2, 3, and 4; and all bills, resolutions, and other matters relating to subjects within the jurisdiction of any standing committee as listed in this clause shall (in accordance with and subject to clause 5) be referred to such committees, as follows:

* * * * *

(l) Committee on Interstate and Foreign Commerce.

(1) Interstate and foreign commerce generally.

(2) Inland waterways.

(3) Interstate oil compacts and petroleum and natural gas, except on the public lands.

(4) Railroads, including railroad labor, railroad retirement and unemployment, except revenue measures related thereto.

(5) Regulation of interstate and foreign communications.

(6) Regulation of interstate transmission of power, except the installation of connections between Government waterpower projects.

(7) Securities and exchanges.

(8) Consumer affairs and consumer protection.

(9) Travel and tourism.

(10) Public health and quarantine.

(11) Health and health facilities, except health care supported by payroll deductions.

(12) Biomedical research and development.

Such committee shall have the same jurisdiction with respect to regulation of nuclear facilities and of use of nuclear energy as it has with respect to regulation of nonnuclear facilities and of use of nonnuclear energy.

In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight functions under clause 2(b)(1)), such committee shall have the special oversight functions provided for in clause (3)(h) with respect to all laws, programs, and government activities affecting nuclear energy.

* * * * *

GENERAL OVERSIGHT RESPONSIBILITIES

2. (a) In order to assist the House in—

(1) its analysis, appraisal, and evaluation of (A) the application, administration, execution, and effectiveness of the laws enacted by the Congress, or (B) conditions and circumstances which may indicate the necessity or desirability of enacting new or additional legislation, and

(2) its formulation, consideration, and enactment of such modifications of or changes in those laws, and of such additional legislation, as may be necessary or appropriate,

the various standing committees shall have oversight responsibilities as provided in paragraph (b).

(b)(1) Each standing committee (other than the Committee on Appropriations and the Committee on the Budget) shall review and study, on a continuing basis, the application, administration, execution, and effectiveness of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee, and the organization and operation of the Federal agencies and entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs thereunder are being implemented

and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated. In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee (whether or not any bill or resolution has been introduced with respect thereto), and shall on a continuing basis undertake futures research and forecasting on matters within the jurisdiction of that committee. Each such committee having more than twenty members shall establish an oversight subcommittee, or require its subcommittees, if any, to conduct oversight in the area of their respective jurisdiction, to assist in carrying out its responsibilities under this subparagraph. The establishment of oversight subcommittees shall in no way limit the responsibility of the subcommittees with legislative jurisdiction from carrying out their oversight responsibilities.

* * * * *

SPECIAL OVERSIGHT FUNCTIONS

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3. (h) The Committee on Interstate and Foreign Commerce shall have the function of reviewing and studying on a continuing basis, all laws, programs and government activities relating to nuclear energy.

* * * * *

RULE XI. RULES OF PROCEDURE FOR COMMITTEES.

IN GENERAL

1. (a) (1) The Rules of the House are the rules of its committees and subcommittees so far as applicable, except that a motion to recess from day to day is a motion of high privilege in committees and subcommittees.

(2) Each subcommittee of a committee is a part of that committee, and is subject to the authority and direction of that committee and to its rules as far as applicable.

(b) Each committee is authorized at any time to consider such investigations and studies as it may consider necessary or appropriate in the exercise of its responsibilities under Rule X, and (subject to the adoption of expense resolutions as required by clause 5) to incur expenses (including travel expenses) in connection therewith.

* * * * *

OPEN MEETINGS AND HEARINGS

* * * * *

(g) (2) Each hearing conducted by each committee or subcommittee thereof shall be open to the public except when the committee or subcommittee, in open session and with a majority present, determines by rollcall vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or

other matters to be considered would endanger the national security or would violate any law or rule of the House of Representatives. No Member may be excluded from nonparticipatory attendance at any hearing of any committee or subcommittee, with the exception of the Committee on Standards of Official Conduct, unless the House of Representatives shall by majority vote authorize a particular committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members by the same procedures designated in this subparagraph for closing hearings to the public: *Provided, however,* That the committee or subcommittee may by the same procedure vote to close one subsequent day of hearing.

(3) Each committee of the House (except the Committee on Rules) shall make public announcement of the date, place and subject matter of any committee hearing at least one week before the commencement of the hearing. If the committee determines that there is good cause to begin the hearing sooner, it shall make the announcement at the earliest possible date. Any announcement made under this subparagraph shall be promptly published in the Daily Digest.

(4) Each committee shall, insofar as is practicable, require each witness who is to appear before it to file with the committee (in advance of his or her appearance) a written statement of the proposed testimony and to limit the oral presentation at such appearance to a brief summary of his or her argument.

* * * * *

QUORUM FOR TAKING TESTIMONY AND CERTAIN OTHER ACTION

(h) (1) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two.

(2) Each committee (except the Committee on Appropriations, the Committee on the Budget, and the Committee on Ways and Means) may fix the number of its members to constitute a quorum for taking any action other than the reporting of a measure or recommendation, which shall be not less than one-third of the members.

* * * * *

CALLING AND INTERROGATION OF WITNESSES

(j) (1) Whenever any hearing is conducted by any committee upon any measure or matter, the minority party members on the committee shall be entitled, upon request to the chairman by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing hereon.

(2) Each committee shall apply the five-minute rule in the interrogation of witnesses in any hearing until such time as each member of the committee who so desires has had an opportunity to question each witness.

INVESTIGATIVE HEARING PROCEDURES

(k) (1) The chairman at an investigative hearing shall announce in the opening statement the subject of the investigation.

(2) A copy of the committee rules and this clause shall be made available to each witness.

(3) Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(4) The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

(5) If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

(A) receive such evidence or testimony in executive session;

(B) afford such person an opportunity voluntarily to appear as a witness; and

(C) receive and dispose of requests from such person to subpena additional witnesses.

(6) Except as provided in subparagraph (5), the chairman shall receive and the committee shall dispose of requests to subpena additional witnesses.

(7) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.

(8) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinency of testimony and evidence adduced at its hearing.

(9) A witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee.

* * * * *

POWER TO SIT AND ACT; SUBPENA POWER

(m) (1) For the purpose of carrying out any of its functions and duties under this rule and Rule X (including any matters referred to it under clause 5 of Rule X), any committee, or any subcommittee thereof, is authorized (subject to subparagraph (2) (A) of this paragraph)—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings, and

(B) to require, by subpena or otherwise, the attendance and testimony of such witness and the production of such books, records, correspondence, memorandums, papers, and documents

as it deems necessary. The chairman of the committee, or any member designated by such chairman, may administer oaths to any witness.

(2) (A) A subpena may be authorized and issued by a committee or subcommittee under subparagraph (1) (B) in the conduct of any investigation or series of investigations or activities, only when authorized by a majority of the members voting, a majority being present. The power to authorize and issue subpenas under subparagraph (1) (B) may be delegated to the chairman of the committee pursuant to such rules and under such limitations as the committee may prescribe. Authorized subpenas shall be signed by the chairman of the committee or by any member designated by the committee.

(B) Compliance with any subpena issued by a committee or subcommittee under subparagraph (1) (B) may be enforced only as authorized or directed by the House.

JURISDICTION OF SUBCOMMITTEES

At a meeting of the full committee on February 8, 1977, the jurisdictions of the subcommittees were established as follows:

Subcommittee on Oversight and Investigations

Jurisdiction: Responsibility for oversight of agencies, departments and all programs within the jurisdiction of the full committee and to conduct such investigations within such jurisdiction. (Note: This subcommittee does not have legislative jurisdiction. The committee's legislative subcommittees would have parallel responsibility to conduct oversight in their assigned areas. Rule X (2) (b) of House Rules.)

Subcommittee on Energy and Power

Jurisdiction: Energy matters within the jurisdiction of the full committee, and jurisdiction over all petroleum, natural gas, electrical power issues; regulation of nuclear facilities; and special oversight functions with respect to all laws, programs, and government activities affecting nuclear energy.

Subcommittee on Health and the Environment

Jurisdiction: Public health and quarantine; hospital construction; mental health and research; biomedical programs and health protection in general, including medicaid and national health insurance; foods and drugs; drug abuse; Clean Air Act and environmental protection in general.

Subcommittee on Communications

Jurisdiction: Interstate and foreign communications including, but not limited to, all communication and information transmission by broadcast, radio, wire, microwave, satellite, or other mode.

Subcommittee on Transportation and Commerce

Jurisdiction: Regulation of travel and tourism, interstate and foreign commerce generally, and all matters related to inland waterways, railroads, railroad retirement, railway labor, solid waste disposal, noise pollution control, war claims, and time.

Subcommittee on Consumer Protection and Finance

Jurisdiction: Consumer protection in general, including toxic substances, product safety, motor vehicle safety, securities and exchanges (the SEC), the regulation of trade (the FTC), and insurance.

Mr. WAXMAN. This committee had a hearing in Sacramento where Congressman Moss stated the following:

Whatever the environmental and safety factors attending atomic energy, nuclear power has long held the attraction of being relatively inexpensive. This has been true especially in light of the dramatic price rise in fossil fuels, prompted in large measure by he OPEC cartel. At the same time as OPEC prices were skyrocketing, however, so too are the prices of uranium. Indeed, the price rise of uranium has been a good deal more dramatic than that of oil—$6 per pound to some $41 per pound in about 3 years. For some reason, perhaps because nuclear power is used by the general public only indirectly, in the form of electricity, this dramatic price rise has gone largely unnoticed by the American consumer.

The uranium price rise alone would be reason enough for the Subcommittee on Oversight and Investigations to be concerned. But recently allegations have been lodged to the effect that uranium prices in our markets have been influenced by a foreign producers' cartel. Today, the subcommittee convenes to examine those allegations and other factors which may or may not have been responsible for the sevenfold increase in the price of uranium. It is appropriate that our inquiry begin in Sacramento, where the documents suggesting the existence of cartel were initially released.

Later on, Congressman Moss said:

Certainly it is not the intention of this subcommittee to prejudice anyone's lawsuit. However that may be, the right of the people of the United States to know and identify the economic forces affecting their daily lives is constitutionally second to none. So too the power of the Congress of the United States, so that it may intelligently and adequately deal with the energy policies that will affect us all for decades to come.

I refer to these matters so that we might establish the jurisdiction of this subcommittee over the matters involved.

I would like to insert in the record at this time the statement by Congressman Moss in its entirety from the meeting of Thursday, November 4, 1976, of this subcommittee in Sacramento, Calif.

Hearing no objection, it is so ordered.

[The statement referred to follows:]

INTERNATIONAL URANIUM SUPPLY AND DEMAND

THURSDAY, NOVEMBER 4, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Sacramento, Calif.

The subcommittee met, pursuant to notice, at 10 a.m., in Room 2545 Federal Building, Hon. John E. Moss, chairman, presiding.

Mr. Moss. The subcommittee will be in order.

Whatever the environmental and safety factors attending atomic energy, nuclear power has long held the attraction of being relatively inexpensive. This has been true especially in light of dramatic price rises in fossil fuels, prompted in large measure by the OPEC cartel. At the same time OPEC prices were skyrocketing, however, so too were the prices of uranium. Indeed, the price rise of uranium has been a good deal more dramatic than that of oil—$6 per pound to some $41 per pound in about 3 years. For some reason, perhaps because nuclear power is used by the general public only indirectly, in the form of electricity, this dramatic price rise has gone largely unnoticed by the American consumer.

The uranium price rise alone would be reason enough for the Subcommittee on Oversight and Investigations to be concerned. But recently allegations have been lodged to the effect that uranium prices and markets have been influenced by a foreign producers' cartel. Today the subcommittee convenes to examine those allegations and other factors which may or may not have been responsible for the sevenfold increase in the price of uranium. It is appropriate that our inquiry begin in Sacramento, where the documents suggesting the existence of a cartel were initially released.

I refer, of course, to the materials provided to James Harding, special advisor to Commissioner Ronald Doctor of the California Energy Commission, by the Australian chapter of Friends of the Earth. Subsequently Mr. Harding, Commissioner Doctor, and California Public Utilities Commissioner Leonard Ross, among others, released summaries of those documents to the press, the Congress, and the Justice Department. Commissioner Ross and Mr. Harding will be with us today.

The belief that a foreign cartel may have been operating to the detriment of American uranium consumers has enjoyed an ususual amount of publicity in recent weeks because of multibillion-dollar litigation involving the Westinghouse Electric Corp. Westinghouse maintains that is has been a victim of just such a cartel. Today we will also hear from representatives of Westinghouse.

There is opinion to the contrary—to the effect that whether or not a cartel in fact existed, it had little or no effect on the prices Americans pay for uranium. Expressing that point of view this morning will be the president of the Nuclear Exchange Corp., also of northern California, Mr. George White.

Whatever the reasons for the dramatic price rise in uranium, it is of course the American utility ratepayer who ultimately pays the bill. To enlighten us on just what the implications are for the American consuming public, given the current $41-per-pound price as well as even higher prices projected for the future, we will hear today from representatives of the Pacific Gas and Electric Co. and the Sacramento Municipal Utility District.

I am not unmindful that some of our witnesses today are involved either directly or indirectly in various aspects of the Westinghouse litigation, as well as a Justice Department investigation into possible antitrust violations by a foreign cartel and that those witnesses are naturally anxious not to prejudice their positions in that litigation by statements made here today.

Certainly it is not the intention of this subcommittee to prejudice anyone's lawsuit. However that may be, the right of the people of the United States to know and identify the economic forces affecting their daily lives is constitutionally second to none. So too the power of the Congress of the United States, so that it may intelligently and adequately deal with the energy policies that will affect us all for decades to come.

Mr. WAXMAN. Gentlemen, have you brought the subpenaed documents with you?

Mr. JOHNSTONE. Yes; we have.

Mr. WAXMAN. Have you turned them over to the subcommittee staff as required by the subpena?

Mr. JOHNSTONE. In this connection I would like to read into the record a letter signed by my partner, William R. Jentes, acting as counsel for Westinghouse Electric Corp., following which we will turn over the documents to the subcommittee with certain exceptions which I shall state.

Mr. WAXMAN. Do you have copies of the letter you are about to read?

Mr. JOHNSTONE. Yes; I shall furnish that to the committee.

The letter is dated May 2, 1977. It is addressed to Mr. John M. Atkinson [sic] of the subcommittee staff. It reads:

"Dear Mr. Atkinson: I am sending with this letter all of the documents and testimony from the Duquesne Light-Westinghouse trial called for by the House Subcommittee on Oversight subpena to Westinghouse dated April 26, 1977.

Please note that certain of these documents and portions of the testimony have been designated "confidential" or "specially confidential" pursuant to the enclosed Orders of Judge Wekselman and Judge Merhige, both dated May 7, 1976. In all instances the confidentiality classification is indicated on the face of the document.

I shall now depart from the letter. The two court orders referred to will also be furnished to you.

I shall now read the third paragraph of the letter which is mooted by certain events which occurred this morning. The third paragraph of the letter states:

You should also note that Gulf asserted attorney-client privilege with respect to certain of the documents and testimony. Although Judge Wekselman denied the claim of privilege, he ruled that Gulf's compliance with his production order did not constitute a waiver of such a claim in future proceedings and that the documents should be given "specially confidential" status in the interim. These Gulf documents are segregated and clearly identified.

Very truly yours,

WILLIAM R. JENTES.

[The letter and attachments follow:]

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Washington, D.C. 20006
202 833-8400

May 2, 1977

Mr. John M. Atkinson
Subcommittee on Oversight
and Investigations
House of Representatives
Room 2323
Rayburn Office Building
Washington, D.C.

Dear Mr. Atkinson:

I am sending with this letter all of the documents and testimony from the Duquesne Light - Westinghouse trial called for by the House Subcommittee on Oversight subpoena to Westinghouse dated April 26, 1977.

Please note that certain of these documents and portions of the testimony have been designated "Confidential" or "Specially Confidential" pursuant to the enclosed Orders of Judge Wekselman and Judge Merhige, both dated May 7, 1976. In all instances the confidentiality classification is indicated on the face of the documents.

You should also note that Gulf asserted attorney-client privilege with respect to certain of the documents and testimony. Although Judge Wekselman denied the claim of privilege, he ruled that Gulf's compliance with his production order did not constitute a waiver of such a claim in future proceedings and that the documents should be given "Specially Confidential" status in the interim. These Gulf documents are segregated and clearly identified.

Very truly yours,

William R. Jentes

WRJ:td
Attachments

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL ACTION - EQUITY

DUQUESNE LIGHT COMPANY, a Corporation; OHIO EDISON COMPANY, a Corporation; and PENNSYLVANIA POWER COMPANY, a Corporation, Plaintiffs, v. WESTINGHOUSE ELECTRIC CORPORATION, a Corporation, Defendant.	No. GD 75-23978 No Real Estate Involved Equity

ORDER

AND NOW, to-wit, this 27 day of May, 1976, IT IS ORDERED, DIRECTED AND DECREED THAT:

1. This Order shall govern the handling of all confidential documents, testimony and information hereafter used, produced, given or filed in this action, which is revealed by or included in any proceeding, whether in the form of depositions, transcripts, interrogatory answers or document production, or in any motions, pleadings, affidavits, briefs or other documents submitted to this Court. This Order shall also apply to documents currently being produced by defendant, pursuant to this Court's Order of March 1, 1976, Paragraph 3 of which is superseded by this Order.

2. Any party or person producing or filing a document in this action (including but not limited to documents in the form of pleadings, motions or responses to discovery) may initially designate that document, or any portion thereof, as "CONFIDENTIAL" by marking, typing or stamping on its face "CONFIDENTIAL." Any party or person hereafter giving testimony in this action may initially designate as "CONFIDENTIAL" any portion of his testimony by advising the reporter of such fact. The reporter shall separately transcribe those portions of the testimony so designated and shall mark, type or stamp on the face of the transcript "CONFIDENTIAL." As to all documents and testimony so designated, the documents, testimony and/or information contained therein shall be shown and/or made available, for use in this litigation and for no other purpose, only to the following:

(a) Counsel for the respective parties to this litigation, including house counsel and co-counsel and employees of said counsel performing work in connection with this litigation;

(b) Experts and consultants, including independent experts and consultants, employees of parties herein designated by said parties as experts, and employees or clerical assistants of said experts performing work in connection with this litigation, to the extent deemed necessary by counsel for the prosecution, defense or settlement of this litigation;

(c) Witnesses, to the extent that such documents and testimony are needed to prepare for or give testimony in this litigation; and,

(d) Any officer or employee of a party who has management responsibility, to the extent deemed necessary by counsel for the prosecution, defense or settlement of this litigation.

No person receiving such "CONFIDENTIAL" document, transcript or information shall disclose it or its contents to any person other than those listed in this paragraph and for the purposes specified, and in no event shall such person make any commercial or competitive use of such document, transcript or information.

3. Any party or person producing or filing a document in this action (including but not limited to documents in the form of responses to discovery) and asserting that such document contains confidential information of a highly sensitive nature, commercially or otherwise, may initially place restrictions on the document's accessibility, beyond those which are provided by the "CONFIDENTIAL" classification referred to in Paragraph 2 of this Order, by marking, typing or stamping on its face "SPECIALLY CONFIDENTIAL" with or without additional words of description. Any party or person giving testimony in this action and asserting that such testimony contains confidential information of a highly sensitive nature, commercially or otherwise, may initially place restrictions on the accessibility of such testimony, beyond those which are provided by the "CONFIDENTIAL" classification referred to in Paragraph 2 of this Order, by advising the reporter of such fact. The reporter shall separately transcribe those portions of the testimony so designated and shall mark, type or stamp on the face of such transcript "SPECIALLY CONFIDENTIAL" with or

without additional words of description. As to all documents and testimony so designated, the documents, testimony and/or information contained therein shall not be reproduced for, or shown to, persons other than counsel, including house counsel, or their secretarial and paralegal assistants engaged in litigation involving Westinghouse uranium matters. Such documents, testimony and information shall not be shown or revealed to experts, company personnel or others.

4. Whenever a party objects to the designation of a document, testimony or information as "CONFIDENTIAL" or "SPECIALLY CONFIDENTIAL," it may apply to this Court for a ruling that the document, testimony or information shall not be so designated. Until this Court enters an Order, if any, changing the designation of the document, testimony or information, it shall be given the "CONFIDENTIAL" or "SPECIALLY CONFIDENTIAL" treatment initially assigned to it.

5. No document, transcript or other material designated as "CONFIDENTIAL" or "SPECIALLY CONFIDENTIAL" shall be made a part of the public record except upon prior approval of this Court.

6. In the event that any party herein produces documents which are signed by or addressed to house counsel or outside counsel, or which contain legal opinions or work product of such counsel, or which are otherwise subject to the privileges applicable to legal

matters and/or the attorney-client relationship, such party shall not thereby be deemed to waive, and such party may assert, said privileges with respect to any documents other than those produced.

By the Court

Weiss J.

CONSENTED TO:

ROSE, SCHMIDT AND DIXON

By

Ninth Floor Oliver Building
Pittsburgh, Pennsylvania 15222
Phone: [412] 434-8600

ECKERT, SEAMANS, CHERIN & MELLOTT

By C. Arthur Wilson Jr.

600 Grant Street
Forty-Second Floor
Pittsburgh, Pennsylvania 15219
Phone: [412] 566-6000

FILED

MAY 07

CLERK, U. S. DIST. COURT
RICHMOND, VA.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re WESTINGHOUSE ELECTRIC CORPORATION URANIUM CONTRACTS LITIGATION

MDL DOCKET NO. 235

CONFIDENTIALITY ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and the stipulation of the parties, by their respective attorneys, it is ORDERED that:

1. When used in this Order the word "document" means all original written, recorded or graphic matters whatsoever and all non-identical copies thereof, including, but not limited to, pleadings, motions, responses to discovery, papers, books, records, letters, photographs, tangible things, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, workpapers, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, advertisements, instructions, charts, manuals, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer print-outs, data processing program library, data processing in-put and output, microfilm, books of account, records and invoices reflecting business operations, all records kept by electronic photographic or mechanical means, any notes or drafts relating to the foregoing, all things similar to any of the foregoing however denominated by the parties and any other documents as defined in Rule 34 of the Federal Rules of Civil Procedure. In all cases

where originals or non-identical copies are not available, document also means identical copies of original documents and non-identical copies thereof. In all cases where documents are in a language other than English, document includes all translations and materials related to particular transactions.

2. This Order supersedes and replaces the Court's Orders of January 17, 21 and 31, 1976, and governs the handling of all confidential documents and testimony and information previously produced, given or filed pursuant to those Orders, as well as the handling of all confidential documents and testimony hereafter produced, given or filed, subject to the further order of the Court.

3. Any party or person producing or filing a document in these proceedings may designate that document, or any portion of it, as "CONFIDENTIAL" by typing or stamping on its face "Confidential Pursuant to Court Order in Westinghouse Uranium Litigation," or words of similar import. To the extent that a document has been previously designated as "CONFIDENTIAL" pursuant to prior Order of the Court, without such words appearing on the document's face, counsel of the party having received such document shall immediately cause such words to be typed or stamped on the face of the document upon specific identification of that document by the party having produced the document.

4. Any party or person giving testimony in these proceedings may designate that portion of his testimony deemed to be "CONFIDENTIAL" by advising the reporter of such fact. The reporter shall separately transcribe these portions of the testimony so designated and shall mark the face of the transcript with the words referred to in paragraph 3 of this Order. The portion of the transcript so marked shall be filed under seal with the Clerk of the Court. Whenever any document desig-

nated as "CONFIDENTIAL" is identified as an exhibit in connection with testimony given in these proceedings, it shall be so marked and separately filed under seal with the Clerk. To the extent that testimony has been previously given and designated as "CONFIDENTIAL" pursuant to prior Order of this Court, without such procedures having been followed, the party or person wishing to have the testimony and exhibits so treated shall make appropriate arrangements with the reporter and the Clerk.

5. Any document or testimony designated as "CONFIDENTIAL" which is revealed by or included in any discovery proceeding (whether formal or informal and whether in the form of depositions, transcripts, interrogatory answers or document production) or in any motions, pleadings, affidavits, briefs or other documents submitted to this Court, shall be subject to this Order. The Clerk shall maintain under seal such documents or testimony designated "CONFIDENTIAL" and submitted to the Court, to be made available only to the Court and to counsel for the parties in these proceedings until further Order of this Court.

6. Whenever a party objects to the designation of a document or testimony as "CONFIDENTIAL", it may apply to the Court for a ruling that the document or testimony shall not be so treated after giving ten days' prior written notice of such application to the party or person asserting such "CONFIDENTIAL" treatment. Until this Court enters an order, if any, changing the designation of the document or testimony, it shall be given the "CONFIDENTIAL" treatment initially assigned to it and provided for in this Order.

7. Except with the prior written consent of the party or person asserting such "CONFIDENTIAL" treatment or the prior order of this Court, after notice as provided in paragraph 6 hereof, the document or transcript, and any information contained therein

may not be disclosed to any person other than:

(a) Counsel for the respective parties to this litigation, including house counsel and co-counsel;

(b) Employees of such counsel and persons assigned to assist such counsel in the preparation of this litigation;

(c) Any officer or employee of a party who has management responsibility to the extent deemed necessary by counsel, for the prosecution, defense or settlement of this litigation; and

(d) Witnesses and consultants, to the extent deemed necessary by counsel, for the prosecution, defense or settlement of this litigation.

No person receiving such "CONFIDENTIAL" document or transcript shall disclose it or its contents to any person other than those described in this paragraph and for the purposes specified, and in no event shall such person make any other use of such document or transcript. Counsel shall be responsible for obtaining the prior written agreement of all persons to whom any "CONFIDENTIAL" document or transcript is disclosed to be bound by the terms of this Order. Such written agreement shall be obtained by securing the signature of any recipient of such document or transcript at the foot of a copy of this Order, after having had such recipient read the Order and having explained the contents hereof to such recipient. Counsel shall be responsible for maintaining a list of all persons to whom any "CONFIDENTIAL" document or transcript is disclosed and, for good cause shown, such list shall be available for inspection by counsel for other parties upon order of this Court.

8. Any party or person producing or filing a document in these proceedings may seek restrictions on the document's accessibility, beyond those which are provided by the "CONFIDENTIAL" classification referred to earlier, by enclosing the document in an envelope or container on the face of which shall be typed or stamped:

"SPECIALLY CONFIDENTIAL

Unless otherwise ordered by the Court, this document shall not be reproduced for, or shown to, persons other than counsel, including house counsel and their secretarial and paralegal assistants engaged in litigation involving Westinghouse uranium matters. Not to be shown experts, company personnel or others."

In the absence of agreement as to the specially confidential nature of the document by the adverse parties, the document, in its envelope or container, shall be filed with the Court within one week after completion of that round of document production to which the document is responsive, or one week after service of a subpoena duces tecum for such document, together with a written motion, a copy of which shall be served on all parties, setting forth a brief description of the document or information for which special confidential treatment is sought, the manner in which disclosure should be restricted and the reasons supporting the request. Counsel for other parties shall have access to such document, or a copy of it, and an opportunity to object to the motion. If the Court grants the motion for "SPECIALLY CONFIDENTIAL" treatment, it will specify the restrictions on disclosure. If the motion is denied, the document will be reclassified as "CONFIDENTIAL" within the meaning of this Order.

9. Any party or person giving testimony in these proceedings may seek restrictions on its accessibility, beyond those which are provided by the "CONFIDENTIAL" classification referred to earlier by advising the reporter of the portion of his testimony deemed to be "SPECIALLY CONFIDENTIAL". The reporter shall separately transcribe those portions of the testimony so designated and shall mark the face of the transcript with the words referred to in paragraph 8 of this Order. The portion of the transcript so marked shall be filed under seal with the Clerk of the Court and shall not be opened until further order of this

Court. Whenever any document designated as "SPECIALLY CONFIDENTIAL" is identified as an exhibit in connection with testimony given in these proceedings, it shall be so marked, separately filed under seal with the Clerk, and not opened until further order of this Court. Promptly after the filing of the transcript and any exhibit designated as "SPECIALLY CONFIDENTIAL," the party so designating such testimony or exhibit shall make application to the Court for special confidential treatment in accordance with the procedures referred to in paragraph 8 above.

10. To the extent that a document has been previously designated as "SPECIALLY CONFIDENTIAL" pursuant to agreement between counsel or otherwise, without the procedures provided in paragraph 8 having been followed, counsel for the party having received such document shall, in the absence of the agreement of the party producing the document, within twenty days after entry of this Order, cause the document to be placed in an envelope or container with the words referred to in that paragraph typed or stamped on the face of the envelope or container and shall cause the document to be given "SPECIALLY CONFIDENTIAL" treatment until the party so designating the document has a reasonable opportunity to move the Court for such treatment under paragraph 8 above. To the extent that testimony has previously been given and designated as "SPECIALLY CONFIDENTIAL", or exhibits identified as such, pursuant to agreement between counsel, without the procedures provided for in paragraph 9 having been followed, the party or person wishing to have the testimony or exhibit so treated shall make appropriate arrangements within twenty days after entry of this Order with the reporter and the Clerk of the Court and shall make prompt application to the Court for such treatment. All other parties shall accord such testimony or exhibit "SPECIALLY CONFIDENTIAL" treatment until a ruling by this Court on the application.

11. A party having produced a document or having given testimony previously designated as "CONFIDENTIAL" may within twenty days from entry of this Order move for an order that such document or testimony be designated "SPECIALLY CONFIDENTIAL," under paragraph 8, or such designation may be made by agreement of the adverse parties.

12. The Clerk is directed to send a copy of this Order to counsel for each party to this litigation.

United States District Judge

5/7/76

/s/ ROBERT R. MERHIGE, JR.

We ask for this:

Liaison Counsel for Plaintiffs

Liaison Counsel for Defendant

Mr. JOHNSTONE. Since Mr. Jentes wrote that letter I have been served with a civil complaint in Civil Action No. 77–742, *Gulf Oil Corp.* v. *Westinghouse Electric Corp.*, and at the same time with papers seeking a temporary restraining order.

The hearing on the temporary restraining order was held before Judge Hart of the U.S. District Court for the District of Columbia this morning, and present at that hearing were counsel for Gulf; myself as counsel for Westinghouse; Mr. Lemov, counsel for this committee who appeared on behalf of the committee; and Mr. Ford, the assistant U.S. attorney who appeared on behalf of the United States.

Following a hearing, Judge Hart issued a temporary restraining order which reads in pertinent part:

> Ordered, that defendant Westinghouse Electric Corp., its officers, agents, employees, and attorneys, be temporarily restrained until 4 p.m., May 4, 1977, or until this order is revoked, from disclosing directly or indirectly to the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, any of its members, attorneys, employees, or agents, the documents and related trial testimony in *Duquesne Light Co.* v. *Westinghouse Electric Corp.*, No. GD 75–2378, in the Court of Common Pleas for Allegheny County, Pa. Hearing on a preliminary injunction is set at 11 a.m. May 4, 1977 in courtroom 14.

That is dated May 2, 1977, and signed by G. L. Hart, U.S. district judge.

At this time, on behalf of Westinghouse, we are prepared to turn over to the subcommittee all of the documents described in Mr. Jentes' letter with the exception of the Gulf documents which are subject to the temporary restraining order, and as to those documents Westinghouse respectfully declines to comply with your subpena on the ground that to do so would place the corporation in contempt of the order of the U.S. district court.

Mr. WAXMAN. Are you aware of the legal precedent which establishes the independent right of Congress to enforce its order, which is in this case a subpena, prior to any order of the court? In the case of *Eastland, et al.*, v. *U.S., Servicemen's Fund*, the Supreme Court held that the activities of the Senate subcommittee fell within the legitimate legislative sphere and, that once this linkage is established, is protected by the absolute prohibition of the speech or debate clause of the Constitution against being questioned in any other place; and, hence, are immune from judicial interference?

We also have the case of Ashland Oil which establishes a precedent for the fact that the Congress has a right, independent of any other branch of government, to obtain information for which it issues a subpena.

Are you aware of those precedents?

Mr. JOHNSTONE. I am aware that the Eastland and Ashland precedents exist. I do not wish to comment for this record on what their significance or holdings might be.

I would wish the record to show that Mr. Lemov this morning argued the Eastland and Ashland precedents to Judge Hart at length and that I, on behalf of Westinghouse, took no position with respect to the significance of those precedents nor with respect to whether or not TRO should be entered.

After hearing this argument, Judge Hart issued the order which he issued.

Mr. WAXMAN. I should point out for the record that Mr. Lemov appeared as an amicus for the court and did not subject this committee to the jurisdiction of that court.

This committee did not submit itself to the jurisdiction of the court and as an independent branch of the Federal Government stands on its own with power to subpena information and to expect that subpena to be adhered to by those parties we find are within the jurisdiction of the committee.

You are relying, then, on the temporary restraining order as a basis for not complying fully with the subpena issued by this committee. Is that correct?

Mr. JOHNSTONE. That is correct, Mr. Chairman.

Mr. WAXMAN. Is there any other reason, physical or otherwise, which would prevent your complying with the subpena of the subcommittee?

Mr. JOHNSTONE. None that I am aware of.

Mr. WAXMAN. Who has possession of the documents at this time?

Mr. JOHNSTONE. I do.

Mr. WAXMAN. These documents are in your possession as an agent of Westinghouse and of Mr. Cotter. Is that correct?

Mr. JOHNSTONE. They are in my possession in my capacity as attorney for Westinghouse.

Mr. WAXMAN. Mr. Cotter, you are an agent and a vice president of the corporation duly served with the subpena. Is that correct?

Mr. COTTER. Yes, sir.

Mr. WAXMAN. It would be the finding of the Chair that each of you and the Westinghouse Corp. are in contempt of Congress and of this subcommittee. It would be the intention of this subcommittee to hold a meeting and to vote a contempt citation.

First, I would like to direct you to comply with the subpena and order you to produce the documents subpenaed under the subpena duly issued to you.

Mr. JOHNSTONE. Mr. Chairman, if I might, I would like to point out on behalf of Mr. Cotter that under protective orders issued by the court in Pennsylvania and the U.S. District Court in the Eastern District of Virginia these documents were to be only in the possession of counsel for the respective parties.

These documents have not been in Mr. Cotter's possession or control. I do not believe he has seen those documents. He does not have custody or control of them right now.

I would like the subcommittee to be aware of those facts before any citations are issued.

Mr. WAXMAN. Am I correct in understanding that it is your intention to turn over a portion of the materials subpenaed by the subcommittee at this time?

Mr. JOHNSTONE. Yes, we do.

Mr. WAXMAN. And you are relying upon the court order as a basis for denying this subcommittee the right to receive the other documents?

Mr. JOHNSTONE. That is correct.

Mr. WAXMAN. And you have raised other issues you wish the subcommittee to take into consideration?

Mr. JOHNSTONE. I would like the subcommittee to take into consideration with respect to Mr. Cotter that he does not now, nor did he ever, have possession and control of these documents. Indeed, he is forbidden, as a result of the two court orders which we are furnishing to you, to have even seen the documents.

Mr. WAXMAN. Are you aware of the fact that this is the first time this has been brought to the attention of the subcommittee, even though subcommittee staff has been in consultation with you and Mr. Cotter and that this matter was not raised earlier as a reason for not turning over all of the subpenaed documents?

Mr. COTTER. I can clarify that, sir. As represented that is correct. Under court orders I could neither have possession nor see the documents. The committee staff did contact me and in turn I contacted our general counsel and the law firm of Kirkland & Ellis.

I received service of the subpena at our place of business. I head the Washington office.

I conveyed the information to the law firm and/or our counsel and the subsequent committee staff conversations were with them.

Mr. WAXMAN. It is my opinion that by accepting service of that subpena that you accepted responsibility for those documents.

Mr. COTTER. Yes, sir.

Mr. WAXMAN. On behalf of the corporation and on behalf of yourself.

Mr. COTTER. Yes. At the time I viewed it as a customary service or process at your place of business.

Mr. WAXMAN. The face of the subpena indicates it is to you.

Mr. COTTER. Yes, sir.

Mr. WAXMAN. If there is some part of the subpena you wish to comply with at this time, I would like you to do so.

Mr. JOHNSTONE. Certainly.

Mr. WAXMAN. Would the clerk please bring those documents forward?

May counsel tell us exactly what we are receiving and what we are not receiving pursuant to the subpena?

Mr. JOHNSTONE. You are receiving the documents as described in Mr. Jentes' letter of May 2 in which he represents them to be complete compliance with your subpena, that is, all documents in your possession or control, et cetera, which were offered into evidence by Westinghouse in the matter of Duquesne Light Co. versus Westinghouse Electric Corp., and which relate to the allegations of conspiracy, et cetera, as described in the attachment to your subpena 95–1–14.

The exceptions to this complete production are 28 documents obtained by Westinghouse from Gulf and a transcript of the testimony in the Pennsylvania proceeding of Mr. Minks, of Gulf, which documents and testimony are the subject of Judge Hart's temporary restraining order.

Mr. WAXMAN. As to those documents not furnished us, for which the subpena has been issued. I again direct you to turn over that subpenaed information to the subcommittee.

Mr. JOHNSTONE. And I again respectfully decline on the ground that to do so would be a violation of the temporary restraining order of U.S. District Court in the District of Columbia.

Mr. WAXMAN. It is the opinion of the Chair that all of you and the corporation, are in contempt of the Congress of the United States.

Mr. Gore?

Mr. COLLINS. Mr. Chairman, before we proceed, you just issued a contempt citation. I would like to ask the basis for which the Chair is holding Westinghouse in contempt.

Mr. WAXMAN. Mr. Collins, the Chair is holding them in contempt on the basis that a subpena was issued by this subcommittee for the production of certain documents, which the subpenaed parties, their representatives and the corporation involved have refused to comply.

Mr. COLLINS. A Federal judge issued a restraining order.

Mr. WAXMAN. Mr. Collins, this subcommittee and the Congress of the United States are not subordinate to any judge, Federal court, or any other court in this country.

Mr. Gore?

Mr. GORE. I would just like to say for the record that I think it is absolutely incredible, the action Gulf has taken in trying to prevent this from coming out.

Here we have one of the major corporations in this country allegedly sneaking around, attending secret meetings to fix the price of uranium around the world.

We find out about it. We ask for the information. They stonewall.

We got a proposal from the President of the United States today, stating, "The United States has the option of relying on light water reactors to provide nuclear power to offset a share of the Nation's energy deficit."

At another point the President states, "The United States also must continue to count on nuclear power to meet its share of the energy deficit."

We are dealing with one of the most serious crisis that this country has ever faced. The Congress of the United States is attempting to design an energy policy to meet this crisis. We are confronted with information that indicates the existence of a worldwide uranium cartel which could subject us to the same kind of extortion that we now have with oil.

We are attempting to get the information to formulate wise policies on behalf of the people of this country pursuant to article I of the U.S. Constitution.

If anybody has any doubt as to why big business has the reputation it does in this conutry, just let them look at the record of this case. It is absolutely astounding.

Obviously you people are in a position where you have to choose between contempt of court and contempt of Congress. We are establishing our position in this debate, and it is a historic debate.

Congress' authority comes from article I of the Constitution. We have a situation where this corporation comes before the court facing allegations, of sneaking around and fixing prices, and the court alines itself with that company and frustrate the will of the Congress. This is a very serious matter.

I was just reading this temporary restraining order. You quoted from the section after the order, Mr. Johnstone.

Mr. JOHNSTONE. Yes.

Mr. GORE. These legal forms have long histories behind them but the words still have a lot of meaning.

It states, "It appears to the court that unless restrained by the order of this court, immediate irreparable injury may result to the plaintiff, Gulf Oil Corporation."

This committee is talking about injury to the people of the United States. That is what this court is balancing, the possible injury to Gulf Oil Corp. from having its alleged misdeeds aired before the public and the possible injury to the people of this country which would result if the Congress of the United States formulated policies in the dark.

I am confident that if the judiciary exercises wisdom, it will come down on the right side of this case.

I thank the Chair for his indulgence in allowing me to make that statement.

Mr. WAXMAN. Thank you.

Mr. Walgren?

Mr. WALGREN. I simply would like to say this: Is there anyone here from Gulf Oil today to explain their position with regard to why they feel the subcommittee should not have this information at this time?

[No response.]

Mr. WALGREN. I would think that would be the least Gulf Oil could do.

Mr. WAXMAN. I am informed they were invited to appear at the hearing this morning. They evidently decided against it.

Mr. WALGREN. If memory serves me right, this is not the first time Gulf has withheld information from this subcommittee. In other cases it was on the ground it was proprietary business information necessary to maintenance of their competitive position.

Is that not the case? If not, I will take that back.

Mr. WAXMAN. I am informed by our counsel that the subcommittee issued a report on Gulf's failure to fulfill its warranty agreement.

Mr. COLLINS As far as I know, Gulf has never refused to furnish us information prior to this. Unless the gentleman has specific information, I would like to ask that he leave the matter in abeyance.

Mr. WAXMAN. There is no matter to be left in abeyance with respect to Gulf.

Mr. WALGREN. They have in the past failed to give the committee information which was requested of them as to their rate of return in the sale of natural gas.

I represent the part of the country where Gulf is headquartered. I have no deference for them. I hope they will take a more forthright approach to our trying to deal with what is right and wrong.

On the one hand they ask for deregulation of natural gas so that people will be able to provide Gulf with much greater capital, apparently to carry out economic objectives, but on the other hand they are unwilling to provide the public with the information that goes behind the need for that capital.

I hope that the court will dismiss this temporary restraining order with dispatch on May 4. I think we all know these are matters of form and it is very easy to get a temporary restraining order and very difficult to get a permanent restraining order.

I do not know the legal grounds on which they asked for this. However, there are larger questions involved in this and there is literally no apology I can make for Gulf Oil under these circumstances.

Therefore, I look forward to May 4 and to having Gulf before this committee thereafter.

Mr. GORE. I want to say that the subject of natural gas is relevant for another reason. Here we have one of the largest companies in this country arguing vehemently for deregulation and letting market forces control the price of energy, and yet denying the public information which allegedly shows they are sneaking behind closed doors fixing the price of energy. It is relevant with regard to natural gas and oil as well.

Mr. COLLINS. I have no brief for Gulf and they are not in my district, such as that of the other gentleman who perhaps knows more about them.

However, I would like to say this. The Gulf statement is filed with the Securities and Exchange Commission. They file a K–2 statement.

Last week I took the 10 largest oil companies and I looked to see what their net earnings were for last year. I do not remember where Gulf stood, but for the 10 leading oil companies in the country, the largest, I wanted to see how much money they made and I wanted to see whether they were putting that money to work in exploration and development.

Last year, the 1976 statement of the oil companies of this country, they invested 180 percent of their net profits into drilling capital development and exploration. They have an excellent record of putting their money to work.

All this stuff about cheap profits is a vague innuendo which is not substantiated by the public facts which are a matter of record.

Private industry can solve this situation of natural gas through the free market. I think they have indicated the only solution, as we all know—when this Government actively entered into price controls itself, we are talking to industries about price controls—in 1970 we actively entered into this. We were 23 percent imports then. Today in this country we are 55 percent imports just because of Government intervention.

Of course, we are getting a little away from the *Gulf* case, but I will be interested as you are in seeing the final records when they come in.

Mr. WAXMAN. I thank the gentleman for his statement.

The fact before us, as the Chair sees it, is that we have a subpena outstanding. The Chair has instructed the witnesses to produce the documents pursuant to the subpena.

The witnesses refused to produce those documents. The Chair finds that to be in contempt of Congress.

At this time we will recess the subcommittee subject to the order of the chairman for reconvening.

The witnesses and all those touched by the committee subpena are still subject to that subpena.

The subcommittee will meet in executive session to consider the appropriate action which may include appropriate criminal proceedings if the House of Representatives concurs.

With that, the meeting stands adjourned, subject to call.

[Whereupon, at 2:13 p.m., the subcommittee adjourned, subject to call.]

INTERNATIONAL URANIUM CARTEL

FRIDAY, JUNE 10, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, in room 2359, Rayburn House Office Building, Hon. John E. Moss, chairman, presiding.

Mr. Moss. The subcommittee will be in order.

At this time the Chair will entertain a motion.

Mr. SHARP. I move that we go into executive session, Mr. Chairman.

Mr. Moss. Is there discussion?

If not, hearing none, the committee will go into executive session for the purpose of taking testimony at this time.

The Chair would ask that all persons not members of the staff of the subcommittee or of the committee leave the room.

We have a representative from the State of New York. The Chair will ask, without objection, that the representative of the assembly of the State of New York be permitted to remain in the executive session.

Is there objection?

Hearing none, it is so ordered.

I have a statement at this time.

Since mid-1971 the energy trade press has reported from time to time on the possible existence of an international uranium producers' cartel. The stories emanated, for the most part, from such faraway places as Paris and Johannesburg, South Africa.

More recently, late last summer, the first hard evidence of such a cartel surfaced, oddly enough, in my own State of California.

A number of documents, very probably stolen from the files of an Australian uranium producer, were made public by a special advisor to the California Energy Commission, who had himself received the documents from former colleagues in the Australian Chapter of Friends of the Earth.

Shortly thereafter, in California, this subcommittee held hearings on the Australian documents and some of the issues they raised.

In the course of those hearings there were a number of oblique references to possible American-based company involvement in the cartel, and to documents pertinent to that charge, produced in the discovery process of litigation against the Westinghouse Electric Corp. by several large utilities, in which the Westinghouse defense rested on its claim of having fallen victim to just such a cartel.

The subcommittee sought the discovery material by subpena on April 26 of this year.

The Gulf Oil Corp., where many of the documents originated, immediately sought and obtained a temporary restraining order blocking delivery of the material to the subcommittee.

Two days later, the restraining order was vacated and Gulf's request for an injunction denied by U.S. District Judge George Hart. The documents were then delivered to the subcommittee, on May 4, and have since been held in executive session as strictly confidential.

Gulf Oil has requested that the documents continue to be held in executive session and strictly confidential. To that end, Gulf has asked to appear before us today. Although under no obligation whatever to grant Gulf's request, the subcommittee is pleased to entertain it, and to welcome Mr. Richard Colman of the law firm of Howry & Simon, appearing on behalf of Gulf.

After we hear from Mr. Colman, subcommittee staff counsel John Atkisson and Patrick McLain will present their analysis of the issues involved.

I should point out that Gulf is not alone in its desire to keep this material confidential.

The Department of State, while not appearing today, has forwarded to me an official request for confidentiality from the Government of Canada. State itself, however, takes no position other than to ask us to accommodate the Canadians if not inconsistent with our investigative purposes and procedures. A little later today we will consider that request, too.

At this time I would invite Mr. Colman to proceed.

You appear as counsel and do not have to be sworn.

STATEMENT OF RICHARD T. COLMAN, ATTORNEY, ON BEHALF OF GULF OIL CORP., ACCOMPANIED BY GERALD P. THURMOND, WASHINGTON COUNSEL, LAW DEPARTMENT, GULF OIL CORP.

Mr. COLMAN. First of all, on behalf of Gulf Oil Corp., appearing with me today is Mr. Gerald P. Thurmond, who is Washington counsel to Gulf Oil Corp.

Second, I would like to thank the chairman and the members of the subcommittee for giving us the opportunity of appearing here today to present our claim and our petition to the subcommittee that the material obtained from Westinghouse and originally obtained from Gulf Oil Corp. be granted confidential treatment.

We seek confidential treatment for this material for essentially two reasons:

First, 28 documents and 1 trial transcript which discusses those 28 documents are subject to what Gulf regards as a valid claim of attorney-client and attorney-work product privilege.

These documents, for the information of the chairman and the subcommittee, are listed in some detail as exhibit A to my letter to the chairman dated May 10.

I might add that in addition to the 28 documents appearing on exhibit A, yesterday in response to a June 3 subpena issued by the sub-

committee, we produced an additional document, the so-called Ramsey report.

We had not previously produced that document in any litigation. It has always been subject to a claim of attorney-client privilege so that my remarks here today would apply in addition to that one document.

The second basis upon which we seek confidential treatment of the material now in the possession of the subcommittee—and this relates to the nonprivileged material—is that such material deals with the details of transactions involving foreign governments, and particularly as the Chair has already noted the Government of Canada, which has indicated quite strongly that it does not wish to see this material publicly disclosed.

Illustrative of the documents in the latter category, that is, documents dealing with the Canadian Government, are Nos. 9, 12, 16, 17, and 22 which are also included on exhibit A of my May 10 letter to the chairman.

Before turning to the merits of our claims as I have just outlined them, I think it appropriate to state that we do not, in making this claim, seek in any way, shape, or form to impede or interfere with the workings of this committee. On the contrary, it is our intention unequivocably to cooperate with the committee, and I believe we have done so to date consistent with what we viewed as our rights.

We would request, however, that there is a middle ground, if you will, between the functioning of this committee and the rights of Gulf Oil Corp. as well as the declared policies of the Canadian Government. We believe that the working of this committee can be carried on and at the same time grant Gulf Oil Corp. the confidential status it seeks for these documents. It is not a situation where the documents are being withheld from the committee or the committee will not have access to them, but rather it is simply the use which will be made of those documents by the committee. Again, we feel that the committee can completely fulfill its functions while at the same time granting confidential treatment to this material.

With respect to the attorney-client privilege, which again relates to the 28—I should say now the 29—documents before the committee and the related trial transcript, Gulf is aware of and recognizes the position of the chairman as stated in the letter of May 23——

Mr. Moss. If I may interrupt for a moment. I have a question before me.

Mr. COLMAN. Yes, sir.

Mr. Moss. I want it clarified both for the record and counsel.

In the opening statement the chairman made, it was made in executive session. Therefore, that opening statement is covered under the rule as any other material is. The Chair is not privileged to release his opening statement until the committee, by a majority vote, determined it appropriate.

There is no way that the Chair may unilaterally act to release that statement.

I am sorry to interrupt.

Mr. COLMAN. That is quite all right, Mr. Chairman.

I was addressing the subject of Gulf attorney-client privilege and work product claims which relate to the 29 documents and one related

trial transcript and was stating that we fully recognize the position of the subcommittee as stated in the chairman's letter to me of May 23 that we do not have the right to assert attorney-client or work product privileges before the subcommittee.

However, as indicated in my initial letter to the chairman, my letter of May 10, we would hope that the subcommittee, as a matter of discretion, would recognize the assertion of privilege with respect to these limited numbers of documents as has been the case on other occasions before this committee and before other committees of Congress.

The full discussion of the law applicable to the 28 or 29 documents as to which we assert attorney-client privilege claims is set forth in the May 3rd memorandum which we filed in the district court proceedings and which was provided at that time to subcommittee chief counsel, Mr. Lemov. I do not propose to go into that in detail here this morning inasmuch as it has been made available to the committee for some time.

I would note, however, that several members of this subcommittee are attorneys, and I would submit that one has merely to look at the very detailed description of the documents involved as set forth in exhibit A to my May 10th letter, and/or look at the documents themselves to see that these documents are clearly privileged within any commonly accepted definition of attorney-client privilege.

They reflect either facts communicated to Gulf attorneys for the purpose of seeking legal advice or the legal analysis, conclusions, and opinions of Gulf attorneys incident to the giving of legal advice.

We are fully aware that a common pleas court judge in the city of Pittsburgh has held that these 28 documents are not privileged, at least in the State of Pennsylvania. Even he held, however, that the document most recently submitted to the committee, that is the Ramsey report, was privilege, and that document was not produced in the Westinghouse litigation, as I have previously noted.

We feel quite strongly that this common please judge was patently wrong, even under his own rationale, and we believe that the error of his ways was recognized by the Federal District Court here in Washington when it passed upon the merits of Gulf's claim in connection with its motion for a temporary restraining order and its motion for a preliminary injunction.

As I have set forth in my May 10th letter to the chairman, the court indicated in his comments to counsel that the documents which he had reviewed in conjunction with the same list which has been furnished to the subcommittee would normally invlove attorney-client relationships.

The court further characterized the ruling of the common pleas court in Pennsylvania as both extraordinary and bizarre.

He stated further that if the common please court were correct in its ruling with respect to these documents, "there must not be any attorney-client relationship in the State of Pennsylvania."

We were opposed in that particular proceeding not only by counsel for the committee but by counsel for Westinghouse as well. Westinghouse has an obvious self-interest in the positions it advances in this respect.

I should note, however, that in my presence in chambers before Judge Hart on May 4, Westinghouse counsel, notwithstanding its pub-

lic pronouncements, commented to Judge Hart that they too thought the common please court judge's ruling was pretty strange on the subject of attorney-client privilege.

Once again it is our very strong contention that that judge was simply wrong, wrong on the law of attorney-client privilege and even under his own erroneous definition of that privilege he was wrong in the way that he applied it.

We would urge the committee to totally disregard the ruling of the common pleas court, and again, while we recognize the position of the chairman and the committee that we are not entitled as a matter of right to privilege, we do think that having reviewed the documents and having reviewed them in conjunction with the list we have furnished, that as a matter of discretion the committee should accord us confidential treatment of these documents.

The second category of material which is at issue here this morning is the so-called Canadian documents.

As I have previously noted, exhibits 9, 12, 16, 17, and 22 identified in exhibit A to my May 10 letter are such Canadian documents.

Those documents, those five, were documents which were actually exchanged between officials of the Canadian Government. We have given them special mention for that reason, and also because these particular documents were contained in the files of Gulf's law department from which they were obtained where they had been sent for the purpose of assisting counsel in rendering legal advice.

But my comments with respect to the Canadian documents really apply equally to all of the nonprivileged material which is now in the possession of the committee. Even a cursory review of the other nonprivileged documents would indicate that they are replete with references to the Canadian Government's policies and practices and very intimate details of discussions with and transactions with officials of the Canadian Government.

As in the case of the attorney-client and work product privileges, Gulf fully recognizes the position of the Chair that we are not entitled to confidential treatment of this Canadian material as a matter of right. But once again we would appeal to the discretion of the Chair and to the discretion of the members of the committee in granting confidential treatment to these Canadian Government documents.

In my letter of May 10 to the chairman I set forth the uranium security regulations of September 21, 1976, which unequivocably state the policy of the Canadian Government against the public disclosure of material of this kind.

Those regulations, while we did not attach them, are subject to the Atomic Energy Control Act. They were published pursuant to it. They carry with them rather substantial penalties for violation, and the penalties apply not simply to the active participant in disclosure of such material but in a rather unique provision, at least in my experience, they apply to any corporate officer who had knowledge of the disclosure and failed to do anything to prevent it.

Second, as pointed out in my letter of May 10, the Canadian Government has formally requested Gulf to deliver similar material to the Canadian Government. This is a letter dated November 8, 1976, addressed from the Minister of Energy, Mines and Resources, which is a Canadian Government department.

While we did not attach them to our letter—and I don't wish to burden the record on this point—there are numerous other statements, public statements, by Canadian Government officials which request confidential status for this material and are clearly against the public disclosure of this material.

Again, just by way of very quick summary, we realize that the Chair and the committee have taken the position we are not entitled to confidential treatment of this material as a matter of right, but we think, in view of the very clear and very strong policy of the Canadian Government, as a matter of accommodation to the Canadian Government, such treatment, such confidential treatment, would be appropriate in this case.

Thank you very much, Mr. Chairman.

Mr. Moss. Thank you, sir.

Before recognizing Mr. Atkisson, I am going to address myself to the second category, those upon which a plea of confidentiality is addressed to the relationship with the Government of Canada.

I think the question this committee must decide is whether the disclosure better serves the purposes of American people, the U.S. national interest, or whether we achieve a greater benefit for the American people through adhering to the request of the Government of Canada, which is requesting this treatment not only as a sovereign power within itself but also as a participant in a commercial venture. Therefore, we have a split role for the Government of Canada. I think this must be carefully evaluated by the committee in making its determination.

At this time the Chair would call upon counsel, Mr. Atkisson.

Mr. ATKISSON. Patrick McLain who has worked long and hard on these issues, I would ask to proceed. I may have some comments at the end.

Mr. Moss. Very well.

Mr. MCLAIN. Thank you, Mr. Chairman.

I would like to address several points as to which the staff believes are the issues before the committee this morning.

The committee already has before it a memorandum prepared by the staff as well as a legal memorandum prepared by the American Law Division of the Library of Congress which we believe are both applicable to the issues. I would like briefly to summarize the major points contained in those.

The first point is what is the applicability of the asserted privilege of Gulf Oil in the congressional setting.

As the memorandum I referred to concludes, the issue never has been squarely presented before the courts. On several occasions, congressional committees have accepted the claim of privilege. On several occasions they have denied it.

As Mr. Colman recognizes, the issue is resolved basically in the discreation of the committee.

On that point I think some clarification needs to be made with reference to Mr. Colman's letter to the chairman, dated May 10.

On page 3 of that letter, Mr. Colman states that this subcommittee, the Subcommittee on Oversight and Investigations, "has been among those which have permitted the assertion of the attorney-client privilege, as indicated in the following colloquy at a recent hearing."

I think the chairman and I both remember that hearing, held in California last November, dealing with prepaid health plans in California. I believe that Mr. Colman could not be more incorrect in his interpretation of what that colloquy means. That colloquy does not involve attorney-client privilege. That colloquy involves that latitude upon which the Chair will recognize counsel in offering advice to the witness.

The colloquy is very clear that the issue, as Chairman Moss recognized, was that counsel would be permitted to advise the witness on his constitutional rights. Because of Mr. Waxman's request, the Chair found it was desirable to go beyond that minimum requirement as contained in rule XI of the Rules of the House of Representatives.

The Chair did not at any time inquire into the nature of that communication. Had the Chair done it, it would have involved the question of attorney-client privilege. It did not, and therefore it is an incorrect interpretation of that colloquy to state otherwise.

Therefore, we get down to the question before the committee as to how they do exercise their discretion in this case. I think that discretion must be exercised by weighing what the legislative interest is in this subject. The issue is an alleged uranium cartel and its possible impact on U.S. commerce.

This issue, I believe, is vital and timely as it relates to the Congress today. The Congress and this committee are considering major energy legislation today. It involves the possible horizontal ownership by the petroleum industry. The existence and the effect of a cartel, as I said, has a vital bearing on that issue.

It has a vital bearing on the issue of the use of nuclear fuel as an alternative fuel, and the effect of the drastic price rise we have seen in the last few years in nuclear fuel.

For that reason, I think the interests of the Congress are compelling at this time to put before the full Congress and the public the facts as they are contained in these documents. The documents themselves contain the evidence which relates to an alleged cartel. There is nothing outside those documents that can give us insight, and the documents themselves must tell the story.

Second, Mr. Chairman, is the question of the applicability of the claim that these documents are prohibited from disclosure by the Canadian Government. This involves a question of comity between nations. The law on this point is very clear that the question of comity is a voluntary one and is not an obligatory one, that it is governed by certain more or less recognized rules, and those rules involve what the positive law of the forum are, the forum here being the U.S. Congress, and also the impact that the recognition would have on the positive rights of the forum and of the citizens.

The Library of Congress memorandum makes clear the fact that the clear trend in recent cases seems to be that foreign nondisclosure laws do not constitute any significant restraint on disclosure, particularly with respect to obtaining information bearing on antitrust matters. The antitrust laws which the Supreme Court has held many times are the cornerstone upon this country's economic policy.

That is also at issue here, as the committee has broad jurisdiction in the antitrust area, as it has jurisdiction over the Federal Trade Commission Act dealing with unfair methods of competition.

I find it interesting, in light of Mr. Colman's comments earlier regarding the materials which have been submitted by Westinghouse. They seem to characterize the Canadian question as one of involving extreme diplomatic sensitivity. I appreciate their concern for this country's interest, but I am a little confused that our own State Department does not share that concern.

As the Chair mentioned earlier, when we met the State Department their message to us was clear—that they would like us to respect the Canadian request if it did not interfere in our investigation. The staff submits that the interest of the U.S. Government is supreme and it would, in fact, interfere with this subcommittee's investigation.

Concluding on that point, the applicability of the privileges to Congress—it is discretionary. The committee must weigh its interest. The staff believes that the interest of the committee is paramount to the interest afforded by the asserted privileges.

The second point which Mr. Colman raised is the validity of the asserted privileges to the documents at issue. We have outlined before the committee exactly what the attorney-client privilege is and what it means.

A key element we have to understand in that privilege is that it relates only to legal advice from a professional legal adviser in his capacity as such.

Mr. Colman emphasizes that if we read these documents we can see clearly they come within the privilege. I have more difficulty than he appears to have in reaching that conclusion. I think a review of the documents on the other hand would show that many times legal advice was not involved. It was business advice.

The attorneys who participated and are named in these memorandums are also high-ranking officials of Gulf Oil Corp. The privilege will not be allowed to protect business advice and will not be allowed to protect legal advice where it is only incidental to business advice of the attorney.

We have cited in our memorandum several of the documents supplied by Westinghouse pursuant to the subpena which illustrate the nature of the communications involved.

Another exception to the attorney-client privilege is one that the attorney-client privilege will not be allowed to protect communications which were made in furtherance of continuing or future fraudulent or criminal acts.

Though there has been no finding of a criminal act in this case, the documents strongly suggest that there is probable cause that such an act took place.

If I might refer to one case which is strictly on point, a U.S. court of appeals case in 1976, *Union Camp Corp.* v. *Lewis.*

If I may read from the court's finding:

> The attorney-client privilege is withdrawn upon a prima facie showing that the lawyer's advice was designed to serve his client in the commission of a fraud or a crime.

Further, the court held that it was not at this stage of the proceeding required to prove the crime or fraud in order to secure the evidence.

This involved a grand jury proceeding. As you know, in grand jury proceedings no proof of a crime is involved.

We have, as before, referred to a specific document which was under subpena, to allow the subcommittee to determine whether these communications were made in furtherance of a fraud or a crime.

My last point is the relationship of the confidential designation by the Canadian Government as they relate to the subpenaed documents. The Supreme Court held that collusion with a foreign government in thwarting legal impediments to production of records would have a vital bearing on justification for dismissal of the action.

What we are saying—and again we have cited the documents which have been subpenaed to illustrate this point—is that Gulf was actively involved, and if not at least actively involved, it took a knowing and active interest in the promulgation of these Canadian statutes and regulations which they are now trying to seek protection from.

I think the memorandum strongly suggests that this is what the Supreme Court was talking about when they referred to thwarting the legal impediments.

Those, Mr. Chairman, are basically the points of the staff. I will merely say in concluding, as we concluded our memorandum, that we know this issue is one of discretion with the Chair. We think that the vital congressional interest in these issues provides a compelling reason for the subcommittee to exercise its clear and lawful discretion and deny Gulf's claim at this time.

Thank you.

Mr. Moss. The two memorandums referred to by counsel will be included in the record at this point.

[Testimony resumes on p. 87.]

[The memoranums referred to follow:]

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CONFIDENTIAL
MEMORANDUM

DATE: June 8, 1977

TO: The Members of the Subcommittee
On Oversight and Investigations

FROM: Chairman John E. Moss

SUBJECT: Issues To Be Raised At Hearings
On June 10, 1977 - Uranium Cartel

Background

On April 26, 1977 the Subcommittee authorized the issuance of a subpoena duces tecum to Westinghouse Electric Corporation (Westinghouse) calling for the production of documents relating to alleged price fixing in the sale of uranium, and the nature and effect of an alleged international uranium cartel.

On May 2, 1977, Gulf Oil Corporation (Gulf) brought an action for, and received, a Temporary Restraining Order enjoining Westinghouse from complying with the subpoena of the Subcommittee. However, on May 4, the United States District Court for the District of Columbia (Judge George L. Hart, Jr.) denied Gulf's motion for a preliminary injunction, dissolved and dismissed the action.

The pertinent part of the Court's opinion holds that the Subcommittee's investigation involves a valid legislative inquiry and this being so:

> ...under the decision of the Supreme Court in Eastland v. United States Servicemen's Fund, this action by the House or its Committee may not be questioned in any other place, including this Court, and therefore there is no likelihood of success of the plaintiff on the merits of this case ultimately."

In ordering the documents delivered to the Subcommittee the Court stated, "Congress can do with them as they see fit."

The subpoenaed material was immediately thereafter delivered by Westinghouse to the Subcommittee. However, it was received in executive session purusant to Rule XI(K)(5) of the Rules of the House of Representatives, thereby requiring an affirmitive vote by the members of the Subcommittee in order to disclose the material.

By letter of May 10, 1977, Mr. Richard Colman of the law firm of Howrey and Simon, representing Gulf, requested an appearance before the Subcommittee to ask that the Subcommittee accord confidential treatment to the material subpoenaed. I granted that request by letter of May 23, 1977, and have set the matter for hearing on Friday of this week, June 10th at 10:00 a.m.

Colman's letter sets forth two reasons for Gulf's belief that the documents should be held confidential: (1), attorney-client and attorney-work product privileges; and (2), statutes or regulations of the Canadian Government designating some of the documents "secret" or "confidential." It is anticipated that Gulf's argument on Friday will assert the same two principles.

Staff Analysis of the Issues

The attached memorandum prepared by the American Law Division of the Library of Congress treats the attorney-client privilege before Congressional committees, as well as the law concerning the excuse of foreign illegality.

A discussion of the American Law Division's legal conclusions, as applied to the documents here in question, prepared by the Subcommittee staff, follows.

I. Attorney-Client Privilege and Attorney-Work Product Doctrine

The attorney-client privilege applies to court proceedings:

> "When legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal adviser except the protection

be waived." 8 Wigmore on Evidence § 2292 (McNaughton Rev.).

The "work product" principle does not afford a privilege but merely imposes a requirement that very good cause for discovery be shown if disclosure is made in the course of a lawyer's preparation of a case. City of Philadelpha v. Westinghouse Electric Corporation 210 F. Supp. 483 (1962). The principle applies to information, memoranda, briefs, communications or other writings prepared by counsel for his own use in anticipation of litigation. Hickman v. Taylor 329 U.S. 495 (1947).

The attorney-client privilege belongs to, and must be asserted by, the client. The work product doctrine belongs to, and must be asserted by, the attorney.

But with respect to assertion of the privileges before the Congress, as opposed to a court of law, the American Law Division memorandum concludes: (1) the issue of the attorney-client privilege's standing before legislative committees has not been squarely presented or decided by the courts; (2) the best evidence supports the view that the availability, or more accurately, acceptance of the attorney-client privilege, is discretionary with the committee; and (3) though not required to observe the privilege, it has been observed on occasion.. (See American Law Division memorandum, attached)

It should be noted that the question of the applicability of confidential communication privileges in Congressional setting has been considered and rejected by the Congress. In considering new rule changes, the Senate Rules Committee recommended against any rule making "the protection of confidential communications applicable to legislative investigations." Senate Report No.2, 84th Cong., 1st. Sess. 27-28 (1955).

It appears that the only case remotely on point is that of Jurney v. MacCracken 294 U.S. 125 (1953). Though divided on another point, the Supreme Court held that the question of attorney-client privilege was "no longer at issue: and states that "(U)pon the conclusion of MacCraken's testimony on February 2, the Committee decided that none of the papers

in his possession could be withheld under the claim of privilege." 294 U.S. at 146.

This appears also to be the precedent with the House of Representatives. Stewart v. Blaine 1 MacArthur 453 (D.C. 1874) involved a witness who declined to answer questions which he claimed related to confidential communications from his client, and was committed for contempt. (see also, Eberling, Congressional Investigations (1928), pp. 349-350).

II. Claim of Protection by "Confidential" Designation by Canadian Government

The American Law Division memorandum deals with this point very thoroughly. However, it must be noted that "...Comity, being voluntary and not obligatory rests in the discretion of the tribunals of the Forum and is governed by certain more or less widely recognized rules." Further, "in recognition and enforcement of foreign laws the courts are slow to overrule the positive law of the Forum, and they will never give effect to a foreign law where to do so would prejudice the State's rights or the rights of its citizens, or where the enforcement of the foreign law would contravene the positive policy of the law of the Forum, whether or not that policy is reflected in statutory enactment." 16 American Jurisprudence 2d "Conflict of Laws," §§ 5,6.

This is of particular importance here, because the "positive" law and the public policy at issue in this forum is the possible violation of the antitrust laws of the United States. To protect the documents at issue might well prejudice the State's rights or the rights of its citizens to insure that competition exists without illegal price fixing in the sale of uranium. The American Law Division memorandum further concludes that "...the clear trend of recent cases seems to be that foreign non-disclosure laws do not constitute any significant restraint on disclosure, particularly as respect (sic.) to obtaining information bearing on antitrust matters."

Gulf's Claims As They Relate To The Subpoenaed Documents

Discussion of Gulf's claims of privilege before the Congress, as opposed to a court of law, taken in the abstract, may itself be dispositive of the issue. But so too should

the claims be reviewed on the merits, as they relate to the specific documents at issue.

This is not the first occasion on which Gulf has asserted this claim of privilege. Gulf presented these same claims to the Pennsylvania courts, which rejected them on the merits.

Moreover, while the court to which the claim was originally presented saw fit to enter a protective order as to the material claimed to be confidential, the same Court, by Order dated March 30, 1977, determined that:

> "Defendant Westinghouse may comply with any Orders or processes emanating from Courts or other authorities or competent jurisdiction with respect to proceedings being held by or before them which require Westinghouse to produce, identify or disclose documents, testimony, or information contained therein which have previously been designated as Confidential or Specially Confidential, or otherwise subject to Orders of this Court preventing their disclosure to third parties." (emphasis added).

Thus, the Court with greatest familiarity with the material has found that the confidentiality asserted by Gulf does not shield the material.

The finding by Judge Hart in Gulf Oil Corporation v. Westinghouse Electric Corporation appears in accord, as the Court in its conclusions of law found, "There is no likelihood of success of the plaintiff on the merits of this case ultimately."

I. The Attorney-Client Privilege

As stated on page 3 of this memorandum:

> "When legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal adviser except the protection be waived."

Several factors must be considered in applying the privilege to the documents at hand.

A. A prime exception to the attorney-client privilege extends to communications made to an attorney in furtherance of a continuing or future fraud or crime; the exception may be invoked where the communications are made in furtherance of acts contemplated by the client; the attorney need not have joined together with the client to commit the fraudulent or criminal acts and the attorney may be ignorant of them. U.S. v. Aldridge 484 F. 2d 655 (1973), cert. denied 94 S. Ct. 1423.

As with the Subcommittee's investigation, this exception has particular applicability to the antitrust laws.

A 1967 U.S. Court of Appeals case is particularly helpful in this regard. Union Camp Corporation v. Lewis 385 F. 2d 143 (1967). A grand jury, convened to investigate possible violations of the antitrust laws, caused a subpoena duces tecum to issue to Union Camp Corporation. Union Camp moved to quash the subpoena on the ground that disclosure would be unreasonable and oppressive since the document and its attachments which the grand jury sought constituted confidential and privileged attorney-client communications. The government claimed that no privilege was applicable because in the document Union Camp's lawyer furnished his client advice for use in an unlawful and fraudulent scheme. The Court held in disallowing the privilege:

> "The attorney-client privilege is withdrawn upon a prima faci showing that the lawyer's advice was designed to serve his client in commission of a fraud or crime." id. at 144. Further, the Court held that, "It was not at this stage of the proceedings required to prove the crime or fraud in order to secure the evidence." id. at 145.

A review of the supoenaed documents show the particular applicability of this case. (see letter of October 11, 1972 from Jackson to O'Hara - in Subcommittee files)

B. The privilege clearly relates only to legal advice from a professional legal adviser, in his capacity as such. Prichard v. U.S. 339 U.S. 974. The privilege does not exist for papers delivered by a client to an attorney where no legal services were rendered. U.S. v. Kelly, 311 F. Supp. The privilege is not applicable where mere business advice is sought. In re Shapiro 381 F. Supp. 31.

The documents now in the Subcommittee's possession only rarely contain legal advice as such, communicated from counsel to client. While nominally attorneys, the individuals involved more often than not hold high level executive positions within Gulf organization. In some the attorney's function is that of

a mere scrivener, faithfully recording the events of cartel meetings. In still others, the advice sought and given is purely of a business nature. (See March 22, 1972 memorandum from Colman to Walker; May 19, 1972 memorandum from Colman to Allen - in Subcommittee files.)

II. Claim of Protection by "Confidential" Designation by Canadian Government

On page 15 of the American Law Division memorandum it is stated that, "the Court also makes clear that any evidence of collusion with the foreign government in courting legal impediments to production of... records ... would have a vital bearing on justification for dismissal of the action..." see Societe Internationale v. Rogers 357 U.S. at 209 (1958)

The subpoenaed documents make clear that Gulf took an active interest in the promulgation of the Canadian regulations, and in fact were actively involved in amending them in order to protect the alleged cartel. (see June 15, 1972 memorandum from Runnals to Austin and April 12, 1972 memorandum from Colman to Minks - in Subcommittee files). These memoranda strongly suggest that Gulf was active in "courting the legal impediments" from which they now seek protection.

Conclusion

The conclusion is inescapable that any decision on the asserted privileges is solely within the discretion of the Subcommittee. That decision must be made by weighing the legislative need for disclosure against any possible resulting injury. The Subcommittee's need to examine the applicability and the effectiveness of the United States antitrust laws in this area is paramount. The courts point out that the antitrust laws have long been a cornerstone of this nation's economic policies. The Subcommittee must be able to report to the House and the public the full facts relating to this matter as they may effect legislative considerations. (See H.R. 3370 and H.R. 683, The Energy Industry Divestiture Act.)

Caution dictates that the Subcommittee be aware of any misuse of the attorney-client privilege. The privilege should not be allowed to be perverted by shielding wrongdoing.

It is the staff's conclusion that the documents do not come within the privilege, and that even if they do,

Congressional interest in the issues they concern is compelling reason for the Subcommittee to exercise its clear and lawful discretion to deny Gulf's claim.

JEM:pma

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May 19, 1977

To: Subcommittee on Oversight
and Investigations
Attention: Michael Lemov

From: American Law Division

Subject: Law Concerning the Foreign Illegality Excuse for Non-Production of Documents

Reference is made to your inquiry of May 10, 1977, requesting information on the above matter. Specifically, you ask for a memorandum of law regarding whether an American corporation may refuse to comply with a valid congressional subpoena duces tecum requiring the production of documents in its possession on the ground that disclosure would contravene Canadian law and public policy.

The documents in question appear generally to concern details and other matters relating to a series of "meetings of Canadian and international uranium producers which were held for the purpose of establishing an informal arrangement for marketing of uranium." See Exhibit D, Gulf Oil Corp. v. Westinghouse Electric Corp., Civil Action No. 77-0742 (May 3, 1977). In his May 10, 1977 letter to Chairman John E. Moss, counsel for Gulf Oil Corporation ("Gulf") states that

the documents in question number 28 and one related trial transcript. Gulf's counsel asserts that these documents are protected against disclosure by the attorney-client privilege. Also, five of the 28 documents are asserted to have originated from the Canadian Government which, it is alleged, has legal requirements that prohibit their disclosure.

Before turning to this second contention which you have asked us to address, a few preliminary remarks appear appropriate. With respect to Gulf counsel's first contention, we have supplied you with a previously prepared memorandum of law regarding the status in congressional committee investigations of the attorney-client privilege. ("When legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal adviser except the protection be waived." 8 Wigmore on Evidence §2292 (McNaughton Rev.); see also McCormick on Evidence §87 (2d ed. 1972). The privilege is not limited to clients who are natural persons. Radiant Burner, Inc. v. American Gas Ass'n., 320 F.2d 314 (7th Cir. 1963)). That memorandum concludes, among other things, that: (1) the issue of the attorney-client privilege's standing before legislative committees has not been squarely presented or decided by the courts; (2) the best evidence supports the view that the availability, or more accurately, acceptance of the attorney-client privilege, is discretionary with the committee;

and (3) though not required to observe the attorney-client privilege, congressional committees in actual practice generally do. See Senate Report No. 2, 84th Cong., 1st Sess. 27-28 (1955). Accordingly, whether or not a congressional commitee accepts the attorney-client privilege as an excuse for not producing subpoenaed documents is a matter for the committee or subcommittee to decide.

Relevant House requirements seem to be in accord with this view. Thus, with respect to appearance of counsel generally, Jefferson's Manual states: "Counsel are to be heard only on private, not on public, bills and on such points of law only as the House shall direct." §348. (Emphasis added.) In the matter of counsel advising a witness at a hearing, Rule XI, Cl. 2(k)(3) states as follows: "Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights." (Emphasis added.)

In his May 10, 1977 letter to Chairman John E. Moss, Gulf counsel asserts that the Subcommittee on Oversight and Investigation "has been among those which have permitted the assertion of the attorney-client privilege: . . ." In support of this contention Gulf counsel reproduces a colloquy between Chairman John E. Moss and Congressman Henry A. Waxman during a hearing on the Delivery of Health Care: California PHP's. Hearing Before the Subcom. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce, 94th Cong., 2d

Sess. 137-38 (1976). The colloquy relied on has little or nothing to do with the attorney-client privilege as defined above. Clearly the gist of the colloquy relates to the leeway to be afforded counsel in advising his client. As noted, Rule XI, Cl. 2(k)(3) provides that at House investigative hearings, counsel may advise a witness only as to his constitutional rights. Obviously, Congressman Henry A. Waxman desired to allow the witness a greater opportunity than is afforded by the Rule. Thus, he states: ". . . I would hate to have a client denied the opportunity to talk to his lawyer even if it were beyond the scope of a constitutional question." (Emphasis added.) The chairman's response makes it clear that the subject under discussion relates to the provisions of House Rule XI, Cl. 2(k)(3). He states: "If the gentleman from California desires that the counsel be permitted, the Chair will indulge him and permit that, but the rules are rather clear." Of course, the Rule specifies the basic minimum guaranty with respect to counsel advising a congressional witness. If a congressional committee desires to afford more than this minimum, the matter is one within its discretion. See Hannah v. Larche, 363 U.S. 420, 442-445 (1960) where the Court analogizes the U.S. Commission on Civil Rights with a congressional committee for purposes of rejecting plaintiff's due process claims.

Whether, in fact, the documents in question are shielded by the attorney-client privilege is a matter which cannot be determined without access thereto. However, if as asserted in the Subcommittee's

amicus brief in Gulf Oil Corporation v. Westinghouse, Civil Action No. 77-0742, "the claim of privilege as to these documents has already been tested . . ., and the decision was adverse to the claim," the Subcommittee can rely thereon for purposes of disposing of the same claim when presented to it. Briefly, while the Subcommittee is not bound by the court's determination of the issue, it can accept it in recognition of the court's expertise on the subject.

In the May 10, 1977 letter to Chairman John E. Moss previously referred to, Gulf's counsel does not refuse to turn over the documents on grounds of the attorney-client privilege and the foreign illegality excuse, but, because of their asserted relevance, asks that they be accorded confidential treatment. Both House Rules and House Commerce Committee Rules provide for public hearing except when a committee or subcommittee majority vote to hold a closed hearing, House Rule XI, Cl. 2(g)(2); Committee Rule 2(e). House Rules provide for a closed hearing whenever disclosure of testimony, evidence, or other matters to be considered would, among other things, "violate any law . . . ." Rule XI, Cl. 2(2)(2). Accordingly, the Subcommittee may, if it wishes, accord confidential treatment to the Gulf material obtained by subpoena from Westinghouse Electric Corporation on May 2 and 4, 1977.

Although the aforementioned House Rule mandates public sessions unless a committee or subcommittee majority votes otherwise, the Subcommittee in the present circumstances is arguably under an obligation to consider Gulf's request and to take a vote thereon. Counsel

for the Subcommittee gave assurances to that effect in obtaining the documents in question. Cf. Yellin v. United States, 374 U.S. 109 (1963); United States v. Grumman, 227 F. Supp. 227 (D.D.C. 1964).

A number of matters which ordinarily require consideration in a memorandum of law relating to any aspect of congressional investigations, namely jurisdiction and legislative purpose, can be dealt with summarily here. Both these matters were affirmed by the United States District Court for the District of Columbia in Gulf Oil Corporation v. Westinghouse Electric Corporation, Civil Action No. 77-0742 (May 4, 1977). Thus, in its Findings of Fact, the court states:

> 3. It appears beyond question that the investigation being undertaken by the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, House of Representatives is one that is properly authorized by that House.
>
> 4. It further appears that the matter in which the Subcommittee is now engaged, and which the subpoena is addressed to, is a matter which involves legislation and that the subpoena is issued for a valid legislative inquiry.

The following excerpts from 16 American Jurisprudence 2d "Conflict of Laws," §§1, 4, 5, 6, regarding definitions and general principles, are submitted by way of general background to the main issue raised by your inquiry:

> Conflict of laws is in reality a part of the subject of international law, which is commonly divided into two aspects, public and

private. Public international law, or the law of nations is that which regulates the political intercourse of nations with each other or concerns questions of rights between nations, whereas private international law, or conflict of laws, is that which regulates the comity of states in giving effect in one to the municipal laws of another relating to private persons, or concerns the rights of persons within the territory and dominion of one state or nation, by reason of acts, private or public, done within the dominion of another, and which is based on the broad general principal that one country will respect and give effect to the laws of another so far as can be done consistently with its own in interests. §1.

* * *

No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one state or nation is allowed to operate within the dominion of another depends on what is commonly called "the comity of nations." Comity, in the legal sense, is neither a matter of absolute obligation on the one hand nor a mere courtesy and good will upon the other. It has been defined as the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws. §4.

In considering the question of comity, it should always be borne in mind that the recognition of foreign laws cannot be claimed as a right, but only as a favor or courtesy. Thus, it has been said that the application of comity does not rise to the effect of establishing an imperative rule of law, and that it has the power to "persuade but not command." It is permitted and accepted by all civilized communities from mutual interest

> and convenience, from a sense of the inconvenience which would otherwise result, and from moral necessity to do justice in order that justice may be done in return. . . . Comity, being voluntary and not obligatory rests in the discretion of the tribunals of the forum and is governed by certain more or less widely recognized rules. §5.
>
> In the recognition and enforcement of foreign laws the courts are slow to overrule the positive law of the forum, and they will never give effect to a foreign law where to do so would prejudice the state's rights or the rights of its citizens, or where the enforcement of the foreign law would contravene the positive policy of the law of the forum, whether or not that policy is reflected in statutory enactment. §6.

For purposes of assessing the law regarding the status of foreign illegality as an excuse for refusing to disclose the five documents alleged to have "originated from the Canadian Government," we assume, as requested, that Gulf will seek to resist any disclosure on such grounds rather than simply offering it as reason for confidential treatment -- i.e., consideration of the matter in executive session.

At the outset, it should be noted that we are not aware of any precedent regarding the invocation of foreign illegality as an excuse for not producing documents pursuant to a legislative subpoena. If the issue has arisen in a congressional setting, it is not documented in writings on the subject of congressional investigations. At least, the issue has not been litigated in the context of a prosecution for contempt of Congress pursuant to 2 U.S.C. 192. However, the issue has arisen in other contexts, such as grand jury investigations and discovery procedures

under the Federal Rules of Civil Procedure, and, the clear trend of recent cases seems to be that foreign non-disclosure laws do not constitute any significant restraint on disclosure, particularly as respect to obtaining information bearing on antitrust matters.

In the aforementioned May 10, 1977 letter to Chairman John E. Moss as supplemented in the May 3, 1977 legal memorandum to Judge George L. Hart, United States District Court, District of Columbia, re: Gulf Oil Corp. v. Westinghouse Electric Corp., Civil Action No. 77-0742, Gulf's counsel asserts that disclosure of the five documents which allegedly originated from the Canadian Government would contravene that Government's laws and policies. In support of this contention, Gulf's counsel points to three Canadian documents assertedly embodying Canadian law and policy which restrain disclosure of the mentioned five documents. The first is Regulations Respecting the Security of Uranium Information which generally prohibit any person from disclosing "any note, document or other written or printed material in any way related to conversations, discussions or meetings that took place between January 1, 1972 and December 31, 1975 . . . in respect of the production, import, export, transportation, refining, possession, ownership, use or sale of uranium or its derivatives or compounds. . . ." The second is the Ontario Business Records Protection Act, C. 54, Rev. Stat. of Ontario, which prohibits only removal of business documents to any jurisdiction outside Ontario. The third and final evidence submitted in

support of the contention that disclosure of the mentioned documents violates Canadian law is a letter from the Minister of Energy, Mines & Resources of Canada formally requesting Gulf's Canadian joint venture to return them and similar "secret and confidential documents" to the Canadian Government. It is not clear whether the cited Canadian legal authorities are enforced by criminal or civil sanctions.

Gulf's memorandum on the law of foreign illegality excuse is brief and in the main relies on three cases: Application of Chase Manhattan Bank, 297 F.2d 611 (2d Cir. 1962); Ings v. Ferguson, 282 F.2d 149, 152 (2d Cir. 1960); Trade Development Bank v. Continental Insurance Co., 469 F.2d 35, 41 (2d Cir. 1972). Although these cases suggest that a district court should not order production if the order would cause a party to violate foreign law, see also, First National City Bank of New York v. Internal Revenue Service, 271 F.2d 616, 619 (2d Cir. 1959), they constitute a slim reed for the proposition asserted by counsel since they (1) are distinguishable on a variety of grounds from the instant case, (2) have been largely superseded by subsequent decisions, including decisions from the Second Circuit, and (3) are not in strict accord with the leading case in the field, Societé Internationale v. Rogers, 357 U.S. 197 (1958).

The problem in these cases, of course, is accommodating the conflicting principles of the law of the forum and effective enforcement with the requirements of due process and international comity. The

problem and its recent emergence to prominance have been explained as follows:

> . . . With the growing interdependence of world trade and the increased mobility of persons and companies, the need arises not infrequently, whether related to civil or criminal proceedings, for the production of evidence located in foreign jurisdictions. . . . The difficulty arises, of course, when the country in which the documents are located has its own rules dealing with the production and disclosure of business information -- a circumstance not uncommon. This problem is particularly acute where the documents are sought by an arm of a foreign government. The complexities of the world being what they are, it is not surprising to discover nations having diametrically opposed positions with respect to the disclosure of a wide range of information. It is not too difficult, therefore, to empathize with the party or witness subject to the jurisdiction of two sovereigns and confronted with conflicting commands. . . ." United States v. First National City Bank, 396 F.2d 897, 900-901 (2d Cir. 1968).

The leading, if not the first, case on the subject is Societé Internationale v. Rogers, 357 U.S. 197 (1958), one of many decisions in the prolonged legal controversy in which a Swiss holding company tried to recover property which had been seized by the Alien Property Custodian during World War II pursuant to the Trading with the Enemy Act. The U.S. Government sought certain records of the Swiss company in order to show that the Swiss company had been controlled by Germans. The plaintiff did not fully comply with the discovery order citing a

Swiss penal nondisclosure law and an order of the Swiss Government forbidding the production of the records in question. 357 U.S. at 200.

The lower court held that foreign illegality was not an adequate excuse for noncompliance with the discovery order and dismissed the complaint. During the course of the proceedings, plaintiff sought and received a waiver from the Swiss Government with respect to many, but not all of the relevant documents sought by the U.S.

On appeal, the Supreme Court reversed and remanded, finding that the remedy of dismissal was not justified in view of the good faith efforts made by the plaintiff to comply with the discovery order. However, the Court made clear that American courts have power to issue discovery orders even where compliance therewith would be illegal under foreign law.

> . . . to hold broadly that petitioner's failure to produce the . . . records because of fear of punishment under the laws of its sovereign precludes a court from finding that petitioner had "control" over them, and thereby from ordering their production, would undermine congressional policies made explicit in the 1941 amendments, [to the Trading with the Enemy Act], and invite efforts to place ownership of American assets in persons or firms whose sovereign assures secrecy of records. The District Court here concluded that the . . . records might have a vital influence upon this litigation insofar as they shed light upon petitioner's confused background. Petitioner is in a most advantageous position to plead with its own sovereign for relaxation of penal laws or for adoption of plans which will at least achieve a significant measure of compliance with the

> production order, and indeed to that end it has already made significant progress. United States courts should be free to require claimants of seized assets who face legal obstacles under the laws of their own countries to make all such efforts to the maximum of their ability where the requested records promise to bear out or dispel any doubt the Government may introduce as to the true ownership of the assets.
>
> We do not say that this ruling would apply to every situation where a party is restricted by law from producing documents over which it is otherwise shown to have control. Rule 34 [of the Federal Rules of Civil Procedure re. discovery] is sufficiently flexible to be adapted to the exigencies of particular litigation. The propriety of the use to which it is put depends upon the circumstances of a given case, and we hold only that accommodation of the Rule in this instance to the policies underlying the Trading with the Enemy Act justified the action of the District Court in issuing this production order. 357 U.S. at 205-206

That the sanction of dismissal for non-compliance imposed by District Court in the circumstances of the case, not want of power to compel disclosure because of foreign illegality, is the key to the case is apparent in the following remarks:

> . . . we think that Rule 37 should not be construed to authorize dismissal of this complaint because of petitioner's non-compliance with a pretrial production order when it has been established that failure to comply has been due to inability, and not to willfulness, bad faith, or any fault of petitioner. 357 U.S. at
>
> This is not to say petitioner will profit through its inability to tender the records called for. In seeking recovery of the General Aniline stock and other assets, petitioner recognizes that

> it carries the ultimate burden of proof of showing itself not to be an "enemy" within the meaning of the Trading with the Enemy Act. The Government already has disputed its right to recovery by relying on information obtained through seized records of I.G. Farbena, documents obtained through petitioner, and depositions taken of persons affiliated with petitioner. It may be that in a trial on the merits, petitioner's inability to produce specific information will prove a serious handicap in dispelling doubt the Government might be able to inject into the case. It may be that in the absence of complete disclosure by petitioner, the District Court would be justified in drawing inferences unfavorable to petitioner as to particular events. So much indeed petitioner concedes. But these problems go to the adequacy of petitioner's proof and should not on this record preclude petitioner from being able to contest on the merits.
>
> On remand, the District Court possesses wide discretion to proceed in whatever manner it deems most effective. It may desire to afford the Government additional opportunity to challenge petitioner's good faith. It may wish to explore plans looking towards fuller compliance. Or it may decide to commence at once trial on the merits. We decide only that on this record dismissal of the complaints was not justified. 357 U.S. 212-213. (Emphasis added.)

It should be noted that while the Court held that dismissal with prejudice was unjustified in the circumstances of this case, it did not rule it out in all cases for failure to comply.

The result in Societé Internationale v. Rogers is in large measure tied to the Court's finding that plaintiff had made a good

faith effort in seeking a waiver from the Swiss Government and in turning over 190,000 documents. Both actions, the Court suggests, are requirements in seeking a resolution in these kinds of cases. However, it should be noted that the Court also makes clear that any evidence of collusion with the foreign government in "court[ing] legal impediments to production of . . . records . . . would have a vital bearing on justification for dismissal of the action . . . ." 357 U.S. at 209.

One of the principal defects in two of the three cases relied on by Gulf is their failure to distinguish between the power to compel disclosure and imposition of sanctions for noncompliance made in the Societé case. Thus, the 10th Circuit recently observed:

> Certain Second Circuit cases arising after Societé suggests that a district court should not order production if the order would cause a party to violate foreign law. See First National City Bank of New York v. Internal Revenue Service, 2 Cir., 271 F.2d 616, 619; Ings v. Ferguson, 2 Cir., 282 F. 2d 149, 152; and Application of Chase Manhattan Bank, 2 Cir,, 297 F.2d 611, 613. Compare United States v. First National City Bank, 2 Cir., 396 F.2d 897, 900-901. The failure of these cases to recognize the distinction between power to compel discovery and imposition of sanctions for non-compliance has been criticized. See e.g., Note, Discovery of Documents Located Abroad in U.S. Antitrust Litigation, 14 Va. J. Int. L., 747, 753. The importance of this distinction has been recognized. See Wright, Discovery, 35 F.R.D. 39, 81 [. . . the Supreme Court has held that a foreign corporation is in "control" of certain records, and thus may be ordered to produce them, even though the penal laws of the country where it is located limit its ability to satisfy the production

> order. Societé, etc.; The effect of those laws is considered in determining what sanction to impose for noncompliance with the order rather than regarded as a reason for refusing to order production]; and Restatement, 2d Foreign Relations Law of the United States, §39 (1), p. 111. See also Calculta E. Coast of India & E. Pakistan/ U.S.A. Conf. v. Federal Maritime Commission, 130 U.S. App. D.C. 261, 399 F.2d 994, 998-999, and American Industrial Contracting, Inc. v. Johns-Mansville Corp., W.D.Pa., 326 F. Supp. 879, 880-881. Arthur Anderson & Co. v. Finesilver, 546 F.2d 338, 341-342 (1976).

The third case cited by Gulf, Trade Development Bank v. Continental Insurance Co., 469 F.2d 35 (2d Cir. 1972), does not turn, as asserted in its legal memorandum, on "the effect of the national interests of the states affected." Rather, the court refused to compel the bank to disclose the identity of its customers in contravention of the Swiss bank secrecy law because such disclosure was unnecessary to petitioner's case. Thus, the court of appeals in describing the trial judge's actions, observed that --

> . . . In pretrial proceedings Judge Pollack upheld the Bank's position on the ground that there was "neither compelling necessity for this information nor potential prejudice to defendent from non-disclosure at this stage of the proceedings," since the transcripts of the customers' accounts and the other records giving details as to the transactions about which the Insurer had inquired were adequate to enable it to prepare for trial. 469 F.2d at 40 (Emphasis added.)

Also,

> . . . Judge Pollack concluded that the Swiss law did prohibit such disclosure and decided that as

a matter of comity he would therefore not require the Bank to identify the customers whose accounts were involved, particularly since in his view the identity was not essential to the issue on trial, which was whether securities transactions had been entered by Salerian in certain customers' accounts in furtherance of his fraudulent scheme. He ruled:

> "But whether the account is known as X or 8044 or John Jones has nothing to do with whether the bonded employee has stolen something or acted dishonestly or fraudulently in connection with that account. The identity of that person is not a relevant issue in the case." Ibid. (Emphasis added.)

In brief, there was no need to place the Bank in the dilemmal situation of having to choose between the conflicting U.S. and Swiss laws. Appellant had all the information necessary to prosecute his case; the additional information sought did not add in any significant way thereto. Accordingly, the district court judge "decided that as a matter of comity he would . . . not require the Bank to identify [its] customers", Ibid., and, the court of appeals, in affirming, held that the former had not abused his discretion.

By way of a final note, it is interesting that the court in considering "the effect of the national interests of the states affected" -- the point stressed in the Gulf legal memorandum -- relegated it to the status of an "addition[al] . . . factor . . . [to] be considered in deciding whether to order a disclosure prohibited by the law of another state. . . ." 469 F. 2d at 4)

Similarly, in Ings v. Ferguson, 282 F.2d at 152, also relied on by Gulf, the court refused to compel disclosure of business records

contrary to Canadian law because (1) under the laws of both the United States and Canada, procedures were available for securing evidence by letters rogatory, and (2) the Canadian banks in question were only witnesses and not parties to the action.

There is yet another distinguishing feature between these early cases and the Subcommittee's situation vis-a-vis Gulf regarding the five Canadian documents in question. Implicit, in the former is the court's traditional reluctance to undertake the resolution of matters in the sensitive area of foreign affairs. As observed by the 2d Circuit: "Where, as here, the burden of resolution ultimately falls upon the federal courts, the difficulties are manifold because the courts must take care not to impinge upon the prerogatives and responsibilities of the political branches of the government in the extremely sensitive and delicate area of foreign affairs. See, e.g., Chicago & Southern Air Lines v. Waterman S.S. Corp., 333 U.S. 103, 111, 68 S. Ct. 431, 92 L. Ed. 568 (1948)." United States v. First National City Bank, 396 F.2d at 901. The Subcommittee is part of one of the two political branches having "prerogatives and responsibilities" in the foreign affairs area.

Gulf's reliance on the foregoing cases implies that these are the only or principal cases in point and that they embody the prevailing law regarding the status of the foreign illegality excuse for noncompliance with a discovery order. As indicated above, neither implication is supported by current decisional and other legal authorities. Indeed,

as noted, the cases relied on by Gulf are not in strict accord with the leading Societé case in two notable particulars: first, they depart from the case-by-case balancing approach implicit in the earlier decision; second, they fail to recognize the distinction made by the Court between the power to compel discovery and the appropriate sanctions for failure to comply.

The drafters of the Restatement of Conflict of Laws of Foreign Relations (2d) in 1965 followed Societé in rejecting the "exception of illegality under foreign law." Thus, section 39(1) states:

> A state having jurisdiction to prescribe or enforce a rule of law is not precluded from exercising its jurisdiction solely because such exercise requires a person to engage in conduct subjecting him to liability under the law of another state having jurisdiction with respect to that conduct. (Emphasis added.)

Recent cases involving the issue of foreign illegality cite the Restatement and utilize its drafters' rationale in resolving these cases. The latter is as follows:

> Where two states have jurisdiction to prescribe and enforce rules of law and the rules they may prescribe require inconsistent conduct upon the part of a person, each state is required by international law to consider, in good faith, moderating the exercise of its enforcement jurisdiction, in the light of such factors as
>
> (a) vital national interests of each of the states,
>
> (b) the extent and the nature of the hardship that inconsistent enforcement actions would impose upon the person,

(c) the extent to which the required conduct is to take place in the territory of the other state,

(d) the nationality of the person, and

(e) the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rule prescribed by that state. §40.

The 2d Circuit in United States v. First National City Bank, 396 F.2d at 901, 902, gave great weight to the Restatement in holding that possible civil liability under the "bank secrecy law" of Germany was not an excuse for failing to comply with a discovery order. Accordingly, both the bank and its vice president were held in civil contempt. In assessing the "vital interests of each of the states", the court emphasized the importance to the United States of effective antitrust enforcement.

> The important interest of the United States in the enforcement of the subpoena warrants little discussion. The Federal Grand Jury before which Citibank was summoned is conducting a criminal investigation of alleged violations of the antitrust laws. These laws have long been considered cornerstones of this nation's economic policies, have been vigorously enforced and the subject of frequent interpretation by our Supreme Court. We would have great reluctance, therefore, to countenance any device that would place relevant information beyond the reach of this duly impaneled Grand Jury or impede or delay its proceedings. Judge Learned Hand put the issue in perspective many years ago: "The supression of truth is a grievous necessity at best, more especially where as here the inquiry concerns the public interest; it can be justified at all only where the opposing private interest is supreme." McMann v. S.E.C., 87 F.2d 377, 378, 109 A.L.R. 1445 (2d Cir. 1937), cert. denied,

McMann v. Engle, 301 U.S. 684, 57 S.Ct. 785, 81 L. Ed. 1342 (1937). 396 F.2d at 903. (Emphasis added.)

The 2d Circuit rejected as a "gross simplification" the distinction between consequent criminal and civil penalties in compelling discovery contrary to foreign law. "We are not required to decide whether penalties must be under the criminal law to provide a legally sufficient reason for noncompliance with a subpoena; but, it would seem unreal to let all hang on whether the label 'criminal' were attached to the sanction and to disregard all other factors. In any event, even were we to assume arguendo that in appropriate circumstances civil penalties or liabilities would suffice, we hold that Citibank has failed to provide an adequate justification for its disobedience of the subpoena" 396 F.2d at 902.

Although the court gave considerable weight to such factors as the likely availability of other remedies to the aggrieved German clients and the possibility that the bank might have a good defense under German law, it concluded that--

> . . . Whatever one may think of requiring disclosure of records of a German corporation deposited in a bank in Germany, surely an American corporation cannot insulate itself from a federal Grand Jury investigation by entering into a contract with an American bank abroad requiring secrecy.

A similar result was reached in American Industrial Contr., Inc. v. Johns-Manville Corp., 326 F. Supp. 879 (W.D.Pa. 1971), where

it was held that notwithstanding the provision of Quebec law against sending any document, resumé or digest of any document of a business concern, the effective enforcement of U.S. antitrust laws required wholly owned Canadian subsidiaries of the American corporation to answer certain interrogatories.

In describing the Quebec law, which appears to be similar to the Ontario law cited in Gulf's legal memorandu the court said:

> . . . this legislation provides that no person shall send out of the province any document or resumé or digest of any document of a business concern. The prohibition does not apply to removal of documents to the principal or head office or to an affiliated company in the ordinary course of business. The statute is not self-enforcing but requires a petition by the Attorney General to a district judge for an order requiring the documents not to be sent out of the province. 326 F. Supp. at 880.

Although uncertain as to the reason for the Quebec law, the court nevertheless --

> . . . agree[d] with the plaintiff's position that in view of the fact that this action involves the anti-trust laws of the United States which are a matter of important public policy to the United States . . . ." Ibid.

Both Societé and United States v. First National City Bank were cited as precedents for the court's decision.

> The court finds support for its position in requiring these interrogatories to be answered in Societe International etc. v. Rogers, 357 U.S. 197, 78 S.Ct. 1087, 2 L.Ed. 2d 1255. It was pointed

> out in the case that the respondent corporation was in a most advantageous position to plead with its own sovereign for relaxation of the laws preventing it from giving the information.
>
> We find further support for our position in the case of United States v. First National City Bank, 396 F.2d 897 (2d Cir. 1968) wherein it was held that with respect to international law, the position of the American courts was as follows:
>
> > "In any event, under the principles of international law, "A state having jurisdiction to prescribe or enforce a rule of law is not precluded from exercising its jurisdiction solely because such exercise requires a person to engage in conduct subjecting him to liability under the law of another state having jurisdiction with respect to that conduct.' Restatement (2d), Foreign Relations Law of the United States, §39(1) (1965)(emphasis supplied.)" 396 F.2d at 901.
>
> The court further pointed out that the anti-trust laws have long been a cornerstone of this nation's economic policies and the securing of information in a suit involving them should not be frustrated if it was at all possible to secure the information by any means. Ibid.

Paying appropriate deference to matters of international relations between the United States and Canada, the court nevertheless concluded that a provincial law is not the kind of legislation usually accorded comity.

> . . . The province of Quebec is not a State within the meanings of the doctrines of international law. These doctrines only apply to nations in the international sense such as the United States and Canada. 326 F. Supp. at 881.

In accord with the foregoing decisions regarding the overriding policy of the United States in antitrust enforcement notwithstanding competing foreign state interests is Joseph Muller Corp., Zurich v. Societe Anonyme de Gerance, 451 F.2d 727, 729 (2d Cir. 1971), See also, United States v. Frank, 494 F. 2d 145, 156 (2d Cir. 1974) where it is stated that --

> . . . no principle of accommodation requires the United States to seal the lips of American citizens testifying to facts within their knowledge concerning activities of other Americans in a foreign country as part of a scheme to violate American criminal law, simply because that country chooses to throw a veil of secrecy around bank accounts except insofar as their courts see fit to lift it.

In Arthur Andersen & Co. v. Finesilver, 546 F.2d 338 (10 Cir. 1976), the court of appeals held that the district court did not abuse its power in requiring discovery of documents even though the production of such documents violated Swiss nondisclosure laws. The court declared: "Foreign law may not control local law. It cannot invalidate an order which local law authorizes." 546 F.2d 342.

In In re Grand Jury Proceedings, 532 F.2d 404 (5th Cir. 1976), the court held that a nonresident bank official could be subpoenaed while in the United States and required to testify regarding possible tax violations even though the very act of testifying would subject him to criminal prosecution for violating the bank secrecy laws of the country of his residence. While expressing sympathy for the petitioner's dilemma

and stating that "courts and legislatures should take every reasonable precaution to avoid" such situations, the court nevertheless could not "acquiesce in the proposition that United States criminal investigations must be thwarted whenever there is conflict with interests of other States." 532 F.2d at 410. As in all of the recent cases the court relied heavily on the Restatement.

With respect to petitioner's assertion that the subpoena compelling his testimony violated the 5th Amendment protection against self-incrimination, the court stated:

> . . . This subpoena is not an attempt to elicit information from Field which will later be used against him in a criminal case. The Fifth Amendment simply is not pertinent to the situation where a foreign state makes the act of testifying a criminal offense. 532 F.2d at 407.

Accordingly, the court found that requiring the petitioner to testify violated neither the constitution nor international comity.

It is obvious from the foregoing that foreign illegality will not in and of itself justify disobeying a subpoena calling for the production of documents. The restatement position requires a balancing of several factors in determining whether the lex fori or the lex sitae will prevail. As applied to the Subcommittee's demands on Gulf to produce, the balance of factors seem to be in favor of the Subcommittee. As respects the matter of the competing nations' interest, the courts point out that the antitrust laws have long been a cornerstone of

this nation's economic policies and the securing of information in a suit involving them should not be frustrated if it is at all possible to secure the information by any means. There is no showing by Gulf of possible criminal or civil sanctions or even economic retaliation should it comply with the Subcommittee's demand. That demand does not require Gulf to perform any duty in Canada. Gulf Corp. is a U.S. concern. Finally, compliance with a Subcommittee subpoena can be enforced by contempt of Congress pursuant to 2 U.S.C. 192.

We do not make light of the sensitive and delicate international considerations involved. Apparently Canadian officials have protested disclosure to officials at the State Department. The absence of this element is a factor the courts have considered in reaching the results in some of the foregoing cases. See, for example, Arthur Andersen & Co. v. Fineselver, 546 F.2d at 341. American Industrial Contr., Inc. v. Johns-Manville Corp., 326 F. Supp. at 880-881. At present, however, Gulf has yet to make a significant showing on the issue of foreign illegality to justify nondisclosure.

R. J. Celada

Raymond J. Celada
Senior Specialist in
American Public Law

Mr. Moss. Do you have additional formal documents?

Mr. COLMAN. I would at this point, Mr. Chairman, like to make a few comments.

Mr. Moss. You will be recognized for that purpose. This is merely for the submission, May 26 and May 10 documents. This is an additional submission of May 26 which also will be included in the record at this point.

Mr. COLMAN. I am not sure I know what that is.

Mr. Moss. This is dated May 26, 1977, addressed to me, uranium documents of Gulf Oil Corp. subpenaed from Westinghouse Electric Corp.

Mr. ATKISSON. Your submission.

Mr. Moss. This is rescheduling the June 9 hearing and your request to submit additional material.

In order to have all of the material in the record we will insert this.

[Testimony resumes on p. 116.]

[The documents referred to follow:]

HOWREY & SIMON
1730 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
(202) 872-8800

May 26, 1977

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

Re: Uranium Documents of Gulf Oil Corporation Subpoenaed from Westinghouse Electric Corporation

Dear Mr. Chairman:

This will acknowledge receipt of your letter of May 23, 1977, scheduling a June 9 hearing to consider Gulf's request for confidential treatment of its documents obtained by subpoena from Westinghouse. We appreciate your courtesy in affording us the opportunity to be heard on this matter, and we will appear as scheduled.

Your letter does not indicate the type of hearing contemplated. In order to facilitate the presentation of our views to the Subcommittee, we request that the June 9 hearing be conducted in Executive Session.

Also, by way of possible clarification, my May 10 letter intended to request confidential treatment for all of the Gulf documents involved. (See pp. 1, 7.) Gulf's attorney-client and attorney-work product privilege claims apply only to the 28 documents and one related trial transcript identified

in Exhibit A to my letter; five of the 28 documents are also Canadian Government documents. (See p. 5, n.1.) We feel that confidential treatment is appropriate for all the Gulf material and that it is particularly appropriate for the 28 privileged documents, the one related trial transcript and the five Canadian Government documents.

Sincerely yours,

Richard T. Colman

RTC:sk

cc: All Subcommittee Members
John Atkisson, Esq.
Patrick McLain, Esq.

NINETY-FIFTH CONGRESS

JOHN E. MOSS, CALIF., CHAIRMAN

JIM SANTINI, NEV.
THOMAS A. LUKEN, OHIO
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MARLEY O. STAGGERS, W. VA.
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DAVE STOCKMAN, MICH.
MARC L. MARKS, PA.
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(EX OFFICIO)

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

MICHAEL M. LEMOV
CHIEF COUNSEL

JAMES HELLIGAN
OPERATIONS DIRECTOR

J. THOMAS GREENE
COUNSEL TO THE CHAIRMAN

May 23, 1977

Richard T. Colman, Esquire
Howrey & Simon
1730 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Re: Uranium Documents of Gulf Oil Corporation
Subpoenaed from Westinghouse Electric
Corporation

Dear Mr. Colman:

I am in receipt of your request on behalf of Gulf Oil Corporation that the Subcommittee on Oversight and Investigations accord confidential treatment to the Gulf material obtained by subpoena from Westinghouse Electric Corporation on May 2 and 4, 1977. According to your letter of May 10, the claim Gulf asks us to entertain is based on the attorney-client and attorney-work product privileges customary in courts of law. In addition, you advise us that some of the materials have been classified as "secret" or "confidential" by the Canadian Government.

Notwithstanding that, Members of the House of Representatives are in no way constrained to honor the attorney-client and related privileges, or even to entertain their claim, it is the intent of the Subcommittee to afford Gulf full opportunity to be heard. To that end, please be advised that the Subcommittee will meet for the specific purpose of considering Gulf's request for confidential treatment of these materials on June 9, 1977, at 10:00 a.m., Rayburn House Office Building (room number to be announced). On that occasion, such representatives or counsel as Gulf may choose may appear before the Subcommittee to assert Gulf's claims.

We would very much appreciate your acknowledging receipt of this notice by letter at your earliest convenience. In the meanwhile, should you have questions on this matter, please feel free to call John Atkisson at 225-5365 or Patrick McLain at 225-3432.

Sincerely,

JOHN E. MOSS
Chairman
Subcommittee on
Oversight and Investigations

JEM:jaw

cc: Members of the Subcommittee on
Oversight and Investigations

HOWREY & SIMON
1730 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D.C. 20006
(202) 872-8800

MAY 10 PM 12 11
SUBCOMMITTEE ON
OVERSIGHT & INVESTIGATIONS

May 10, 1977

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

Re: Uranium Documents of Gulf Oil Corporation Subpoenaed from Westinghouse Electric Corporation

Dear Mr. Chairman:

I am writing to you in my capacity as counsel for Gulf Oil Corporation ("Gulf") to request that the Subcommittee on Oversight and Investigations ("Subcommittee") accord confidential treatment to the Gulf material obtained by subpoena from Westinghouse Electric Corporation ("Westinghouse") on May 2 and 4, 1977. This material involves sensitive commercial transactions outside the United States, and its public disclosure would be potentially embarrassing to the foreign governments involved in such transactions.

Confidential treatment is particularly appropriate for the 28 documents and one related trial transcript 1/ with respect to which Gulf has asserted attorney-client and attorney-work product privileges. In addition, five of the 28 documents originated from the Canadian Government and have been designated by

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1/ A list of this material is attached hereto as Exhibit A.

that Government as secret or confidential. Disclosure of similar documents in Canada has been prohibited by statute and regulation.

As you know, Gulf recently petitioned the Federal Court in the District of Columbia to prevent Westinghouse from producing the above-described 28 documents and the related trial transcript. At several points during the court proceedings, counsel for the Subcommittee stated that the Gulf material would be received by the Subcommittee in Executive Session and would not be disclosed without notice to Gulf and a vote of the Subcommittee. Thus, counsel stated at the May 4 hearing:

> "As I said, the material is to be received by the subcommittee in executive session and can be released after notice to Gulf only by a vote of the subcommittee with the possibility of review in the full committee." (Tr. at 43; see also May 2 Tr. at 14 and 20-21 and May 4 Tr. at 57.)

Counsel for the Subcommittee also indicated that Gulf would be given an opportunity to be heard before the Subcommittee concerning the confidential nature of the material involved. For example, at the May 2 hearing, Mr. Lemov stated:

> "You [Gulf] come before the Committee and make your argument, and I can assure you the same eleven members who voted on the subpoena last week will hear you out and make a decision by the Legislative Branch, then if you lose the decision, appeal to the House of Representatives." (Tr. at 37; see also May 2 Tr. at 17, 24 and 36 and May 4 Tr. at 45.

The purpose of this letter is to reassert Gulf's concern for the confidential nature of the documents involved, particularly the small number involving privilege and the few Canadian Government documents. Gulf respectfully requests the Subcommittee to maintain these materials in confidence, and further requests notice and an opportunity to appear before the Subcommittee and be heard if the Subcommittee intends to disclose any of the Gulf material outside Executive Session.

Privileged Material

In the recent Gulf-Westinghouse court proceedings, counsel for the Subcommittee argued that Gulf did not have the right to assert the attorney-client privilege before a Congressional Committee. However, counsel acknowledged that Congressional Committees "have traditionally entertained claims of attorney-client privilege." (May 4 Tr. at 45.) See, e.g., Hutcheson v. United States. 369 U.S. 599, 604 (1962), where a witness's claim of attorney-client privilege was honored by the Senate Select Committee on Improper Activities in the Labor or Management Field (McClellan Committee). This Subcommittee has been among those which have permitted the assertion of the attorney-client privilege, as indicated by the following colloquy at a recent hearing:

> "MR. WAXMAN. Mr. Chairman, I haven't looked at the rules, but I would hate to have a client denied the opportunity to talk to his lawyer even if it were beyond the scope of a constitutional question.
>
> "MR. MOSS. If the gentleman from California desires that the counsel be permitted, the Chair will indulge him and permit that, but the rules are rather clear.
>
> "MR. WAXMAN. It may be so, but just my sense of fairness indicates to me as an attorney myself I would certainly want to be able to talk to my client. I think the client has the right to have his attorney present.
>
> "MR. MOSS. You may consult with your attorney."

Delivery of Health Care: California PHP's, Hearing Before the Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce, 94th Cong., 2d Sess. 137-38 (1976).

The same considerations of fairness dictate that Gulf's attorney-client privilege be honored by the Subcommittee in this case. While the Federal Court in the District of Columbia dismissed Gulf's action against Westinghouse, it did so purely as a matter of deference to the Subcommittee's jurisdiction. The court clearly indicated, however, that, with one or two possible exceptions, Gulf's claims of privilege were valid with respect to all material except the five Canadian documents. (May 2 Tr. at 7, 27; May 4 Tr. at 3, 12, 22 and 27.) Moreover,

all 28 documents and the related trial transcript were sealed by the court at the conclusion of the proceedings. (May 4. Tr. at 54, 56.)

Canadian Documents

As indicated above, 5 of the 28 documents at issue in the Gulf-Westinghouse proceedings, and now in the possession of the Subcommittee, originated from the Canadian Government.[1/] On numerous occasions, the Canadian Government has stated its strong and unequivocal policy against the disclosure of this type of material. Thus, disclosure of these 5 documents would almost certainly interfere with United States relations with the Government of Canada.

The Canadian Uranium Information Security Regulations were issued on September 21, 1976, specifically to prohibit the disclosure of the types of documents here involved.[2/] In a September 22, 1976, statement concerning the issuance of the Security Regulations, the Canadian Minister of Energy, Mines & Resources noted that documents such as the 5 here at issue contained "information in respect of activities approved and supported by the Canadian Government." The Minister further

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1/ These documents are numbered 9, 12, 16, 17 and 22 in the attached Exhibit A.

2/ A copy of the Security Regulations are attached hereto as Exhibit B.

observed: "Clearly, this must be regarded as an issue of sovereignty." Thus, the Canadian Government is strongly opposed to the public disclosure of documents similar to the 5 which the Subcommittee now has in its possession, and public disclosure would be regarded as an infringement of Canadian sovereignty. In addition, the Minister of Energy, Mines & Resources has formally requested Gulf's Canadian affiliate to return secret and confidential documents such as the 5 here involved. 1/ This request is presently the subject of diplomatic consultation between the United States Department of State and the Canadian Foreign Office.

Although, as indicated above, the court in the Gulf-Westinghouse proceedings did not feel the 5 Canadian documents were to be protected as attorney-client material, it nonetheless recognized the sensitivity of these documents and, accordingly, sealed them in the court records. At the conclusion of the May 4 hearing, the court stated:

> "They [the two sets submitted for in camera inspection] have now both been sealed. So far as the court is concerned, they are sealed. What the committee does with them is something else.
>
> "I know you have a lot of business in that, that involves Canada, that might involve a furor." (May 4 Tr. at 56.)

* * *

1/ A copy of this request is attached hereto as Exhibit C.

> "I may say that in reading it, I think I saw material that could cause international problems." (Id. at 57.)

For all the foregoing reasons, Gulf respectfully requests the Subcommittee to accord confidential treatment to all of its documents obtained from Westinghouse, and Gulf requests notice and an opportunity to be heard before the Subcommittee if the Subcommittee intends to disclose any of this material outside Executive Session.

Sincerely yours,

Richard T. Colman
Attorney for
Gulf Oil Corporation

Enclosures

cc: w/encls.
All Subcommittee Members
Michael R. Lemov, Esquire
John Atkisson, Esquire

EXHIBIT A

Date: 3/22/72

From: I. W. Coleman [Associate General Counsel,Gulf Oil Corporat:

To: E. B. Walker [Executive Vice-President, Gulf Oil Corporat:

Distribution:
R. K. Allen [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Limited].
J. G. Dieter [Assistant General Counsel, Gulf Energy & Environmental Systems Co., a division of Gul Oil Corporation].
R. D. Jackson [Attorney, Gulf Oil Corporation].

Description of Document: Memorandum describing recent developments re proposed international uranium marketing arrangement. Memorandum contains confidenti information communicated by client to counsel

* * * *

2. Date: 4/12/72

From: I. W. Coleman [Associate General Counsel, Gulf Oil Corporat:

To: M. E. Minks [General Counsel, Gulf Oil Corporation].

Distribution:
E. B. Walker [Executive Vice-President, Gulf Oil Corporati
R. D. Jackson [Attorney, Gulf Oil Corporation].
R. K. Allen [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Ltd.].
H. E. Hoffman [Associate General Counsel/Vice President, Gulf Energy & Environmental System Co., a division of Gulf Oil Corporation].

Description of Document: Memorandum reflecting legal analysis and requesting consultation re the giving of legal advice to Gulf management personnel concerning a proposed international uranium marketing arrangement. Memorandum contains confidential information communicated to counsel by client re the proposed international arrangement. Memorandum gives counsel's advice and opinion on this matter.

* * * *

Date: 4/19/72

From: M. E. Minks [General Counsel, Gulf Oil Corporation].

To: File

Distribution: None

Description of Document: Memorandum to file summarizing author's communication with Messrs. Zagnoli and Allen concerning proposed international arrangement, and outlining legal conclusions. Memorandum contains confidential information communicate to counsel by client. Memorandum gives counsel's advice and opinion on this matter.

4. Date: 4/24/72

From: Uncertain

To: File Notes

Distribution: None

Description of Document: Handwritten notes of Gulf lawyer reflecting telephone conversation with Mr. Allen concerning a uranium producers meeting, which sets forth legal opinions and conclusions. Document is from the files of Gulf's Law Department.

* * * *

5. Date: 4/28/72

From: R. D. Jackson [Attorney, Gulf Oil Corporation].

To: I. W. Coleman [Associate General Counsel, Gulf Oil Corporat

Distribution:
M. E. Minks [General Counsel, Gulf Oil Corporation].
M. W. Ramsey [Director, Corporate Planning, Planning and Economics Department, Gulf Oil Corporation; (performed factual and economic analyses at request and under direction of counsel)].

Description of Document: Memorandum setting forth principal points of discussion between Messrs. Jackson, Ramsey and Zagnoli concerning proposed uranium cartel. Memorandum contains confidential information communicated to counsel by client re the proposed uranium cartel. Memorandum sets forth advice and opinion of counsel on this matter.

* * * *

6. Date: 4/28/72

From: R. D. Jackson [Attorney, Gulf Oil Corporation].

To: I. W. Coleman [Associate General Counsel,Gulf Oil Corporat

Distribution:
M. W. Ramsey [Director, Corporate Planning, Planning and Economics Department, Gulf Oil Corporation. (Performed factual and economic analyses at request and under direction of counsel)].

Description of Document: Memorandum transmitting opinion of counsel re proposed international producers' arrangement which sets forth legal conclusions and advice concerning Gulf's being compelled to participate by the Canadian government.

7. Date: 5/1/72

From: I. W. Coleman [Associate General Counsel, Gulf Oil Corporat

To: M. E. Minks [General Counsel, Gulf Oil Corporation].

Distribution: None

Description of Document: Memorandum reflecting discussions among Messr Allen, Estey and Matthews re application of legal principles and suggested courses of action. (Beverly Matthews--Partner, McCarthy & McCarthy, representing Gulf Minerals Canada, L

* * * *

8. Date: 5/1/72 w/attachment (a) dated 5/1/72

From: W. Z. Estey [Partner, Robertson, Lane, Perrett, Frankish Estey; counsel for Gulf Minerals Canada,Limit

To: I. W. Coleman [Associal General Counsel, Gulf Oil Corporati

Distribution: None

(a) From: W. Z. Estey [Partner, Robertson, Lane, Perrett, Frankish Estey; counsel for Gulf Minerals Canada,Limit

To: R. K. Allen [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Limited].

Distribution: None

Description of Document: Letter attaching copy of letter prepared by counsel containing legal advice and opinion concerning Canadian statutes and policies as applicable to certain of Gulf's activities.

* * * *

9. Date: 5/3/72 w/attachment (a) undated

From: O.J.C. Runnalls [Senior Advisor - Uranium, Department of Energy, Mines & Resources; Official of Urani Canada, Limited, a Crown Corporation].

To: N. M. Ediger [Manager, Gulf Minerals Canada, Limited].

Distribution: None

(a) From: O.J.C. Runnalls [Senior Advisor - Uranium, Department of Energy, Mines & Resources; Official of Urani Canada, Limited, a Crown Corporation].

To: J. Austin [Deputy Minister of the Department of Energy Mines & Resources; President, Uranium Canada Limited, a Crown Corporation].

Distribution: None

Description of Document: Letter attaching copy of Minutes of Meeting International Uranium Producers in Paris, April 20-21, 1972. Classified Secret by Canadian government.

* * * *

10. Date: 5/4/72 w/attachment

From: W. Z. Estey [Partner, Robertson, Lane, Perrett, Frankish Estey; counsel for Gulf Minerals Canada,Limit

To: R. K. Allen [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Limited].

Distribution: I. W. Coleman [Associate General Counsel, Gulf Oil Corporat

Description of Document: Letter attaching revised page of the opinion of counsel described in Document 15, above.

* * * *

11. Date: 5/11/72 w/attachment (a) dated 5/10/72

From: R. D. Jackson [Attorney, Gulf Oil Corporation].

To: M. E. Minks [General Counsel, Gulf Oil Corporation].

Distribution: None

(a) From: N. M. Ediger [Manager, Gulf Minerals Canada, Ltd.].

To: R. K. Allen [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Ltd.].

Distribution: None

Description of Document: Buckslip attaching telex */ dated 5/10/72 from Mr. Ediger to Mr. Allen summarizing Ottawa meeting of Canadian Producers, which telex contains marginal notes reflecting mental impressions and conclusions of Gulf counsel, which writing is believed to be that of Mr. Jackson.

---

*/ Telex produced without marginal notations. Privilege being claim as to marginal notations only.

Date: 5/17/72
w/attachment (a)
dated 5/16/72

From: O.J.C. Runnalls [Senior Advisor - Uranium, Department of Energy, Mines & Resources; Official of Uranit Canada, Limited, a Crown Corporation].

To: N. M. Ediger [Manager, Gulf Minerals Canada, Limited].

Distribution: None

(a) From: O.J.C. Runnalls [Senior Advisor - Uranium, Department of Energy, Mines & Resources; Official of Uranit Canada, Limited, a Crown Corporation].

To: File

Distribution: None

Description of Document: Letter attaching minutes of Canadian Uranium Producers' Meeting of May 9, 1972. Classified confidential by Canadian government.

* * * *

3. Dated: 5/19/72
w/attachments (a) undated, and
(b) dated 5/10/72

From: R. K. Allen [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Limited].

To: I. W. Coleman [Associate General Counsel, Gulf Oil Corporation].

Distribution: None

(a) Description of Attachment: Draft Aide Memoire re Canadian Uranium Producers' Meeting on May 19, 1972.

Distribution: None

(b) */ From: Carl

To: N. M. Ediger [Manager, Gulf Minerals Canada, Limited].

Distribution:
W. Z. Estey [Partner, Robertson, Lane, Perrett, Frankish & Estey; counsel for Gulf Minerals Canada, Limited].
H. E. Hoffman [Associate General Counsel/Vice President, Gulf Energy & Environmental Systems Co., a division of Gulf Oil Corporation].

Description of Document: Letter enclosing attachments for purposes of keeping counsel advised and receiving continuing advice from counsel on matters concerning uranium producers' arrangement. Attachment (a) is draft prepared by counsel for discussion with other counsel.

---

*/ Attachment (b) produced without claim of privilege.

4. Date: 6/2/72

From: R. D. Jackson [Attorney, Gulf Oil Corporation].

To: File

Distribution:
M. E. Minks [General Counsel, Gulf Oil Corporation].
I. W. Coleman [Associate General Counsel,Gulf Oil Corporat
R. K. Allen [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Ltd.].

Description of Document: Memorandum to file summarizing discussion between author and Mr. Allen concerning legal advice and containing counsel's advice and opinions with regard to a proposed uranium marketing organization.

* * * *

5. Date: 6/2/72

From: R. D. Jackson [Attorney, Gulf Oil Corporation].

To: File

Distribution:
M. E. Minks [General Counsel, Gulf Oil Corporation].
I. W. Coleman [Associate General Counsel, Gulf Oil Corporat
R. K. Allen [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Ltd.].
M. W. Ramsey [Director, Corporate Planning, Planning and Economics Department, Gulf Oil Corporation. Performed factual and economic analyses at request and under direction of counsel].

Description of Document: Memorandum reflecting legal analysis and conclusions of Mr. Jackson with regard to a legal opinion which he had been requested to prepare. Memorandum also gives legal opinion of counsel regarding a matter communicated to him by client.

* * * *

Dated: 6/15/72

From: O.J.C. Runnalls [Senior Advisor - Uranium, Department of Ener Mines & Resources; Official of Uranium Canada Limited, a Crown Corporation].

To: J. Austin [Deputy Minister of the Department of Energy, Mines & Resources; President, Uranium Canada, Limited, a Crown Corporation].

Distribution:
G. M. McNabb — [Assistant Deputy Minister (Energy) of the Department of Energy, Mines & Resources; Executive Vice President, Uranium Canada, Limited, a Crown Corporation].

Description of Document: Summary of Canadian Uranium Producers' Meeti in Johannesburg, May 28, 1972. Classified confidential by Canadian government.

* * * *

17. Dated: 6/27/72

From: O.J.C. Runnalls — [Senior Advisor - Uranium, Department of Energy, Mines & Resources; Official of Urani Canada, Limited, a Crown Corporation].

To: J. Austin — [Deputy Minister of the Department of Energy Mines & Resources; President, Uranium Canada Limited, a Crown Corporation].

Distribution:
G. M. McNabb — [Assistant Deputy Minister (Energy) of the Department of Energy, Mines & Resources; Executive Vice President, Uranium Canada, Limited, a Crown Corporation].

Description of Document: Summary of Meeting of Canadian Uranium Producers of June 9, 1972. Classified confidential by Canadian government.

* * * *

18. Date: 7/6/72

From: R. D. Jackson — [Attorney, Gulf Oil Corporation].

To: I. W. Coleman — [Associate General Counsel, Gulf Oil Corporation].

Distribution:
F. R. O'Hara — [Attorney/Antitrust Counsel, Gulf Oil Corpor tion].

Description of Document: Memorandum reflecting advice of counsel concerning a matter communicated to counsel by client. Memorandum also reports on plann meeting of client and counsel.

* * * *

9. Date: 7/10/72

From: R. D. Jackson — [Attorney, Gulf Oil Corporation].

To: I. W. Coleman — [Associate General Counsel, Gulf Oil Corporat
F. R. O'Hara — [Attorney/Antitrust Counsel,Gulf Oil Corporat
M. W. Ramsey — [Director, Corporate Planning, Planning and Economics Department, Gulf Oil Corporation. (performed factual and economic analyses at request and under direction of counsel)].

(50506

Distribution:
M. E. Minks — [General Counsel, Gulf Oil Corporation].

Description of Document: Memorandum reflecting work schedule of lawyers re preparation of legal opinion. Memorandum gives subjects of upcoming meeting of counsel and client.

* * * *

20. Date: 7/20/72

From: R. D. Jackson — [Attorney, Gulf Oil Corporation].

To: M. E. Minks — [General Counsel, Gulf Oil Corporation].

Distribution:
R. K. Allen — [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Ltd.].
I. W. Coleman — [Associate General Counsel, Gulf Oil Corpora
W. Z. Estey — [Partner, Robertson, Lane, Perrett, Frankish & Estey; counsel for Gulf Minerals Canada, Limited].
N. M. Ediger — [Manager, Gulf Minerals Canada, Limited].
F. R. O'Hara — [Attorney/Antitrust Counsel, Gulf Oil Corporation].
M. W. Ramsey — [Director, Corporate Planning, Planning and Economics Department, Gulf Oil Corporation. (Performed factual and economic analyses at request and under direction of counsel.)].
S. A. Zagnoli — [President, Gulf Minerals Canada, Limited].

Description of Document: Memorandum from Mr. Jackson to Mr. Minks containing an antitrust evaluation and counsel's opinion and advice given to Mr. Zagnoli with respect to Gulf's prospective involvement in the proposed international uranium marketing arrangement. Memorandum also contains confidential facts communicated from client to counsel.

* * * *

21. Date: 8/15/72

From: R. D. Jackson — [Attorney, Gulf Oil Corporation].

To: F. R. O'Hara — [Attorney/Antitrust Counsel, Gulf Oil Corporation].

Distribution:
I. W. Coleman — [Associate General Counsel, Gulf Oil Corporation].

Description of Document: Memorandum setting forth substance of discussions among counsel re proposed Canadian regulations concerning uranium marketing.

Dated: 9/25/72
w/attachment (a)
dated 9/21/72

From: O.J.C Runnalls — [Senior Advisor - Uranium, Department of Energy, Mines & Resources; Official of Uranium Canada, Limited, a Crown Corporation].

To: G. R. Albino — [Official of Rio Algom, Ltd., a Canadian mining company].
J. Kostuik — [Official of Denison Mines, Ltd., a Canadian mining company].
W. M. Gilchrist — [Official of Eldorado Mines, Ltd., a Canadian Crown corporation].
N. M. Ediger — [Manager, Gulf Minerals Canada, Ltd.].
K. E. Kegel — [Official with Uranerz Canada, Ltd., a Canadian subsidiary of a West German company].
G. M. McNabb — [Assistant Deputy Minister (Energy) of the Department of Energy, Mines & Resources; Executive Vice President, Uranium Canada, Limited, a Crown Corporation].

Distribution: None

From: O.J.C. Runnalls — [Senior Advisor - Uranium, Department of Energy, Mines & Resources, Official of Uranium Canada, Limited, a Crown Corporation].

To: J. Austin — [Deputy Minister of the Department of Energy Mining & Resources; President, Uranium Canada Limited, a Crown Corporation].

Distribution: None

Description of Document: Memorandum attaching copy of minutes of Canadian Uranium Producers' Meeting of September 5, 1972. Classified confidential by Canadian government.

* * *

23. Date: 9/26/72
w/attachment

From: R. K. Allen — [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Limited].

To: I. W. Coleman — [Associate General Counsel, Gulf Oil Corporation].

Distribution: None

Description of Document: Letter attaching outline of a proposal prepared by counsel for possible use in the then forthcoming negotiations with joint venture partner concerning the impact of regulations adopted by Canada's Energy Control Board. Letter requests legal advice from co-counsel regarding the proposal.

4. Date: 10/11/72

From: R. D. Jackson **/ [Attorney, Gulf Oil Corporation].

To: F. R. O'Hara [Attorney/Antitrust Counsel, Gulf Oil Corporation].

Distribution: None

Description of Document: Letter concerning earlier consultation on legal points and recommending the giving of certain legal advice to the client re. international uranium producers' arrangement. Letter contains confidential information communicated by client to counsel.

* * * *

5. Date: 10/12/72

From: F. R. O'Hara [Attorney/Antitrust Counsel, Gulf Oil Corporation].

To: R. K. Allen [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Limited].

Distribution: None

Description of Document: Letter by counsel which sets forth legal comments and brief antitrust analysis concerning a matter on which client requested legal advice.

* * * *

6. Date: 11/20/72

From: F. R. O'Hara [Attorney/Antitrust Counsel, Gulf Oil Corporation].

To: N. M. Ediger [Manager, Gulf Minerals Canada, Limited].

Distribution:

R. K. Allen	[Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Limited].
W. Z. Estey	[Partner, Robertson, Lane, Perrett, Frankish & Estey; counsel for Gulf Minerals Canada, Limited].
J. McAfee	[President, Gulf Oil Canada, Limited].
M. E. Minks	[General Counsel, Gulf Oil Corporation].
J. C. Phillips	[Vice-President General Counsel, Gulf Oil Canada, Limited].
S. A. Zagnoli	[President, Gulf Minerals Canada, Limited].

**/ Although at this time Mr. Jackson had recently left the employ of Gulf, he was still acting as counsel to Gulf on certain unresolved matters with which he was concerned while employed as a Gulf attorney.

Description of Document: Letter setting forth counsel's analysis and legal opinion with regard to antitrust considerations and advice with regard to compliance with antitrust laws,re international uranium producers' arrangement and direction by Canadian government that Gulf participate therein. Letter contains confidential information communicated by client to counsel.

* * * *

7. Date: 1/2/73
w/attachments (a) dated 12/27/72*/ and (b) dated 12/22/72*/

From: R. K. Allen [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Limited].

To: F. R. O'Hara [Attorney/Antitrust Counsel, Gulf Oil Corporation].

Distribution:
N. M. Ediger [Manager, Gulf Minerals Canada, Limited].

a) From: N. M. Ediger [Manager, Gulf Minerals Canada, Limited].

To: S. A. Zagnoli [President, Gulf Minerals Canada, Limited].

Distribution:
R. K. Allen [Counsel, Gulf Mineral Resources Company, a subsidiary of Gulf Oil Corporation; counsel, Gulf Minerals Canada, Limited].

W. Z. Estey [Partner, Robertson, Lane, Perrett, Frankish & Estey; counsel for Gulf Minerals Canada, Limited].

(b) From: J. Austin [Deputy Minister of the Department of Energy, Mines & Resources. President, Uranium Canada Limited, a Crown Corporation].

To: N. M. Ediger [Manager, Gulf Minerals Canada, Limited].

Distribution: None

Description of Document: Letter setting forth legal conclusions and requesting legal opinion re client's proposed response to Canadian government's proposed directive.

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*/ Attachments (a) & (b) produced without claim of privilege.

8. Date: Undated

From: Uncertain

To: File Note

Distribution: None

Description of Document: Handwritten notes of Gulf attorney reflecting communication with client and statement of le question in advance of preparation of formal legal opinion. Document is from the files of Gulf's Law Department.

9. Trial transcript of the testimony of Gulf General Counsel Merle E. Minks, given in Duquesne Light Co. v. Westinghouse Electric Corp., concerning documents 1 through 28 above.

EXHIBIT B

CANADA	)	TO ALL TO WHOM THESE
	)	
PROVINCE OF ONTARIO	)	PRESENTS MAY COME, BE
	)	
TO WIT:	)	SEEN OR KNOWN

I, GLEN GORDON MACARTHUR, a Notary Public in and for the Province of Ontario, by Royal Authority duly appointed, residing at the City of Toronto, in the Municipality of Metropolitan Toronto, in the said Province, DO CERTIFY AND ATTEST that the paper writing annexed hereto is a true copy of a document produced and shown to me and purporting to be a Regulation issued under the Atomic Energy Control Act entitled "Uranium Information Security Regulations" bearing Registration number SOR/76-644 and dated 23 September, 1976, the said copy having been compared by me with page 2747 of the Canada Gazette Part II, Vol. 110, No. 19, an act whereof being requested I have granted the same under my Notarial Form and Seal of Office to serve and avail as occasion shall or may require.

IN TESTIMONY WHEREOF I have hereunto affixed my Notarial Form and Seal of Office at Toronto, in the said Province, this 7th day of January, 1977.

A Notary Public in and for the Province of Ontario

Registration
SOR/76-644 23 September, 1976

ATOMIC ENERGY CONTROL ACT

Uranium Information Security Regulations

P.C. 1976-2368 21 September, 1976

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 Regulations respecting the security of uranium information made by the Atomic Energy Control Board.

REGULATIONS RESPECTING THE SECURITY OF URANIUM INFORMATION

Short Title

1. These Regulations may be cited as the *Uranium Information Security Regulations*.

Security of Information

2. No person who has in his possession or under his control any note, document or other written or printed material in any way related to conversations, discussions or meetings that took place between January 1, 1972 and December 31, 1975 involving that person or any other person or any government, crown corporation, agency or other organization in respect of the production, import, export, transportation, refining, possession, ownership, use or sale of uranium or its derivatives or compounds, shall

(*a*) release any such note, document or material, or disclose or communicate the contents thereof to any person, government, crown corporation, agency or other organization unless

(i) he is required to do so by or under a law of Canada, or

(ii) he does so with the consent of the Minister of Energy, Mines and Resources; or

(*b*) fail to guard against or take reasonable care to prevent the unauthorized release of any such note, document or material or the disclosure or communication of the contents thereof.

Enregistrement
DORS/76-644 23 septembre 1976

LOI SUR LE CONTRÔLE DE L'ÉNERGIE ATOMIQUE

Règlement relatif à la sécurité de l'information sur l'uranium

C.P. 1976-2368 21 septembre 1976

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 d'approuver le Règlement relatif à la sécurité de l'information sur l'uranium, ci-après, établi par la Commission de contrôle de l'énergie atomique.

RÈGLEMENT RELATIF À LA SÉCURITÉ DE L'INFORMATION SUR L'URANIUM

Titre abrégé

1. Ce règlement peut s'intituler: *Règlement relatif à la sécurité de l'information sur l'uranium.*

Sécurité de l'information

2. Une personne ayant en sa possession ou sous sa surveillance un document, une note ou une autre pièce écrite ou imprimée relative de quelque façon à des conversations, discussions ou réunions, tenues au cours des années 1972, 1973, 1974 et 1975 et auxquelles ont pris part cette personne ou une autre personne ou un gouvernement, une société de la Couronne, une agence ou autre organisation concernant la production, l'importation, l'exportation, le transport, le traitement, la possession, la propriété, l'utilisation ou la vente de l'uranium, de ses dérivés ou de ses composés, ne doit en aucune façon

a) diffuser cette note, ce document ou cette pièce ni en révéler le contenu à une personne, un gouvernement, une société de la Couronne, un organisme ou une organisation, quels qu'ils soient, sauf

(i) si une loi du Canada l'y oblige, ou

(ii) si le ministre de l'Énergie, des Mines et des Ressources y consent; ni

b) négliger de se prémunir ou de prendre des mesures appropriées contre sa diffusion illégale ou la révélation de son contenu.

QUEEN'S PRINTER FOR CANADA, OTTAWA, 1976

IMPRIMEUR DE LA REINE POUR LE CANADA, OTTAWA, 1976

CANADA	)	TO ALL TO WHOM THESE
PROVINCE OF ONTARIO	)	PRESENTS MAY COME, BE
TO WIT:	)	SEEN OR KNOWN

I, GLEN GORDON MACARTHUR, a Notary Public in and for the Province of Ontario, by Royal Authority duly appointed, residing at the City of Toronto, in the Municipality of Metropolitan Toronto, in the said Province, DO CERTIFY AND ATTEST that the paper writing annexed hereto is a true copy of a document produced and shown to me and purporting to be a letter from Alastair Gillespie to Mr. A. Janisch dated November 8, 1976, the said copy having been compared by me with the said original document, an act whereof being requested I have granted the same under my Notarial Form and Seal of Office to serve and avail as occasion shall or may require.

IN TESTIMONY WHEREOF I have hereunto affixed my Notarial Form and Seal of Office at Toronto, in the said Province, this 7th day of January, 1977.

A Notary Public in and for the
Province of Ontario

Ottawa, Ontario
K1A 0E4

Mr. A. Janisch
President
Gulf Minerals Canada Limited
110 Yonge Street
Suite 1400
Toronto, Ontario
M5C 1T4

Dear Mr. Janisch:

Uranium Marketing Arrangement

During the period from January 1, 1972, to December 31, 1975, representatives of Gulf Minerals Canada Limited attended periodic meetings of Canadian and international uranium producers which were held for the purpose of establishing an informal arrangement for the marketing of uranium. As you are aware, Gulf participated in that arrangement, which excluded the Canadian and United States domestic markets, only as a result of the specific written request of the Government of Canada.

As a consequence of Gulf's agreement to participate in that arrangement, in accordance with the policies then being administered by my Department, confidential documents and other material bearing on the above subject were made available to Gulf, both by the Government of Canada and other participants.

Accordingly, and in light of recent developments in the United States, I request that you deliver any such documents or other material, and any other material prepared on the basis of the said documents or other material, to me at the Department of Energy, Mines and Resources, 580 Booth Street, Ottawa, Ontario, by 5:00 p.m. on Friday the 12th of November, 1976.

Yours sincerely,

Alastair Gillespie

Mr. COLMAN. Thank you.

Mr. MOSS. I would like to recognize Mr. Wunder in behalf of the minority.

Mr. WUNDER. Thank you, Mr. Chairman.

First, might I pose a couple of questions of the staff?

Mr. MOSS. Yes; indeed you may, Mr. Wunder.

Mr. WUNDER. Thank you.

Mr. MOSS. The Chair wants to lay out the procedure with which we are faced.

The ruling on whether or not confidentiality will be accorded the documents is within the discretion of the Chair. The determination of whether or not the documents will be released must be determined by a majority vote of the subcommittee. Therefore, the Chair is most anxious that the gentleman assist the Chair in any way possible to discern any points that the Chair should consider.

Mr. WUNDER. Thank you. My questions are more of a factual nature.

Mr. McLain, in your statement you indicated there were precedents going both ways on Congress honoring attorney-client privilege.

The first part of the question is this: When they denied the attorney-client privilege, can you tell me what the facts of the cases were?

Mr. MCLAIN. Yes. The primary case in point, Mr. Wunder, is the case of *Jurney* v. *McCracken* which I am sure you are aware of in another context. That case also involved an investigation by a Senate committee to overseas mail carriers and the contract thereof. McCracken was a Washington attorney representing one of the contractors.

He was subpenaed for information relating to these contracts by the Senate committee. There was an interesting sequence of what happened with the documents.

They were submitted, taken back, burned, or destroyed in other ways. The end result was that he did not provide those documents to the committee. He asserted attorney-client privilege as his justification for nonsubmission.

The committee did not accept that claim. The case, as you know, went to the Supreme Court.

The Supreme Court found that that question was not at issue here, and not surprisingly they did not seek to take it up. There was a finding by the committee that they did not accept the assertion by McCracken.

There is a very old case which gives similar input in the House of Representatives, the case of *Stewart* v. *Blaine* in 1874. That involved a witness who declined to answer questions which he claimed were confidential communications from his client, and he was committed for contempt by the House of Representatives.

Mr. WUNDER. In that case they were confidential communications?

Mr. MCLAIN. Yes.

Mr. WUNDER. In the *Jurney* v. *McCracken* case, were the documents in question communications from counsel to client or were they documents——

Mr. MCLAIN. My recollection is that as in this case they were documents, indeed communications, to the client and from the client.

As the rule on privilege is written, it appears from reading it that it refers only to communications from the client. Case law is to the

effect that this is obviously not the correct interpretation of the rule except as may be provided by State laws as it is in Pennsylvania, and it also involves communications from the attorney to his client relating to the client's confidential communication.

Mr. WUNDER. Let's take the flip side. When Congress recognized the attorney-client privilege, what was the nature of the documents in that case? What were the facts there?

Mr. MCLAIN. Mr. Colman alluded to the Hutcheson case and probably can explain it better than I can. It is very much in their interest.

My recollection is that it involved documents containing confidential communications as well.

I might add, Mr. Wunder, that I did not mention in our presentation the fact that the question of attorney-client privilege has been considered by the Congress specifically.

The Senate in 1955, in considering new rules changes; the Rules Committee considered the question of confidential communications as a bar to testimony before Congress. In their report dealing with those rules they said specifically that the committee recommended against any rule making "the protection of confidential communications applicable to legislative investigations." The question has been considered and specifically rejected by Congress.

Mr. WUNDER. I would like to pose some questions to Mr. Colman.

I wonder whether you might be able to explain the *Hutcheson* case. What were the facts in that case where Congress did recognize attorney-client privilege?

Mr. COLMAN. In the *Hutcheson* case, Mr. Wunder, the assertion of privilege was not one involving documentation as it is here. It was simply a testimonial assertion.

The witness was being questioned with respect to certain labor racketeering investigations. The witness was questioned concerning certain transactions and certain communications. He chose to stand not on a fifth amendment or other constitutional privilege but rather on the fact that his communication was covered by the attorney-client privilege, and that was the justification for his having refused to answer the question.

The facts of the case do not deal specifically with that assertion of privilege other than to note that the committee did not challenge the assertion of privilege as a reason for refusing to answer. It was simply an acknowledgement by the committee that the privilege was appropriate under the circumstances.

Mr. WUNDER. Why should we not consider as dispositive the ruling of the Pennsylvania court on the issue of attorney-client privilege?

Mr. COLMAN. There are several reasons. The principal one I already referred to, Mr. Wunder, and that is that the ruling of that court was plainly in error. Insofar as any rationale can be determined for the court's holding, it was that in the State of Pennsylvania the attorney-client privilege is limited to communications from the client to the attorney, but applied in no way to communications from the attorney to the client unless it repeated verbatim the client's communication. It did not apply to such everyday functions of a lawyer as an exchange between two counsel for the same person. It did not apply to communications by a lawyer to his file in order to enable him to advise his client.

The only thing covered according to that judge was a communication from the client to the attorney.

I do not know of any authority that would support that. Certainly it is the common law rule. Certainly it is not the rule in the Federal court, and I don't think it should be the rule before a committee of Congress.

As far as commenting on his opinion, I would again refer to the comments of the Federal district court here which characterized that court's ruling as extraordinary and bizarre. I would concur wholeheartedly. There is no explanation for it.

Furthermore, in applying the court's own rationale in Pennsylvania the court departed from its ratonale.

If one looks at the documents which have been submitted to the committee, one will see quite clearly that those documents on their face contain, expressly contain, communications from clients to attorneys. Yet the court, through some manner or means, held those documents not to be privileged.

Even under its own ruling those documents were clearly privileged. So again there are two basic reasons—one, the court was in error, clearly so, and, two, the court did not even follow its own erroneous rationale in applying it to the documents which the committee now has.

Mr. WUNDER. Let me ask you about the documents themselves. The documents, exclusive of the Canadian documents—do all these contain legal advice? This is a point raised by Mr. McLain.

Mr. COLMAN. I would like to address Mr. McLain's point.

Mr. WUNDER. Let me ask the question first. Do all of them contain legal advice from attorney to client or are some of them dealing simply with business matters?

Mr. COLMAN. Absolutely not. Absolutely not, Mr. Wunder.

The strawman which Mr. McLain has raised is the same strawman that Westinghouse has raised. It is the easiest way to defeat Gulf's attorney-client privilege.

However, there is a significant difference between an attorney who renders legal advice on business matters, which these attorneys were clearly doing, and an attorney who simply renders business advice. Those are the situations to which Mr. McLain refers and to which Westinghouse refers which are totally inapposite here. The kinds of things in these documents are lawyers rendering legal advice as such by anyone's definition.

Mr. McLain also referred in his comments to the fact that several of the people involved were high ranking officials of Gulf Oil Corp. I don't know what he means by that. The highest ranking official is the general counsel of Gulf Oil Corp., but he is not a businessman, and in response to the committee counsel's specific request I went through the list, and I went through and identified all of the individuals at their request who held other than lawyers' positions, other than attorneys' positions. There are two of them—a Mr. Hoffman and a Mr. Phillips.

Insofar as these two individuals are concerned, in each instance they were clearly operating as lawyers and rendering legal advice. The documents speak for themselves.

Also, I would call to your attention, to the attention of the committee, that if you will refer to the nonprivileged documents you will see that there are some 16 documents by my count, 16 documents which are either sent to or received as a copy recipient by Messrs. Allen and Hoffman, 16 of them as to which we did not claim privilege.

The reason we did not claim privilege as to these documents was that we went through and we made a rational decision on each and every document. Where it simply was a business matter, where no legal advice was rendered, it was not included on the attorney-client list. Where legal advice was granted or sought it was included.

Those 16 documents as as follows. These are references to the Duquesne trial exhibits which are listed at the top of the documents in the committee's possession:

Nos. 3364, 3365, 3366, 3367, 3368, 3369, 3371, 3374, 3375, 3380, 3387, 3391, 3397, 3400, 3403, and 3408.

Second, in addition the nonprivileged documents contain two documents authored by Mr. Allen, actually authored by him—3362 and 3373. We didn't assert attorney-client privilege as to those documents authored by a lawyer simply because he was a lawyer, because our review of them clearly indicated that they were not rendering legal advice.

Third, the deposition testimony of Mr. Allen, an attorney, is included in three exhibits—3383, 3384, and 3385.

Finally, the committee will be obtaining from the court in Richmond, unless some impediment unknown to me intercedes, the testimony of Mr. Hoffman, another attorney.

I was present at Mr. Hoffman's deposition. Not once in the course of his deposition did he assert the attorney-client privilege in an attempt to evade answering or to avoid answering a question put to him.

It is clearly a strawman to say that these documents contain business advice strictly. They do not. A candid and objective review of those documents would clearly reveal that.

Mr. WUNDER. I have a question on another point. Why would not the exception to the attorney-client privilege dealing with communications to an attorney in furtherance of a continuing or future fraud or crime be applicable to these documents?

Mr. COLMAN. I am glad you brought that up. I intended to.

No. 1, such a rationale for depriving Gulf of its attorney-client privilege assumes a result as to which I think there is a rather substantial ground for difference of opinion. I don't know of any crime committed. I don't know of any fraud committed.

The chairman in his opening remarks referred to the fact that as early as 1971 there were reports, public reports, of the meetings of the cartel committees in different places around the world.

As far as the documents are concerned, I can only say that I have reviewed them very, very carefully time and time again. I don't know what Mr. McLain is referring to, because there is nothing in there which would indicate furtherance of a crime of fraud.

Again let's assume the very worst position from Mr. McLain's standpoint. Let's assume that a crime was being committed or a fraud was being committed. That doesn't say that a person is a fortiori not entitled to legal advice. It is when the attorney becomes an instrument of the fraud, becomes an instrument of the crime, that the privilege ceases to apply.

There is absolutely no evidence here that that was the case.

Mr. Moss. At this moment there is no evidence before the committee. There is evidence in the files of the committee.

The question is whether evidence in the files of the committee will be utilized in public or in closed hearings.

The hearing record does not reflect evidence before the committee.

Mr. COLMAN. I appreciate that, Mr. Chairman. I did not mean to indicate otherwise. However, a review of the documents involved—let me put it that way—will reflect absolutely no basis for the statement made by Mr. McLain.

I think one of the——

Mr. MCLAIN. If I might, before we attribute statements to me.

As you said, Mr. Chairman, we by no means are making a finding of crime or fraudulent acts. The court in the decision I mentioned was a grand jury proceeding. It made no finding at the time the documents were compelled in that case.

Mr. COLEMAN. One point deserves mention as well, Mr. Chairman and members of the subcommittee. Running throughout Mr. McLain's comments is the assumption, unstated but the assumption, that the committee does not have these documents. He can cite me a lot of situations where the rule might be otherwise if someone were trying to say you did not have the right to the material. That is not the situation before this committee.

The situation here is that the documents are in your possession. They are in your custody and control. The question is, as he indicated at the outset, and as the chairman recognized in his opening comments, the question is one of discretion, committee discretion in exercising its functions—do the attorney-client privilege documents, and the documents where the Canadian Government expressed itself so strongly, do they have to be publicly disclosed.

I heard nothing except conclusory comments by Mr. McLain which would indicate to me that the committee cannot function fully without disclosing material of this type.

Mr. WUNDER. With respect to those Canadian documents, did Gulf take any active interest or any interest? Were they involved at all in the promulgation of the regulations forthcoming from the Canadian Government in making those documents classified?

Mr. COLMAN. Absolutely not.

Mr. WUNDER. They played no role at all?

Mr. COLMAN. I am aware of absolutely no involvement on our part. I don't know what Mr. McLain is referring to.

Mr. WUNDER. There were no draft——

Mr. COLMAN. I am under handicap here. I was not provided a courtesy copy of the legal memos to which Mr. McLain refers. I am operating in the dark as far as his basic papers are concerned.

However, I know of absolutely nothing that was done by Gulf or any personnel connected with Gulf which has anything to do with documents which I cited in my May 10 letter to the chairman and the ones I referred to this morning.

Mr. SCHEUER. Mr. Chairman?

Mr. Moss. Mr. Scheuer.

Mr. SCHEUER. Might I ask the witness—in what way Gulf would be damaged by the disclosure of the documents or the information which is the subject of this discussion.

Mr. COLMAN. There are two ways, Mr. Scheuer. No. 1, we feel, as we have indicated this morning and on a number of other occasions, that these documents are legitimately subject to a claim of attorney-client privilege. We think that is a valuable claim. We think it is a valid claim and a significant claim.

Mr. SCHEUER. Are these documents pertaining to the relationship between Gulf and their counsel?

Mr. COLMAN. There are 29 documents at issue here, sir, which are in our judgment subject to a valid claim of attorney-client privilege, yes.

The remainder of the documents, there are more than 29 in toto, and the remainder of the documents are those which come under the umbrella of what we referred to as the Canadian policy against disclosure.

Mr. SCHEUER. What is that?

Mr. Moss. Would the gentleman yield?

Mr. SCHEUER. Of course.

Mr. Moss. I think there are two questions that the committee will have to dispose of today.

One, I as chairman, in keeping with the custom of the rules of the House, will dispose of, whether or not attorney-client privilege should be recognized.

The other the committee must vote on, that is, whether or not it should release the documents.

The committee is free to release the documents by a majority vote whether or not the Chairman rules that they are subject to attorney-client privilege.

The rules of the House impose no condition upon the discretion of the committee in determining whether or not to release subpenaed material. With an abundance of caution I would like an opportunity afforded for a hearing of the views——

Mr. SCHEUER. Are we subpenaing the lawyers or Gulf?

Mr. Moss. We subpenaed the documents from Gulf.

Mr. COLMAN. Sir—I didn't mean to interrupt.

Mr. Moss. We have not subpenaed. Counsel does not appear here today——

Mr. SCHEUER. Are we going to make the quorum call?

Mr. Moss. It is a rollcall but I will miss it in order to continue this discussion so——

Mr. SCHEUER. I am sure we will be back, Mr. Chairman.

Mr. Moss. Yes, I am certain.

So that the record is complete on this, my point was that the counsel for Gulf appears here at their request and not as a result of any compulsory process initiated by this committee.

Mr. COLMAN. I very much appreciate that. As I indicated at the outset, we are very grateful to the chairman and the committee for affording us this opportunity. I fully realize that.

Again, just by way of summary, Mr. Chairman, Mr. McLain touched upon what I would refer to as matters of policy or discretion, the applicability of the privilege in a congressional setting, the comity,

if any, between this congressional subcommittee and the Government of Canada.

I don't quarrel with his general principles. I think I acknowledged at the outset, in my opening remarks, that we were talking about a matter of discretion as a practical matter. However, I strongly disagree with his, I think, very conclusory and, I think, also premature conclusion that it is absolutely essential to the functioning of the committee that a public disclosure follow and that in its discretion it need not accord comity to the wishes of the Canadian Government and it need not honor the privilege which Gulf has asserted as to these documents.

I have already touched upon, in response to Mr. Wunder's questions, the element of privilege which Mr. McLain raised as involving business advice and the element of privilege which relates to communications in furtherance of fraud.

A third element as well, that Gulf somehow had some role in the promulgation of the policies of the Canadian Government to which I referred—I don't think there is any foundation for any of those three specific points made by Mr. McLain.

Mr. Moss. Mr. Atkisson?

Mr. ATKISSON. Briefly, Mr. Chairman, thank you.

To summarize the structure of the staff's argument here, we firmly believe that privilege does not apply in any event before the Congress of the United States.

Next, even if it did, on the merits the privilege would not apply to the specific documents that we have before us in issue today.

On that point, contrary to the inference Mr. Colman presented, a reading of these documents yields nothing so much as a mosaic in which attorneys—albeit they are attorneys both in name and in fact—they also wear other hats. They are participants in meetings, participants in the discussions to go ahead or not to go ahead in the meetings. Those are all facts which may or may not surface before the public as our investigation continues.

However, I assure you that the attorneys are in no sense in the participation of these meetings acting strictly as counsel. They are business participants as business executives. One need only refer to the Gulf organization chart which is in the Chair's folder and you will see the names of these counsel on the boards of the various subentities of the Gulf Oil Corp.

I might say, in addition to that, that the staff seeks more than anything else—I keep hearing the word "release"—the staff seeks the use of these documents in a public session. As a matter of public policy the Congress well over a century ago decided that executive sessions are extraordinary. There is a reason for that. They fly in the teeth of the policies of the Congress.

This is a public body and it should be open to the public. Therefore, an executive session is authorized only under very extraordinary rules.

We want to be able to use these documents as necessary, and perhaps it will not be necessary, in public session to air these issues. That is the key to what we seek here.

We have no intention of marching out into the hallway and releasing these documents in wholesale fashion. That is simply not the objective.

Finally, as to the Canadian privilege, I think it would be a very sad day indeed for the Congress when a foreign government can classify documents within the jurisdiction of the U.S. Congress, classify them as secret and have that classification hold.

Mr. Moss. Is there further comment?

Mr. COLMAN. I have nothing further, Mr. Chairman, except once again to thank you for the opportunity of appearing before you this morning.

Mr. Moss. Again I want to divide the issues which are to be decided, the one under the Rules of the House where the presiding officer of a committee or of the House makes the rulings, interpreting the rules which are applicable to the hearings being conducted or procedures being carried forward. I am prepared to make that ruling now.

Let me state that this is a body which, as you know, derives its traditions from the Grand Inquest of the British, a government dating back, I think, to the 14th century. Long before the commonwealth was a lawmaking body it was a law interpreting body. It has very broad powers of inquiry.

One of the powers would be to determine whether or not a client-attorney privilege of any nature should continue to be recognized in the Federal courts, and in making that determination it could inquire with the utmost care into the very nature of the most confidential communications between an attorney and his client in order to determine the facts upon which to make an ultimate legislative decision.

I think I have to go no further than a determination that the power of the Congress to inquire is sufficiently broad to encompass the entirety of the body of law, either the statutory law, the constitutional law, or the common law under which we act.

It is my firm conviction that the commonwealth precedents, customs of both the Commons and the House, fully sustain rejecting a claim of attorney-client privilege if it impedes in any manner whatsoever the necessary inquiries of the Congress in determining whether a law of the United States may have been violated or whether that law accords sufficient protection to the American people.

In the instant case we are concerned with a rapid escalation in the cost of fuel, uranium. We have an obligation to report to the Congress as fully as possible upon the reasons, all those discernible to us after the most critical examination, and to make recommendations to the Congress and to the departments or agencies of Government which might have authority vested in them to act.

Therefore, on that basis, I rule that the attorney-client privilege is not applicable in this instance.

Whether or not the documents will be used in a public session is a matter which my colleagues must determine. We will have them meet. We shall continue in executive session until they are able to return from the floor, at which time they will be advised of my ruling.

They are then free to exercise their own judgment in voting to determine whether or not the documents should be released.

I want to thank each of you gentlemen for your appearance. I realize this is an important matter to decide, and I have given it careful thought and study in advance of this hearing. I attempted to approach the hearing with an open mind to be convinced that there was indeed a valid claim. I have not found that evidence here this morning.

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With that, gentlemen, you are excused and excused with the thanks of the committee.

We will notify you of the action taken by the committee regarding the matter of voting on whether or not the documents should be made public.

Mr. COLMAN. Can you tell me, Mr. Chairman, when that will be? Do you have that information at this time?

Mr. Moss. I would hope that the committee can sometime during the day convene. Members are not responding to a vote. They will be returning here as promptly as possible for further discussions.

How much time they might want to take to examine either the transcript or thhe material which is before us is a matter which the individual members will have to decide.

I thank you very much, and, as I say, at this point you are excused.

[Whereupon, at 11:20 a.m., the subcommittee recessed.]

AFTER RECESS

[The subcommittee reconvened at 11:45 a.m., Hon. John E. Moss, chairman, presiding.]

Mr. Moss. The committee will come to order.

The Chair will state that he has been in touch with the Parliamentarian who tells him that he has the authority to hold the vote open as long as the Chair is willing to sit and wait for members to appear and cast their votes.

In view of the fact we are only two members shy at this moment, the Chair is going to proceed and will then hold the rollcall open, and as soon as a majority vote has been recorded he will then announce the vote.

Under the ruling of the Parliamentarian that is the only constraint on the Chair in a matter of this type.

The issue, then, before the committee is the question of whether or not the material which was subpenaed by the committee on April 26, 1977—well, the Chair will offer for insertion in the record a resolution.

Does everyone have a copy of the resolution? It is being distributed.

[The resolution referred to follows:]

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

RESOLUTION

The Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce of the U.S. House of Representatives, having received certain documents in Executive Session pursuant to subpoena No. 95–1–14, issued and served on April 26, 1977, and having further heard in Executive Session argument at the request and on behalf of the Gulf Oil Corporation in support of its request that said documents remain in Executive Session and be held confidential by the Subcommittee, based on Gulf's claim that (1) the attorney-client and attorney-work-product privileges apply to the documents and should therefore preclude their disclosure, and (2) that some of the documents have been classified by the Canadian Government as "secret" or "confidential" which should preclude their disclosure; and having deliberated thereon, it is

Resolved. (1) The attorney-client and attorney-work-product privileges may be entertained by the House of Representatives, its Committees and Subcommittees, solely as a matter within the discretion of the House or its Committees or Subcommittees;

(2) The classification of documents now within the jurisdiction of the House of Representatives, as "secret" or "confidential", by a foreign government, does not apply to the House or its Committees and Subcommitteees;

(3) The Gulf documents do not properly fall within the traditional attorney-client and attorney-work-product privileges because they convey business as opposed to legal advice among parties acting not as legal counsel but as business executives, or because they pertain to activities which may have been in pursuit of crime or fraud; and

(4) The need of Congress and its Committees and Subcommittees for information on the possible existence of an international uranium suppliers' price-fixing cartel and on he operations of multinational integrated energy production companies, and consequently for public hearings and a timely report, is compelling; and be it further

Resolved, pursuant to Rule XI(1)(k)(7) of the Rules of the House of Representatives, the Subcommittee on Oversight and Investigations authorizes and consents to the release or use of the documents here in issue in public sessions of the Subcommittee.

Dated: June 10, 1977.

Mr. Moss. The Chair would be willing to entertain a motion.

Mr. GORE. For approval of the resolution? I move the previous question.

Mr. Moss. The Chair would recommend that on the last page of the resolution—for use of the documents here in issue in public sessions of the subcommittee—that we also include the transcript of the hearings held today for the purpose of determining whether or not the documents would be recognized as coming within attorney/client privilege.

The Chair believes it appropriate to inform the committee that a ruling was made by the Chair, and as always such a ruling is subject to appeal if it is disagreed to by the committee, holding that the attorney/client privilege did not cover the material subpenaed by the subcommittee.

If the members would like to hear the Chair's ruling, that could be read to the members. If not, of course it will be in the hearing transcript.

Is there discussion on the resolution?

[No response.]

Are all members prepared, then, to vote?

[No response.]

The clerk will call the roll.

The CLERK. Mr. Carney?

[No response.]

The CLERK. Mr. Scheuer?

Mr. SCHEUER. Aye.

The CLERK. Mr. Waxman?

[No response.]

The CLERK. Mr. Chairman, you have Mr. Waxman's proxy.

Mr. Moss. We shall first vote the members and then proxies as a separate item. There can be no announcement of the vote until a majority of the members have voted in person.

The CLERK. Mr. Krueger?

[No response.]

The CLERK. Mr. Sharp?

Mr. SHARP. Aye.

The CLERK. Mr. Moffett?

Mr. MOFFETT. Aye.

The CLERK. Mr. Santini?
[No response.]
The CLERK. Mr. Maguire?
Mr. MAGUIRE. Aye.
The CLERK. Mr. Luken?
[No response.]
The CLERK. Mr. Walgren?
Mr. WALGREN. Aye.
The CLERK. Mr. Gore?
Mr. GORE. Aye.
The CLERK. Mr. Collins?
[No response.]
The CLERK. Mr. Lent?
[No response.]
The CLERK. Mr. Rinaldo?
[No response.]
The CLERK. Mr. Stockman?
[No response.]
The CLERK. Mr. Marks?
[No response.]
The CLERK. Mr. Staggers?
[No response.]
The CLERK. Mr. Devine?
[No response.]
The CLERK. Chairman Moss?
Mr. MOSS. Aye.

Voting by proxy, to be separately listed. Mr. Waxman's valid proxy executed on the 10th day of June designating me for the purpose of voting on this matter and all matters coming before the subcommittee votes aye.

A similar proxy from Congressman Luken votes aye.

A vote cannot be announced, and the Chair will hold the vote open until such time as a majority of the members have responded to the rollcall.

We have a second item that will be proposed, the authorization for issuance of subpenas to Mr. S. A. Zagnoli, Gulf Mineral Reserves Co., Denver, Colo.; Mr. M. W. Ramsey, Gulf Minerals Resources Co., Denver, Colo.; Mr. D. Hunter, the Helix Corp., Boston, Mass.; Mr. L. T. Gregg, Nuclear Assurance Corp., Atlanta, Ga.; Mr. Jerold McAfee, president and chairman of the board, Gulf Oil Corp., Pittsburgh, Pa.; Mr. Frank Cotter, Westinghouse Electric Corp.; and H. E. Hoffman, formerly with Gulf Oil Corp.

These, of course, are all pursuant to the same investigation previously authorized.

The clerk will call the roll. This rollcall will be handled in the same manner and held in abeyance as to announcing results until the majority of members have personally cast their votes.

The CLERK. Mr. Carney?
[No response.]
The CLERK. Mr. Scheuer?
Mr. SCHEUER. Aye.

The CLERK. Mr. Waxman?
[No response.]
The CLERK. Mr. Krueger?
[No response.]
The CLERK. Mr. Sharp?
Mr. SHARP. Aye.
The CLERK. Mr. Moffett?
Mr. MOFFETT. Aye.
The CLERK. Mr. Santini?
[No response.]
The CLERK. Mr. Maguire?
Mr. MAGUIRE. Aye.
The CLERK. Mr. Luken?
[No response.]
The CLERK. Mr. Walgren?
Mr. WALGREN. Aye.
The CLERK. Mr. Gore?
Mr. GORE. Aye.
The CLERK. Mr. Collins?
[No response.]
The CLERK. Mr. Lent?
[No response.]
The CLERK. Mr. Rinaldo?
[No response.]
The CLERK. Mr. Stockman?
[No response.]
The CLERK. Mr. Marks?
[No response.]
The CLERK. Mr. Staggers?
[No response.]
The CLERK. Mr. Devine?
[No response.]
The CLERK. Chairman Moss?
Mr. Moss. Aye.

The CLERK. Mr. Chairman, you have Mr. Waxman's and Mr. Luken's proxies as well on this matter.

Mr. Moss. The Chair casts the properly executed proxy of Mr. Luken in the affirmative and a similar proxy by Mr. Waxman in the affirmative.

The Chair will announce to members leaving for the hearing on energy that there will be a briefing at 4 o'clock on Monday for the purpose of giving members full information regarding the hearing the committee will have with Jim Schlesinger. That will be at 4 o'clock.

We shall stand in recess until a rollcall has been completed.

[Brief recess.]

Mr. Moss. I would like to ask unanimous consent that the hearing record be held at this point to receive a written memorandum setting forth the Parliamentarian's ruling upon which the Chair has based the procedure the committee is now employing.

Is there objection?

Hearing none, such is the order of the committee.

[The following memorandum was received for the record:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., June 10, 1977.

Memorandum to: Honorable John E. Moss, Chairman.
From: John Atkisson, Deputy Chief Counsel.
Subject: Open Rollcall Vote of the Subcommittee.

The Office of the Parliamentarian of the House advises that a rollcall vote of the Subcommittee may be held open for a reasonable time, within the sound discretion of the chair, provided: (1) that two Members are present and sitting for the duration and (2) that the results of the vote are not announced until after a quorum vote has been attained and the issue resolved as final.

Mr. Moss. The committee will be in order.

The clerk will call the absentees.

The gentleman from Nevada seeks recognition.

Mr. SANTINI. How am I recorded?

Mr. Moss. How is Mr. Santini recorded?

The CLERK. Not recorded, Mr. Chairman.

Mr. Moss. How does the gentleman desire to be recorded?

Mr. SANTINI. This is the resolution which has been the subject of the notice of hearing?

Mr. Moss. Yes.

Mr. SANTINI. On that resolution I would vote aye.

Mr. Moss. And on the other rollcall being held open, with regard to the issuance of the subpenas which are tied to the memorandum.

Mr. SANTINI. I would similarly vote aye, Mr. Chairman.

Mr. Moss. The chairman of the committee, Mr. Staggers.

Mr. Staggers, how do you desire to be recorded?

Mr. STAGGERS. I vote aye.

Mr. Moss. With regard to the issuance of the subpenas how do you desire to be recorded?

Mr. STAGGERS. I vote aye.

Mr. Moss. The clerk will announce the votes.

The CLERK. Mr. Chairman, the vote is 11 ayes, no nays; 11 ayes, no nays.

Mr. Moss. The record shows 9 of the votes were cast in person; 9 of the votes having been cast in person, with the vote of 11 to nothing the resolution is adopted.

By the same vote the issuance of subpenas is authorized.

The committee now stands adjourned with the thanks of the Chair.

[Whereupon, at 12:07 p.m., the subcommittee adjourned.]

INTERNATIONAL URANIUM CARTEL

THURSDAY, JUNE 16, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will come to order.

Our hearings today and tomorrow will detail secret agreements between nations and companies to control the price and supply of uranium, one of our most important sources of energy.

There is no doubt now that a cartel existed. The controversy is over its effectiveness in the world market and, more particularly, in the United States.

What we do know is that the price of uranium, or "yellowcake," was $5 per pound when the cartel was organized in 1972, threatening to drop to $4 and it is now over $40 per pound.

Whatever the reasons for this 700-percent increase—and several factors other than a cartel will doubtless be suggested this morning—the timing of the cartel's formation and that of the price rise are one and the same. Whether that phenomenon is anything other than an astounding coincidence, we may learn today.

Certainly the members of what later came to be called "the club" agreed to set prices.

The problem they faced is classic. During the seventies, they estimated the world demand for "yellowcake" at 26,000 tons. Over 100,000 tons were available and more was coming onto the market, forcing companies to reduce price and increase efficiency in order to be competitive.

We will hear today how the producers resolved that problem and eventually made arrangements to sell the 26,000 tons at a profit, far in excess of what they could have sold the entire 100,000 tons for at their first cartel price of $6.

Six dollars, by the way, was the price the club members themselves thought initially sufficient to cover costs and profits and still allow for what they considered "high-risk" future development.

We will hear today how these arrangements were made, how they were kept secret, and how various companies dealt with the antitrust laws on four continents and the Common Market. In other words, they sought to "stabilize" prices for one of the barometer fuels of this century.

The subcommittee's investigation of the cartel began almost 1 year ago when certain so-called Friends of the Earth documents from Australia surfaced in California—where we held hearings last November 4.[1]

Since then, we sought—and finally obtained—thousands of pages of other, more revealing, documents—chiefly from the classified files of the courts sitting in judgment on a multibillion dollar controversy between a number of American utility companies and the Westinghouse Corp.

I say "finally," because we ourselves were forced into yet another court, where ultimately we prevailed, to obtain the materials we had originally subpenaed.

Some of those documents have been classified as "secret" by the Canadian Government, which for its part has officially requested that they remain so. Doubtless the governments of other nations—France, South Africa, and Australia—share Canada's concern.

But those of us charged with oversight of this Nation's commerce and this Nation's energy plans cannot, in all good faith, allow pertinent information to be hidden from public view.

Neither, it should be said, are the governments involved acting strictly as governments, for they are in the international uranium supply business themselves.

Indeed, the whole question of just who owns and controls what—in France, Canada, Australia and South Africa—not to mention the United States—will be the subject of future hearings.

The cartel was a sophisticated operation. It had a paid secretariat, a policy committee, an operating committee, a formal document governing its actions, and a system of sanctions for those who would interfere with their view of an orderly market for uranium.

The Gulf Oil Co., through its Canadian subsidiary, was an active participant in the cartel. Gulf's executives were present and active at cartel meetings. Gulf proposed price increases for uranium. Gulf executives helped to draft the basic documents.

To the end that we may explore those events, we are happy to welcome Gulf's chairman of the board and chief executive officer, Mr. Jerry McAfee.

He is accompanied by Mr. S. A. Zagnoli, executive vice-president of Gulf Minerals Resources Co. and formerly president of Gulf Minerals Canada, Ltd.

Later, we will hear from Mr. L. T. Gregg, formerly with Gulf in Canada.

Tomorrow we will explore these matters with still other former Gulf employees.

Midway through our investigation, we learned that the New York State Assembly, through its Legislative Oversight Office, was also investigating the cartel. In what we are told is an unprecedented procedure, we decided to invite members of the New York State Assembly to these hearings.

I am pleased to welcome to the dais Hon. Irwin J. Landes, chairman, Committee on Corporations, Authorities and Commission, New York

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[1] "International Uranium Supply and Demand," hearing before the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, 94th Cong., 2d sess., Nov. 4, 1976, serial No. 94–150.

State Assembly, and the ranking minority member of that committee, Hon. Lloyd S. Riford, Jr.

We welcome you, gentlemen, and we welcome the cooperation extended by the State of New York and the excellent assistance given the subcommittee by the staff of the assembly's committee.

We have a rollcall underway in the House. Those are the second bells.

It may be necessary for some of the members to leave in order to respond to a record vote on the floor. It is intended to show no discourtesy to witnesses. They will return as promptly as they can.

The Chair will continue with the hearings, however, in order that we may cover the material scheduled for this morning.

I would now like to recognize the chairman of the New York Assembly's Committee on Corporations, Authorities, and Commissions for a statement. Mr. Landes?

Mr. LANDES. Thank you. Mr. Chairman.

We appreciate this opportunity to work closely with the Congress on a matter of such vital importance to New York State.

From the information already developed by our staff, we are now beginning to reevaluate New York's plans for nuclear energy development.

One of the reasons the State was seriously considering nuclear options was the assumed low cost of nuclear fuel.

We believe that the cartel has set in motion price increases which put in doubt whether nuclear energy will continue to be a low-cost energy source.

The unique process of ratesetting allows the increased costs to flow directly through to ratepayers.

In New York State, it is our belief, that price increases set in motion by the cartel could cost consumers $1 billion in New York alone between now and 1980.

I am very pleased to be with you here today, Chairman Moss.

Mr. Moss. Thank you, sir.

I have been requested to suspend for 10 minutes before calling the witnesses. Under the rules, that request becomes binding on me as chairman that I honor it and suspend for the 10 minutes to permit the members to return.

The committee will stand in recess for 10 minutes.

[Brief recess.]

Mr. Moss. The subcommittee will be in order.

At this time, the Chair calls as witnesses, Mr. Jerry McAfee, Chairman of the Board and chief executive officer of Gulf Oil Corp., and Mr. S. A. Zagnoli, executive vice president, Gulf Minerals Resources Co., and formerly president of Gulf Minerals Canada Ltd.

Gentlemen, will you come forward and be sworn?

Do you, and each of you, solemnly swear that the testimony you are about to give this subcommittee shall be the truth, the whole truth, and nothing but the truth so help you God?

Mr. MCAFEE. I do.

Mr. ZAGNOLI. I do.

Mr. Moss. Will you identify yourselves to the reporter for the hearing record?

TESTIMONY OF JERRY McAFEE, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, GULF OIL CORP., AND S. A. ZAGNOLI, EXECUTIVE VICE PRESIDENT, GULF MINERALS RESOURCES CO., AND FORMER PRESIDENT, GULF MINERALS CANADA, LTD.

Mr. McAFEE. I am Jerry McAfee.

Mr. ZAGNOLI. I am S. A. Zagnoli.

Mr. Moss. Mr. McAfee, it is my understanding you have a statement, and you may proceed.

Mr. McAFEE. Thank you.

I would like to begin by expressing our appreciation to you for your courtesy in delaying the hearings so that as many members of the committee as possible can hear our statement, because we feel we have some facts to present and some information to give you and perhaps some clarification to offer which will be helpful to the committee in its development of the facts surrounding this very complicated matter and the improvement of your understanding of what it is all about.

Mr. Chairman, and members of the committee, as I have stated and as the chairman has indicated, I am Jerry McAfee, chairman of the board—not president—and chief executive officer of Gulf Oil Corp.

My appearance here today, and the statement I shall make, is in response to the express request of the committee for information from Gulf on allegations that U.S. uranium prices and markets have been influenced by a foreign producer's cartel.

Contrary to certain press reports, we very definitely welcome this opportunity to describe to you the forces operating in the uranium market which Gulf believes were directly responsible for the dramatic increase in the price of uranium over the past few years.

At the outset, I would like to make it clear that my personal knowledge of the details of this subject matter is necessarily limited. I have been chairman and chief executive officer of Gulf since January 14, 1976. As such, I am accountable for the activities of the corporation since that time.

Although I am, and have been, quite removed from the day-to-day operations of Gulf's current and past uranium activities, when I received the committee's request for information, I requested that a statement be prepared reflecting the knowledge and the views of the corporation, as well as my own. Where appropriate, I make reference by footnote in this statement to independent authorities which support the views expressed.

From September 1, 1969, to January 14, 1976, I was the president and chief executive officer of Gulf Oil Canada Limited. Gulf Oil Corp. owns 68.3 percent of Gulf Oil Canada stock. The remaining shares are publicly traded on the Toronto Stock Exchange and others and are widely held by over 24,000 persons, most of whom are Canadian citizens.

Gulf Minerals Canada Ltd., on the other hand, another Gulf Canadian company, is a wholly owned Canadian subsidiary of the Gulf Oil Corp.

In 1972, Gulf Minerals Canada, then a potential uranium producer, was directed by the Government of Canada to participate with all

Canadian uranium producers in a marketing arrangement formed by the Governments and producers of Canada, France, Australia, and South Africa. The group was officially known as the Uranium Marketing Research Organization. The home markets of the four participating countries and the single nonmember exception, the market of the United States, were specifically excluded from the terms of the agreement.

Neither Gulf Oil Canada nor I had any responsibility for the operation of Gulf Minerals Canada Ltd., although Gulf Oil Canada does have a 5.1 percent investment in the Rabbit Lake uranium mine in Saskatchewan Province. In addition, Gulf Oil Canada has a working arrangement with Gulf Minerals Canada Ltd.—which we shall hereafter refer to as GMCL—for other mineral operations in Canada.

While president of Gulf Oil Canada, I was keenly aware of the Canadian Government's policies and actions in its pervasive regulation and conservation of its natural resources. The Canadian Government, and I might add the governments of the ten provinces as well, have always taken an extremely active role in closely regulating and controlling the business operations of those companies engaged in the production and sale of Canada's mineral resources. For example, in the uranium industry, the Canadian Government issues mining permits to Gulf Minerals Canada Ltd. for the Rabbit Lake uranium mine for only 1-year periods. There is no guarantee that even after substantial investment and operation, a permit will necessarily continue to be renewed.

In addition, all contracts for the exportation of uranium out of Canada must be approved by the Atomic Energy Control Board. If the price, terms, conditions, duration, or volume of any particular contract is not satisfactory to the board, it simply will not be approved and allowed to go into effect. Having lived and worked in Canada for almost 9 years, I am quite familiar with the active role and intense regulatory control of the Canadian Federal and Provincial governments as well as the attitude of the Canadian Government toward certain foreign investments, including uranium.

Moreover, as a matter of information, I was specifically made aware of the Canadian Federal Government's requirement that all Canadian uranium producers must participate in the government-sponsored international uranium marketing arrangement. To further clairfy my position in the matter, I might add that I neither agreed to nor disagreed with the actions of GMCL at that time but was merely advised of them. At no time was I involved in any of the organization's meetings—that is, the marketing arrangements—either as president of Gulf Oil Canada, a separate and distinct company from Gulf Minerals Canada, or otherwise.

In a sincere effort to assist this committee, I will attempt to present a composite corporate review of significant events as we know them. Obviously, no single person can describe every event which transpired during the period in question.

During the period of the international uranium marketing arrangement, which began in 1972 and ended in 1974, Gulf had a significant interest in the exploration and development of uranium. It still does. Our first production was in Canada. We made substantial investments in what is known as the Rabbit Lake project in Northern Saskatche-

wan. Gulf's exploration activities and plans ultimately resulted in a joint operation between Gulf Minerals Canada Ltd. and the Canadian subsidiary of a West German mining company. Gulf Oil Canada, had then, and has now, what amounted to a 5-percent investment interest in the Rabbit Lake project.

The overall investment anticipated the development of a large reserve of uranium ore and the mining, milling, and selling of it. Before full corporate authorization of the investment had been obtained, a 49 percent interest was sold to a West German partner. It was projected that Rabbit Lake would start producing in 1975—which it did—with an eventual annual output of about 4.5 million pounds.

While the project was starting up, the uranium markets outside the United States were in a depressed state. Prices were low—in some cases, substantially below production costs—and there was an oversupply. The prospects for improvement were very dim. Some independent analysts attributed the condition which then existed to the prohibition against the importation of foreign uranium into the United States, to heavy stockpiling of uranium by the United States, and sales therefrom in foreign markets at U.S. governmentally fixed prices.

The Government of Canada had, and still has, the statutory and regulatory power to control the export of its uranium, just as the United States does. As early as January 1972 with construction and investment at Rabbit Lake well along, the Canadian Government requested representatives of Gulf Minerals Canada—the wholly-owned Canadian subsidiary of Gulf Oil Corp.—to attend a meeting of Canadian uranium producers and potential producers.

Managers of Gulf Minerals Canada justifiably felt that they were under pressure from the Government of Canada to meet with Government representatives and discuss the future of the then-depressed Canadian uranium industry.

Gulf Minerals management believed the existing Canadian uranium producers resented foreign intrusion into the industry—by Gulf Minerals Canada and its West German partner. Ultimately, it was felt, the ongoing producers—in combination with the Canadian Government—might move to restrict or eliminate Gulf's business opportunities. We were, after all, new and foreign entrants in the Canadian uranium business.

Despite this, Gulf, in late January of 1972, rejected a request from the Canadian Government to attend a meeting of all national uranium producers. The purpose of that meeting was to consider a forthcoming non-U.S. international producers conference in Paris. Gulf did not attend the meeting in Canada or the conference in Paris.

On February 16 of that year, 1972, in response to a demand from the Canadian Government, representatives from the Gulf Minerals Canada Limited and its parent managing authority, Gulf Minerals Resources Co. in Denver, did attend a meeting of Canadian producers in Ottawa. It was at this time that Gulf learned in general terms what was discussed at the previously mentioned conference in Paris.

Gulf already had sought counsel from its attorneys on the issues surrounding Canada's push toward Government-sponsored producer meetings. U.S. and Canadian laws were fully considered.

Greater pressures were then applied by the Canadian Government for GMCL to attend these meetings—push was turning to shove. The record shows that the Canadian Government and uranium producers were of the opinion that Gulf was overly sensitive to the cartel and U.S. antitrust implications. Sensitive we were—whether we were overly sensitive is a matter of judgment. At no time did GMCL voluntarily seek to become a part of any producers' arrangement. It was compelled to do so.

Gulf Minerals Canada representatives attended two meetings of the international marketing organization at the express direction of the Canadian Government. They were called to develop specifics of the marketing arrangement. Even then, Gulf reminded the Canadian Government that its actions had to be in compliance with U.S. antitrust laws.

Gulf officials were told by the Government of Canada that enforced control of uranium would be mandated if the producers themselves could not work out a unanimously accepted plan for maintaining a viable domestic uranium industry. Gulf officials informed the Canadian Government that Gulf Minerals Canada could participate only if it were clear that no U.S. or Canadian laws would be violated.

The response was that Gulf would be compelled to participate if the Canadian companies already in production requested the Government to direct all of them to be associated together. It is important to note that Gulf Minerals Canada and its West German partner were not given the opportunity to respond. The formal directives were then issued which resulted in the compulsory participation.

Thereafter, a final corporate determination was made that no laws were being violated and the suggestion, once considered within the company, that we seek a U.S. Justice Department ruling on the matter was dropped. That view was concurred in by outside antitrust counsel.

In this context, I would refer the subcommittee to a Justice Department memorandum dated January 25, 1972, concerning antitrust and foreign commerce. That publicly announced advisory contained the following statement. I am quoting the Justice Department at the very time this organization was being set up—January of 1972.

> 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 abide by the governmentally desired—but not officially imposed—system of arrangements as a condition of securing, and keeping, the necessary permits and approvals.
>
> 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 and not involving exports to the United States should not violate U.S. antitrust laws.

The Canadian Government made no effort to conceal its actions in setting prices for uranium. It argued that it did so largely because of official U.S. policy which Canada considered as tantamount to price rigging and which it deemed clearly anticompetitive. Ottawa argued publicly that U.S. policies were contrary to the General Agreement on Tariffs and Trade.

The Canadian Government—through its Minister for External Affairs—even used the forum of the United Nations to present its case for an orderly international trade in uranium; unfortunately, no one seemed to listen.

There was additional published information of the existence of a foreign uranium marketing arrangement. There was no secret. As the chairman pointed out, it is the effectiveness of this arrangement and not its existence which is the focal point of current inquiry. There have been numerous public analyses of critical factors which did drive up the price of U.S. uranium, but the international marketing organization, which is sometimes referred to as the foreign cartel, was not one of them.

Let me briefly address those factors which we feel are responsible for the recent dramatic uranium price increases.

I believe and I submit that the facts will show that uranium prices in the United States have increased because of a number of different factors[1] including, among others:

First, the policies of the U.S. Government, particularly the embargo, the stockpile, and sales from stockpile;

Second, the policies of foreign governments, such as the decision of the Australian Government, a potential large source of supply, to prohibit exports from that country;

Third, the 1973 Arab oil embargo and the 1973–74 OPEC price increases which sharply increased the pressure for acceleration of the development of nuclear power plants;

Fourth, sharply higher exploration and development costs associated with deeper drilling, lower ore grades, and fewer discoveries and various inflationary factors; and

Fifth, and in our judgment the most important, the activities of Westinghouse Corp. in the uranium market.

Others support these views. For example, Paul Schmitt of the Nuclear Assurance Corp. cites three main reasons for current uranium price levels:

First, the rising costs of expanding production facilities;

Second, higher oil prices which put pressure on the entire nuclear industry; and

Third, Westinghouse's inability to meet its contractual commitments.[2]

The so-called foreign uranium cartel, which was the offspring of the Canadian Government and the government-owned uranium industries of other countries, simply had no discernible impact on either the domestic or foreign uranium commerce of the United States.

Let me address each of these points in a little more detail.

First, any analysis of the domestic uranium industry must include an examination of the role played by the U.S. Government. Indeed, the domestic uranium market developed largely as a result of Government needs for uranium in connection with its weapons program during and after World War II.[3]

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[1] Hobbs, James S. "Uranium Supply, Demand, and Price," Nuclear Assurance Corp., March 1976, at 5–62 (hereinafter "Hobbs").

[2] "Uranium Dilemma: Why Prices Mushroomed," Business Week, Nov. 1, 1976, at 97.

[3] "Significant Events in the Uranium Market, 1969–76," Nuclear Exchange Corp., Oct. 15, 1976, at 2 (hereinafter "Nuexco"). McCoy, Robert W., Jr., "Westinghouse Electric Corp.: Commercial Nuclear Power and Uranium," Kidder, Peabody & Co., Sept. 25, 1975, at 13 (hereinafter "Kidder-Peabody").

The Government has continued to be the dominant factor in the uranium industry to this day.[1] Every facet of the production, conversion, enrichment, fabrication, use, and reprocessing of uranium is subject to detailed regulation.

The Atomic Energy Commission, succeeded in 1975 by the Energy Research and Development Administration, has guided the uranium industry from its birth in the 1950's to date. The present supply of, and demand for, uranium, as well as its price, is to a large measure the result of many different Government policies which did not always achieve the goals which the Government intended.

Other U.S. governmental bodies and their decisions have also had significant impact on the demand for, and price of, uranium in the United States. Perhaps most significant among these were new environmental health and safety regulations which increased materially the cost of existing uranium operations and radically changed the economics of production, thus delaying the start of new operations.[2]

Inflation took its toll during this period and the price of uranium increased with the price of all other fuels and commodities.[3]

I assume that the committee is aware that the embargo has continued until the first of this year when it began to be lifted on a gradual basis, beginning in January of 1977.

Second, just as the Atomic Energy Commission has had a substantial impact on the domestic uranium industry, foreign governments exercise a great deal of control and influence over the uranium industries operating in their own countries. This is particularly true with regard to the major uranium-producing countries, such as Canada, Australia, South Africa, and France. All four of these countries have taken some action on their own behalf and in their own interests, quite apart from the cartel, which has had a significant effect on the uranium market situation.

Third, one of the single most important factors contributing to the rapid escalation in uranuim prices was the Arab oil embargo of mid-1973, followed, as you know, by the OPEC price increases shortly thereafter. The oil embargo cause a scramble for alternative sources of fuel, the likes of which we have never experienced before.

Foreign nations, as well as the United States, sought to protect and conserve their own alternative energy sources, and thus the uranium export policies imposed by many foreign governments coincided with the oil crisis of 1973.[4] Westinghouse's own studies flatly state that the 1973 oil embargo was the major cause of the rise in uranium prices.[5]

Fourth, sharply higher exploration and development costs associated with deeper drilling, lower ore grades, fewer discoveries, and general inflation have also contributed to the higher uranium prices of recent years.

Fifth, and most important, it seems to be the vogue of the day for any discussion of uranium to inevitably lead to a discussion of Gulf and Westinghouse. This will be not exception.

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[1] Lorie, James H., Gody, Celia Star, "Economic Analysis of Uranium Prices," Westinghouse Electric Corp., July 9, 1975, at 5 (hereinafter "Lorie-Gody").
[2] Nuexco, at 9.
[3] Nuexco, at 5.
[4] Kidder, Peabody, at 28; Lorie-Gody, at 42; Nuexco, at 6.
[5] Lorie-Gody, at 32.

It is submitted that Westinghouse, in response to the entry into the nuclear reactor markets by Gulf and others, undertook a massive and unprecedented program of short sales of uranium at unreasonably low prices. With these sales, Westinghouse made commercially unmatchable offers of uranium to utilities as part of total packages by which nuclear steam supply systems and/or fabricated fuel and uranium were offered for sale.

Westinghouse entered into firm price contracts for the sale of fabricated nuclear fuel, including large quantities of uranium for use in that fuel, when it did not have in its possession, or available on contract from suppliers, the uranium needed to fulfill its contracts.

When Westinghouse stopped selling short, late in 1973, uranium prices started climbing. When Westinghouse reneged on its uranium contracts and belatedly in September of 1975 publicly disclosed at long last its massive short position, market demand reacted dramatically. Upward pressure in prices was intensified as both the estranged utilities and Westinghouse entered the market on a massive scale.

Gulf's views in this matter are shared by many others. For example, in a March 1976, Fuel-Trac report prepared by James B. Hobbs of the Nuclear Assurance Corp. on "Uranium Supply, Demand, and Price," 17 pages are devoted to the impact of Westinghouse's buying and selling practices on the increase in uranium prices.[1]

Keith Cunningham, president of United Nuclear Corp., which is attempting to rescind two contracts to supply uranium to General Atomic, a Gulf affiliate, at low prices, has stated that Westinghouse was responsible for the uranium price rise.

He states:

> Demand was withheld from the market * * * Westinghouse was selling reactors and offering utilities long-term contracts for uranium without buying it from producers, and the volume they were dealing with amounted to nearly three times annual U.S. production.[1a]

Moreover, and you will find this most interesting, a 1976 report prepared by Westinghouse's own counsel, Kirkland and Ellis, for the American Petroleum Institute concedes Westinghouse's responsibility for the recent increase in uranium prices in these words:

> Another reason for the recent price increase is Westinghouse's 1975 announcement that it would not fulfill most of its long-term contractual commitments to 27 utilities to deliver 65 million pounds of uranium over the next 20 years, causing an influx of new demand.[2]

In addition, a 1976 study prepared by Paul L. Joskow for the Massachusetts Institute of Technology also concludes that Westinghouse was the principal cause of the runup in uranium prices during 1975 and 1976.[3]

In summary, Mr. Chairman, our position is simply this:

First, a Gulf subsidiary in Canada participated reluctantly in an intergovernmental uranium marketing arrangement at the direction of the Canadian Government, but only after receiving legal assurance

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[1] Hobbs, at 5–60, 5–77.

[1a] "A Little Company With Lots of Uranium," Forbes, June 1, 1977, at 45.

[2] Kirkland and Ellis, "Horizontal Divestiture," American Petroleum Institute, 1976, at III–23, citing Wall Street Journal, Sept. 30, 1976; Mitchell, Hutchins, Inc., "The Uranium Stocks: The Nuclear Industry Kaleidoscope Coming Together," 1976.

[3] Joskow, Paul L. "Commercial Impossibility, the Uranium Market and the Westinghouse Case," Massachusetts Institute of Technology Department of Economics Working Paper No. 186, September 1976.

that its actions were completely in accordance with the laws of both Canada and the United States.

Second, this marketing arrangement had no discernible effect on the United States domestic uranium market, partly because the intergovernmental agreement specifically excluded the United States market and partly because the United States governmentally imposed embargo on the importation of all foreign uranium, including that from Canada, effectively shielded the U.S. market from the foreign market.

Third, the significant increase in the U.S. price of uranium in recent years is the result not of any activities of this marketing arrangement but of a number of other factors, including the independent actions of the U.S. and foreign governments, increasing costs, the Arab oil embargo and OPEC price rise, and, most importantly the questionable marketing practices of Westinghouse in selling uranium short as a feature of their nuclear marketing efforts.

Thank you very much, Mr. Chairman, for your attention and your courtesy. We will be glad to try to answer any questions which you and the other members of the committee may have.

[Testimony resumes on p. 175.]

[Mr. McAfee's prepared statement follows:]

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STATEMENT OF GULF OIL CORPORATION
BEFORE THE SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

This statement is respectfully submitted for the Committee's use and for the record in these proceedings.

Gulf Minerals Canada Limited, which is in the uranium business, is a Canadian corporation owned by the Gulf Oil Corporation. In 1972, Gulf Minerals Canada was directed by the government of Canada to participate with all other Canadian uranium producers in a marketing arrangement formed by the governments of Canada, France, Australia, South Africa, and an English producer. The group was officially known as the Uranium Marketing Research Organization. The home markets of the participating countries and the market of the United States were specifically excluded from the arrangement.

The Canadian government and the governments of the Provinces as well, have always taken an extremely active role in regulating and controlling the business operations of those companies engaged in the production and sale of Canada's mineral resources. For example, in the uranium industry, the Canadian government issues mining permits to Gulf Minerals Canada for the Rabbit Lake uranium mine for only one-year periods. There is no guarantee even after Gulf's substantial investment and operation that a permit will continue to be renewed. (Gulf's investment to date in the Rabbit Lake uranium

mine in Saskatchewan Province is in the tens of millions of dollars.) In addition, all contracts for the exportation of Canadian uranium must be approved by the Department of Industry, Trade and Commerce and the Atomic Energy Control Board. If the price, terms, conditions, duration or volume of any particular contract is not satisfactory to the Board, the contract simply will not be approved and allowed to go into effect. Gulf Minerals Canada in fact has had contracts rejected by the Board because the terms were not satisfactory.

As everyone is aware, Westinghouse Electric Corporation has reneged on its contracts to supply uranium to a very large number of public utilities and is seeking to divert attention from that fact by attempting to place the blame on the foreign producers' marketing arrangement. It is particularly ironic that Westinghouse, which has disrupted the uranium industry by short-selling vast quantities of uranium which it did not own, should now ignore its own corporate studies, which flatly state that the 1973 oil embargo was the major cause of the rise in uranium prices,[1/] and claim that it was unfairly surprised by the "secret" activities of a foreign producers' cartel.

Westinghouse has never explained how any foreign cartel was responsible for the Westinghouse corporate decision to short-sell $2 billion worth of uranium which it did not own, could not produce, and did not have under contract for purchase.

Admittedly, the Westinghouse explanation has a certain simplistic appeal: foreign producers are the scapegoat on which it conveniently can blame all of our energy problems and absolve itself of responsibility. Of course, Westinghouse has committed a $2 billion corporate blunder for which it now tries to evade completely its responsibility and culpability.

We think Westinghouse is entitled to the same right that any commodity speculator enjoys when he has badly misjudged the market. Moreover, we would advise anyone who really wants to know what happened to the nuclear reactor and uranium markets to take a close look at Westinghouse's attempt to monopolize reactor sales coupled with its massive short sales of uranium which it did not own.

We believe the facts will show that uranium prices in the United States have increased because of a number of different factors,[2/] including, among others:

(a) the irresponsible activities of Westinghouse in the uranium market with its massive short sales of uranium which it did not have under contract -- thereby setting its prices without knowledge of its long-term costs;

(b) the policies of the United States Government in prohibiting the importation of foreign uranium to be enriched in the United States for use in domestic reactors, and stockpiling

large amounts of uranium; in fact, almost every facet of the production, conversion, enrichment, fabrication, use and processing of domestic uranium is subject to detailed governmental regulation;

(c) sharply higher exploration and development costs associated with deeper drilling, lower ore grades, and fewer discoveries;

(d) the 1973 Arab oil embargo;

(e) the policy of the government of Australia in withholding uranium from the market; and

(f) rising inflation.

Indeed, Paul Schmitt of the Nuclear Assurance Corporation cites three main reasons for current uranium price levels: (1) the rising costs of expanding production facilities; (2) higher oil prices which put pressure on the entire nuclear industry; and (3) Westinghouse's failure to meet its contractual commitments. 3/

The foreign uranium cartel, which was the offspring of the Canadian Government and the government-owned nuclear industries of other countries, simply had no discernible impact on either the domestic or foreign uranium commerce of the United States. Moreover, it would not have had any impact because of the United States embargo on the importation of foreign uranium for enrichment and use in domestic reactors.

ACTIVITY OF FOREIGN URANIUM PRODUCERS

It is very tempting to blame others for a problem which has been largely brought on by our own governmental policies and the irresponsible acts of a U.S. corporation -- Westinghouse. We are perhaps too eager to accept such an explanation. Westinghouse would blame the foreign uranium cartel for virtually all the problems which face the United States uranium industry today. This conclusion, however, is not shared by Gulf, by the domestic uranium industry, or by objective analysts and commentators, who uniformly reject any notion that the cartel affected domestic uranium prices.

For example, Nuclear Exchange Corporation, an acknowledged authority in the field, concluded in its October 15, 1976, special topical report entitled "Significant Events in the Uranium Market: 1969-1976" that the cartel had no influence on the United States market:

> First, it is Nuexco's judgment that the activities of this gathering of overseas producers and potential producers (variously referred to as the 'cartel', the Club, and by other names) had little or no effect on domestic uranium prices. Reports that the overseas producers had met on various occasions, both prior to and during 1974, were common knowledge within the industry. The 'cartel' and its reported activities had been the subject of numerous articles and commentary in industry publications, including Nuexco's Monthly Reports to the Nuclear Industry. Recent headlines in the national media about the activities and

> discussions between various overseas producers did not come as a surprise to uranium buyers.
>
> Second, it should be recognized that while the 'cartel' was composed of individual companies from various nations, it was the Governments of these countries which clearly were the dominant parties in determining uranium marketing policies.
>
> It has been previously noted that, following the 1972 election of the Labour Government in Australia, uranium sales activity essentially ceased in that country. Similarly, a Canadian official recently stated publicly that the Atomic Energy Control Board of Canada was directed by the Canadian Government to deny export licenses for export uranium sales when the prices were below certain established levels. Thus, the ability of the 'cartel' to affect the course of prices was sharply circumscribed by political considerations within the countries of its reported members.
>
> 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 then prevailing in the domestic market, as opposed to leading it. Thus, the appearance of foreign buyers in the domestic market was not due to the fact that foreign prices were higher, but because relatively secure uranium supplies were available in the U.S., whereas the overseas situation was less definite in terms of both quantity and security of supply. 4/

These observations are wholly accurate:

1. The existence and meetings of the foreign uranium cartel were far from secret -- indeed, they were publicized in both the trade press and newspapers of general circulation;

2. Any participation by Gulf's Canadian subsidiary, Gulf Minerals Canada, was undertaken at the express direction and compulsion of the Canadian Government; and
3. Not only did the foreign uranium cartel expressly disavow any activity which might affect the United States uranium industry, it was also ineffective in reaching its purported goal, which was the orderly marketing of uranium in foreign countries.

The meetings and activities of the cartel were far from secret.[5/] For example, on February 8, 1972, an article in The Toronto Globe & Mail reported on a meeting in Paris of government and private industry representatives from all leading producers except the United States. This article confirmed that the delegations from Canada, South Africa and Australia met with French officials and uranium experts to examine the strategy which should be adopted in view of the present oversupply, depressed prices and long-term needs of uranium. Indeed, the article notes that a communique was issued following the meeting by the French government-controlled uranium marketing body.

On August 24, 1972, The Toronto Globe & Mail reported on the new Canadian regulations under the Atomic Energy Control Act. The regulations confirmed the speculation that the

Canadian Government was close to making an agreement with France, South Africa and Australia in an effort to carry out what the newspaper described as a cartel-like arrangement that was worked out in Johannesburg, South Africa, on May 29-30, 1972.

The cartel and its reported activities were also the subject of numerous articles and commentary in industry publications, including Nuexco's monthly reports to the nuclear industry.[6/]

Moreover, Westinghouse was fully informed of the foreign uranium producers' cartel from its inception. According to the reported testimony of Raymond L. Witzke, then head of the Westinghouse Nuclear Fuel Division, in the Duquesne Light trial, Westinghouse was kept fully informed of the meetings and plans of the cartel in 1972, 1973 and 1974 through a joint exploration venture in Australia.[7/] In fact, internal Westinghouse documents indicate that Wyoming Minerals, a wholly-owned subsidiary of Westinghouse, also monitored activities of the foreign producers' cartel and reported them to its parent, Westinghouse.[8/]

Gulf Minerals Canada's management was not particularly concerned with the poor worldwide uranium market in early 1972. The Rabbit Lake mine was not scheduled to begin production until 1975, and a substantial amount of that production was committed for sale to West Germany's nuclear power program, by

way of its partner in the Rabbit Lake joint venture. Gulf Minerals Canada was nevertheless ordered to attend meetings of world uranium producers, at the express direction of the Canadian Government which was concerned about the orderly marketing of uranium outside of the United States.

Gulf Minerals Canada was repeatedly reminded by Canadian Government officials that the informal world arrangement was essential to a stable world uranium market; that a stable world uranium market was vital to Canada's national self-interest; that the success of the informal world arrangement depended on the participation of all Canadian producers; that Gulf Minerals was the one hold-out among Canadian producers; that without Gulf Minerals Canada's participation such an arrangement might violate Canadian antitrust laws; that the very existence of Rabbit Lake as a joint venture between subsidiaries of foreign nationals was an exception to the Canadian policy of limited foreign ownership of uranium production facilities; and that since Gulf Minerals was a Canadian corporation it must comply with the orders of the Canadian Government. Gulf Minerals was admonished to make every effort to adhere to the common terms of the world arrangement.

Canada made no effort to conceal the general nature of its uranium actions. The Minister of Energy, Mines and Resources, issued a public statement on August 23, 1972, which outlined Ottawa's actions. It read:

> The Honorable David S. Macdonald, Minister of Energy Mines and Resources, issued 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.

In addition to the oral and written directives, the Canadian Government, on August 2, 1972, through the Governor General, promulgated regulations which required all Canadian producers to comply with the terms of the world agreement. The amendment to Atomic Energy Control Regulations said, in part:

> A permit to export prescribed substances [e.g., uranium] 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.

The full text of these regulations and the announcement appeared in the Canada Gazette SOR/72-301, dated August 2, 1972.

As a result of these and other governmental directives, orders and other forms of compulsion, and after Canada passed regulations forcing companies to comply with the pricing and allocation provisions of the informal world agreement, Gulf Minerals Canada was required to comply with the foreign producers' arrangement.

Nevertheless, those knowledgeable in the uranium industry acknowledge that even if the prices purportedly adopted by the cartel were implemented, they were well below those then prevailing in the United States. For example, a recent lengthy report prepared by Pacific Gas & Electric Company to assess the impact of the foreign producers' cartel on domestic uranium customers indicates that Pacific Gas & Electric Company was aware of the existence of the cartel since its inception in 1972.[9/] The study notes that at that time the utility felt that the cartel was not affecting its uranium supply.[10/] The PG&E study goes on to conclude and reaffirm that conclusion. Pacific Gas does "not believe that their uranium purchase contracts * * * were particularly affected, even indirectly, by cartel activities."[11/]

Finally, as we have noted heretofore, the United States market was specifically excluded from all of the operations of the foreign marketing arrangement.

THE ROLE OF THE UNITED STATES GOVERNMENT

Any analysis of the domestic uranium industry must include an examination of the role played by the United States Government. Indeed, the domestic uranium industry as well as the Canadian industry, developed largely as a result of the United States Government's need for uranium in connection with its weapons program during and after World War II.[12/]

The Government has continued to be the dominant factor in the uranium industry to this day:[13/] every facet of the production, conversion, enrichment, fabrication, use and reprocessing of uranium is subject to detailed regulation. The Atomic Energy Commission, succeeded by the Energy Research and Development Administration, has guided the uranium industry from its birth in the 1950's to date. The present supply of and demand for uranium, as well as its price, are to a large measure the result of many different government policies.

Until the late 1940's, the United States was largely dependent on foreign sources to meet its uranium requirements. Domestic reserves were simply inadequate to fill estimated United States needs. To stimulate domestic development, the Government itself surveyed large areas of the western United States and stimulated private exploration and production by establishing guaranteed price levels and providing bonuses for initial production from new mines.[14/] The Government likewise

initiated and expanded raw materials research and development programs.[15/] In the mid-to-late 1950's, as a result of Government encouragement, private exploration increased substantially.[16/] Commentators on the uranium industry credit the AEC with responsibility for this rapid build-up in uranium discovery and production by making what would be considered a high-risk business sufficiently rewarding to attract needed capital.[17/]

During the years 1948 through 1957, the AEC, which was for all practical purposes the only purchaser during this time period, paid an average of $11.19 per pound for the 18,376 tons of domestic uranium purchased.[18/]

In 1958, however, the AEC with its long term needs met, decided to rely on then developed reserves to meet scheduled deliveries. The AEC limited its purchase commitments to uranium from domestic reserves developed prior to November, 1958. This had the predictable effect of causing a rapid decline in new exploration for uranium. The average price of uranium decreased from a high of $9.57 per pound in 1958 to a low of $7.82 a pound in 1963.[19/] Furthermore, commercial demand was insufficient during this period to restore the production industry to its former level of activity.

In the mid-1960's, the AEC declared an embargo on the domestic use of foreign uranium enriched in the United States. Thus, foreign producers were effectively barred from competing

in the U. S. market (which represented at that time 70% of the "free world" market).

Thus, prior to 1972, these and other governmental actions had resulted in a production industry characterized by overcapacity and declining prices, the potential for large quantities of material being made available from government stockpiles,[20] and enrichment contracts which discouraged long-term investment and planning.[21]

The six-month period from November 1972 through June 1973 is regarded by many as a watershed in the uranium industry. In December, 1972, the AEC announced its abandonment of requirements-type enrichment contracts[22] in favor of "fixed commitment contracts" which required customers to purchase specified quantities of enrichment services at specified dates and to deliver the required natural uranium feed to government enrichment facilities on a fixed schedule.[23]

After a nine-month period in which new criteria were developed and implemented, this policy went into effect. Thereafter, customers were committed to purchase exact quantities of enrichment work during each year of a rolling ten-year period[24] - with an eight-year notice required prior to the first year of scheduled enrichment. Thus, beginning in September, 1973, when the new form of contract became mandatory, minimum uranium requirements were fixed well ahead of the actual requirement date.[25] Because of costly penalties

imposed on a utility customer unable to provide feed uranium pursuant to the contract schedule,[26/] utilities began trying to secure 10-to 20-year forward commitments for uranium supply. This is in stark contrast with the utilities' forward coverage of their fuel requirements prior to the AEC change in contract terms in 1973. For example, as of April 1973, there was only a 5.6 year forward coverage of uranium requirements by utilities, and, in October, 1973, only 24 percent of U.S. uranium requirements through 1985 were covered by supply contracts.[27/]

This over-contracting for enrichment services, beginning in 1973, was further exaggerated by the AEC decision to give first priority to customers requiring early enrichment services. Since the AEC was the only assured source of enrichment services, customers overstated their enrichment needs, to protect themselves.[28/] Quite simply, the costs involved in having enriched fuel too early were minor compared to the possibility of not having fuel at all when it was needed. This, in turn, had the effect of exaggerating the apparent demand for short-term purchases.

The artificial effect which these long-term fixed commitment contracts had in creating the appearance of greater demand than actually existed in the period subsequent to 1972 was made vividly clear in June, 1975. At that time, ERDA gave enrichment customers the opportunity to adjust and amend

deliveries under their contracts and delay the schedule of uranium feed deliveries.[29/] The result of this "open season" was a very significant reduction in uranium requirements for the 1978-1985 period.[30/] We thus had a clear demonstration that the artificial demand created by fixed commitment contracts pushed prices up beyond the level that actual demand would have. The enrichment contracts that the AEC required to be submitted in September, 1973 implied nuclear growth more rapid than even the most optimistic AEC projection.[31/]

These government policies, experts agree, contributed substantially first to artificially reduced uranium demand and production, and then led to the inexorable increase in prices from 1973 through 1976. Before 1972, the government's uranium policy had held back potential supply and created uncertainty. But, then, in 1972 and 1973, the government helped stimulate demand to the point that production simply could not come on stream quickly enough to prevent a rapid rise in prices and shortage of supply.

While the Atomic Energy Commission obviously has had the most direct impact on the domestic uranium industry, other governmental bodies and their decisions also had significant impact on the demand for and price of uranium in the United States. Perhaps most significant among these were new environmental, health and safety regulations which increased the cost of existing uranium operations and radically changed the

economics of production, thus delaying the start of new operations.[32/]

Inflation also took its toll during this period, and the price of uranium increased with the prices of all other fuels and commodities.[33/]

Finally, sharply higher exploration and development costs associated with deeper drilling, lower ore grades and fewer discoveries have contributed to the higher uranium prices of recent years.

THE ROLE OF FOREIGN GOVERNMENTS

Just as the Atomic Energy Commission has had a substantial impact on the domestic uranium industry, foreign governments exercise a great deal of control and influence over the uranium industries operating in their own countries. This is particularly true with regard to the major uranium producing countries such as Canada, Australia, France and South Africa. Perhaps none of their actions taken alone would have had a significant impact on the United States domestic market. They did not, however, occur as isolated incidents over an extended period of time. Rather, the year 1973 was one of an unprecedented number of foreign developments which had a significant impact on the domestic uranium industry.

For instance, Australia was perceived as a major source of potential uranium supply.[34/] Its large high-grade reserves were thought likely to be increased substantially. However, in early 1973 the Labour Government came to power in Australia and ordered the halt of development and marketing efforts of uranium.[35/] Australia has likewise showed great reluctance to allow foreign investment in its uranium industry.[36/] Both of these factors have operated to remove a potentially significant source of supply from the world market.

Likewise, in late 1973, potential future supply was reduced further when France sought to cover its own expanded

domestic nuclear program by utilizing its captive sources of supply in Africa. Thus, French uranium was withdrawn as a competitive element from the market.[37/]

In South Africa, uranium is a joint product of gold mining operations. In early 1973, it also became apparent that the sharp increase in the world price of gold would result in decreased South African uranium production. The higher gold prices had changed gold mining economics to the point that a greater total return could be obtained, and mine life extended, by mining lower grade ores, and selling reduced quantities of gold and uranium.[38/]

Another very important factor contributing to the overall rapid escalation in uranium prices was the Arab oil embargo of mid-1973. The embargo caused a scramble for alternative energy sources. Foreign nations, as well as the United States, sought to protect and conserve their own energy sources. Indeed, the changes in uranium export policies imposed by many foreign governments were reinforced by the oil crisis of 1973.[39/]

Moreover, to the extent that oil prices placed a lid on the competitive price of nuclear power in certain areas, that lid was lifted substantially when the price of oil trebled. Thus, uranium which was more expensive to mine could now be profitably marketed at higher prices. In fact, uranium prices have not yet approached the "parity value" of $100 per pound

at which some experts suggest nuclear power would cease to be competitive with power generation relying on fossil fuels. 40/

Even the "Economic Analysis of Uranium Prices," authored by James H. Lorie and Celia Star Gody for Westinghouse, concluded that the oil embargo was a major cause of rising uranium prices:

> In retrospect it is now possible to trace the major factors which brought about the sharp rise in [nuclear] fuel prices that began in late 1973. The most important of these were developments in the international petroleum market which then spread throughout the energy field. 41/

This conclusion is shared by other experts in the field: the oil pricing policies of OPEC were a most significant cause of the rapid rise in demand for and price of all energy sources, including uranium. 42/

Over the past decade, the Canadian Government has adopted policies with regard to its uranium industry which directly affected Gulf. Canada had been a staunch ally in supplying United States nuclear needs. This market was abruptly taken from Canada by the U.S. embargo. Thus, the actions of the United States Atomic Energy Comission was felt strongly in Canada and forced the Canadian Government to protect its own industy.

In the 1950's, the Canadian Government encouraged development of the Canadian uranium industry to meet the needs of the United States Atomic Energy Commission and the United

Kingdom Atomic Energy Authority. But, in 1959, the United States notified Canada that it would not exercise its options to purchase additional Canadian uranium, but did agree to stretch out deliveries under existing contracts to the end of 1966. In August 1964, the United States excluded foreign uranium enriched in the United States from sale in the United States markets, effectively barring Canadian producers from competing in the United States. And then, in 1967, the Atomic Energy Commission indicated its willingness to sell to domestic and foreign customers enriched uranium based on a natural uranium price of $8 per pound, which effectively placed a ceiling of $8 per pound on the price that non-U.S. producers could hope to achieve in the international market.

In the face of declining markets and to prevent total erosion of its uranium industry, the Canadian Government spent over $100 million in stockpiling uranium, entered into a joint venture with a Canadian producer to maintain stockpiles to guarantee a minimum production level over the period 1971 through 1974, and required Canadian producers themselves to stockpile uranium in order to maintain a Canadian uranium industry.

In 1970 and 1971, Canada initiated dialogues with the governments of uranium consuming and producing nations, but these negotations were unsuccessful. Canada viewed the market situation as sufficiently serious to encourage formation of and require participation by Canadian companies in discussions leading to possible marketing arrangements for the non-United States markets.

WESTINGHOUSE'S MONOPOLISTIC ACTIVITIES

As previously noted, one of the prime causes of the dramatic rise in uranium prices was the irresponsible action of Westinghouse Electric Corporation in its marketing of both nuclear reactors and uranium. In litigation now pending in Chicago, Gulf believes that it will show:

> Both fossil fuel and nuclear power plants require turbine generators to convert mechanical energy into electrical energy. Westinghouse is one of only two wholly domestic manufacturers of turbine generators and its market share has grown significantly in the past decade. No additional domestic companies have successfully entered the turbine generator market since 1962. In February 1962, Westinghouse pleaded nolo contendere to a criminal antitrust charge of fixing prices on turbine generators. The company was fined and several of its executives were fined and sentenced to serve jail terms. Numerous private suits followed, wherein the plaintiffs recovered substantial amounts of monetary damages from Westinghouse. In December 1976, the Department of Justice announced modifications to its decree against Westinghouse that arose from that indictment and an accompanying civil case. The

Department of Justice "was prepared to file [another] civil action against Westinghouse * * * after an investigation showed that identical pricing policies adopted and made public by [Westinghouse] beginning in 1963 had the effect of eliminating price competition in the turbine generator industry." Assistant Attorney General Donald Baker was quoted by the Wall Street Journal on Monday, December 13, 1976, as saying that the pricing policies of the two turbine generator manufacturers were, in effect, a "public exchange of assurances intended to stabilize prices."

Westinghouse is also engaged in the manufacture of nuclear steam supply systems, an integral part of a nuclear reactor which supplies high-pressure steam to turbine generators for the production of electricity. The pattern of predatory and unlawful acts and practices of Westinghouse in the turbine generator market has carried over into the nuclear steam supply system, fabricated nuclear fuel, and uranium markets and establishes, in part, Westinghouse's modus operandi in attempting,

and conspiring, to monopolize and in monopolizing the nuclear steam supply system, fabricated nuclear fuel, and uranium markets. In 1954, twenty companies were engaged in reactor research and development in the United States. By 1968, only five companies were manufacturing nuclear reactors. A similar pattern, affecting manufacturers of fabricated nuclear fuel, is evident in that market as well.

Until it was forced to withdraw from the marketplace by reason of Westinghouse's monopolistic practices, Gulf was engaged directly and through affiliates in the design, manufacture and sale of nuclear steam supply systems utilizing a high temperature gas-cooled nuclear reactor; in the design, manufacture and sale of fabricated nuclear fuel for use in light water nuclear reactors such as those manufactured by Westinghouse; and in the purchase and sale of uranium as a component of fabricated nuclear fuel.

In response to the entry into these markets by Gulf and others, Westinghouse undertook

> a massive and unprecedented program of short sales of uranium at unreasonably low prices. With these sales, Westinghouse made commercially unmatchable offers of uranium to utilities as part of total packages by which nuclear steam supply systems and/or fabricated fuel and uranium were offered for sale. Westinghouse entered into firm price contracts for the sale of fabricated nuclear fuel, when it did not have in its possession, or available on contract from suppliers, the uranium needed to fulfill its contracts.

Gulf's views in this matter are shared by many others. In a March 1976 report prepared by James B. Hobbs of the Nuclear Assurance Corporation on "Uranium Supply, Demand and Price," seventeen pages are devoted to the impact of Westinghouse's buying and selling practices on the increase in uranium prices.[43/] Keith Cunningham, president of United Nuclear Corporation (which is attempting to rescind low-price contracts to supply uranium to General Atomic), has stated that Westinghouse was responsible for the uranium price rise: "Demand was withheld from the market. Westinghouse was selling reactors and offering utilities long-term contracts for uranium without buying it from producers, and the volume they were

dealing with amounted to nearly three times annual U.S. production."[44/]

Moreover, a 1976 report prepared by Westinghouse's own counsel, Kirkland and Ellis, for the American Petroleum Institute concedes Westinghouse's responsibility for the recent increase in uranium prices:

> Another reason for the recent price increase is Westinghouse's 1975 announcement that it would not fulfill most of its long-term contractual commitments to 27 utilities to deliver 65 million pounds of uranium over the next 20 years, causing an influx of new demand. [45/]

In addition, a 1976 study prepared by Paul L. Joskow for the Massachusetts Institute of Technology also concludes that Westinghouse was the principal cause of the run-up in uranium prices during 1975 and 1976.[46/]

Two of the more pernicious practices in which Westinghouse engaged are:

1. Tying the sales of nuclear steam supply systems and initial and reload fabricated nuclear fuel assemblies to sales of uranium at predatory, unreasonably low prices; and
2. Engaging in massive short sales of uranium.

A nuclear reactor requires an initial core of fuel and annual reloads of approximately one-third of the initial core.

During the late 1950's and early 1960's, Westinghouse offered nuclear plants to utilities on a "turn-key" basis, whereby Westinghouse was responsible for the reactor, turbine, non-nuclear equipment and complete construction.[47] Westinghouse likewise contracted with utilities for their total fuel services, i.e., to provide enriched uranium fabrication, the initial core, and reloads.

Westinghouse would tie, through its turn-key and total fuel service contracts, sale of the initial core and reloads to sale of the reactor.[48] Since Westinghouse was by far the largest potential supplier of nuclear reactors at that time, this was a significant impediment to uranium production. Once Westinghouse contracted to build a nuclear facility, no uranium producer could hope to sell fuel to that utility for the Westinghouse reactor throughout the extended period during which the Westinghouse contract tied the utility to purchasing fuel from Westinghouse. Westinghouse abandoned its turn-key, firm price policy only after prodding by the Atomic Energy Commission and the Department of Justice.

Subsequently, Westinghouse effectively tied the sale of uranium to its reactors by conditioning the warranties on the nuclear steam supply system on the use of Westinghouse initial fuel cores and reloads, despite the fact that utilities were quite interested in having independent and competitive bids on their fuel supplies. Moreover, for identical fuel,

Westinghouse would price the reload fuel much lower than the initial fuel core, thus forcing potential competitors for reload business to bid at prices below a profitable level. While other suppliers of reactor systems would bid for the nuclear steam supply system and fuel fabrication on the initial core plus one or two reload batches,[49] Westinghouse would bid for long-term supplies of reload--up to ten years.

As an in-depth study by Kidder, Peabody concluded, "Westinghouse used uranium in various ways to help secure either reactor orders and/or reload fuel fabrication orders."[50] Indeed, according to the reported testimony of Raymond L. Witzke, then head of the Westinghouse Nuclear Fuel Division, in the Duquesne Light trial in a Pennsylvania court, Westinghouse continued to offer uranium for sale without sufficient material under contract to cover the sale, in order "to guarantee that Westinghouse would maintain a minimum 20% share of the nuclear steam supply system business."[51]

It was in this context that Westinghouse engaged in massive short sales of uranium. During the period up through 1974, Westinghouse sold some 80 million pounds of uranium to utility customers, the great bulk of which it neither owned nor had under contract. Other fuel fabricators, in contrast, before bidding for a reload fuel supply contract would seek to obtain uranium price quotes to incorporate in their bids. Naturally, these competitors simply could not match Westinghouse's

quoted prices for uranium which it neither owned nor had under contract.[52/]

This practice excluded other potential manufacturers of reactors from supplying reactors and fuel to utility customers.[53/] Moreover, it depressed the market price for uranium. Westinghouse offered low price uranium for sale without any knowledge of its long term costs.[54/] This false and artificial overabundance of supply, as well as the incredibly low prices at which Westinghouse offered the uranium which it did not own, discouraged other potential producers from entering the market and existing producers from expanding, because they could not hope to earn a profit at a price competitive with the prices Westinghouse quoted.

Westinghouse has admitted in testimony during trial of the suit brought by several utility customers to force Westinghouse to fulfill its uranium commitments that it was well aware of its uranium shortage as early as 1972. According to an internal Westinghouse document made public during the Duquesne Light trial, Westinghouse was aware of a 55-million pound uranium shortfall as early as December 1972, but nonetheless concluded "major sales" to utilities during 1972 and 1973.[55/] In March 1973, John Simpson, president of Westinghouse Power Systems, assured Westinghouse shareholders and the public that "We have firm commitments that match our requirements through the term of all our contracts."[56/] On March 27, 1975,

Robert Kirby, Westinghouse chairman, again assured the public and Westinghouse shareholders that the company was doing many things to make sure it would not get caught short on its uranium contracts. He predicted "the market price for uranium will continue to be realistic," and that Westinghouse had exposure only "for the period 1984 and 1985, but we're working on it quite hard to make sure we are not overexposed."[57/] Furthermore, according to testimony in the Duquesne Light trial, on August 22, 1975, Westinghouse assured a major utility customer that it found acceptable a proposed delivery schedule for a reload fuel section. Only thereafter was reality acknowledged. On September 8, 1975, barely seventeen days later, Westinghouse publicly announced that it would renege on its contractual obligations and refused to ship the reload fuel.[58/]

Westinghouse announced on September 8, 1975, that because of supposedly unforeseen increases in uranium prices, it was legally excused from delivering some 65 million pounds of uranium to its customers.[59/] That announcement had a further impact on uranium prices and demand. It sent purchasers into the market seeking to cover Westinghouse's unlawfully concealed short-fall, and prices sky-rocketed.

Westinghouse did not commit an honest mistake in an isolated transaction; it engaged in a calculated course of conduct over a period of many years to manipulate the uranium

market in its own favor. Westinghouse used its power and leverage in the sale of reactors to preclude uranium producers and fuel fabricators from access to substantial markets. It gambled on selling short, in not covering its commitments and in deceiving utilities and the public about its activities.

Short selling is universally recognized as a manipulative practice which is disruptive of an orderly free market. Congress has repeatedly condemned the practice of selling short in its regulation of various commodity markets; courts have branded short sales as rank gambles.

Westinghouse now finds itself in a $2 billion dilemma of its own making. It gambled and lost, with uranium it did not own, and Westinghouse would now force the energy consuming public to foot the bill.

Neither the Congress nor the courts should condone such a greedy scheme.

July 18, 1977

BIBLIOGRAPHY

"Discrepancies Surfacing in Westinghouse Uranium Case," Nucleonics Week, January 27, 1977. ("Nucleonics Week, January 27, 1977").

"Evidence Shows Westinghouse Was Aware of Looming U308 Shortfall in 1972," Nucleonics Week, January 20, 1977. ("Nucleonics Week, January 20, 1977").

Furbush, Malcom H., Fallin, Jack F., Jr. Interim Report Re Uranium Marketing, Pacific Gas & Electric Co., May 20, 1977. ("PG&E").

Hobbs, James S. Uranium Supply, Demand & Price, Nuclear Assurance Corp., March 1976. ("Hobbs").

Joskow, Paul L., Commercial Impossibility, the Uranium Market, and the Westinghouse Case, Massachusetts Institute of Technology Department of Economics, Working Paper No. 186, September, 1976. ("Joskow").

Kirkland & Ellis, Horizontal Divestiture, American Petroleum Institute, 1976. ("Kirkland & Ellis").

"A Little Company with Lots of Uranium," Forbes, June 1, 1977. ("Forbes, June 1, 1977").

Lorie, James H., Gody, Celia Star Economic Analysis of Uranium Prices. Westinghouse Electric Corp., July 9, 1975. ("Lorie-Gody").

McCoy, Robert W., Jr., Westinghouse Electric Corporation: Commercial Nuclear Power & Uranium, Kidder, Peabody & Co., September 25, 1975. ("Kidder, Peabody").

"PG&E: Any Desired Change in World U308 Trade Needs Governmental Action," Nucleonics Week, June 2, 1977. ("Nucleonics Week, June 2, 1977").

Significant Events in the Uranium Market 1969-1976, Nuclear Exchange Corp., October 15, 1976. ("Nuexco").

Taylor, Vince. Prepared Testimony before the California Energy Resources Conservation & Development Commission, March 4, 1977. ("Taylor").

"The Uranium Dilemma: Why Prices Mushroomed," Business Week, November 1, 1976. ("Business Week, November 1, 1976").

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FOOTNOTES

1/ Lorie-Gody, at 32.

2/ Hobbs, at 5-62.

3/ Business Week, November 1, 1976, at 97.

4/ Nuexco, at 7.

5/ PG&E, at 8-42.

6/ PG&E, at 32-36.

7/ Nucleonics Week, January 20, 1977, at 1a.

8/ Nucleonics Week, January 20, 1977, at 1a.

9/ PG&E, at 37.

10/ PG&E, at 37.

11/ Nucleonics Week, June 2, 1977.

12/ Nuexco, at 2; Kidder, Peabody, at 13.

13/ Lorie-Gody, at 5.

14/ Hobbs, at 5-1-5-2; Taylor, at E-20.

15/ Hobbs, at 5-2.

16/ Kidder, Peabody, at 13.

17/ Hobbs, at 5-3.

18/ Hobbs, at 5-3.

19/ Hobbs, at 5-3.

20/ Lorie-Gody, at 16.

21/ Nuexco, at 3.

22/ Nuexco, at 3.

23/ Hobbs, at 5-9, 5-10; Lorie-Gody, at 37-38; Taylor, at E-4.

24/ Hobbs, at 5-10; Taylor, at E-4.

25/ Kidder, Peabody, at 16; Hobbs, at 5-10; Nuexco, at 4.

26/ Taylor, at E-4.

27/ Hobbs, at 5-10.

28/ Taylor, at E-4.

29/ Kidder, Peabody, at 16; Nuexco, at 9.

30/ Nuexco, at 9.

31/ Taylor, at E-10.

32/ Nuexco, at 5 and 1.

33/ Nuexco, at 5.

34/ Kidder, Peabody, at 28; Lorie-Gody, at 15, 43-44.

35/ Kidder, Peabody, at 29; Nuexco, at 4.

36/ Kidder, Peabody, at 29.

37/ Lorie-Gody, at 44; Nuexco, at 6.

38/ Nuexco, at 4.

39/ Kidder, Peabody, at 28; Lorie-Gody, at 42; Nuexco, at 6.

40/ Hobbs, at 5-10.

41/ Lorie-Gody, at 32.

42/ Lorie-Gody, at 33.

43/ Hobbs, at 5-60, 5-77.

44/ Forbes, June 1, 1977, at 45.

45/ Kirkland & Ellis, at III-23, citing The Wall Street Journal, September 30, 1976; Mitchell, Hutchins, Inc., The Uranium Stocks: The Nuclear Industry Kaleidoscope Coming Together, 1976.

46/ Joskow, at 62-63.

47/ Hobbs, at 5-60; Kidder, Peabody, at 4 and 10.

48/ Hobbs, at 5-60.

49/ Kidder, Peabody, at 16.

50/ Kidder, Peabody, at 10.

51/ Nucleonics Week, January 20, 1977, at 1a.

52/ Hobbs, at 5-62.

53/ Kidder, Peabody, at 4.

54/ Hobbs, at 5-43; Nuexco, at 3.

55/ Nucleonics Week, January 20, 1977, at 1a.

56/ Kidder, Peabody, at 5.

57/ Kidder, Peabody, at 6.

58/ Nucleonics Week, January 27, 1977, at 1.

59/ Hobbs, at 5-19, 5-62; Kidder, Peabody, at 6 and 31.

Mr. Moss. The Chair would like to announce at this time the following order will prevail during the session this morning:

It will yield to the committee counsel. Following that, the members will be yielded to in order, alternating from side to side. Then the two members of the State of New York Assembly will be recognized, the minority counsel, and then Mr. Haddad, staff of the State Assembly of the State of New York.

At this time, the Chair recognizes Mr. John Atkisson, committee counsel.

Mr. ATKISSON. Thank you, Mr. Chairman.

Mr. McAfee, you referred in your statement to Gulf's first learning of the arrangements abroad and you mentioned a date of February 16.

It is only a very slight point, but I believe from our information that Mr. Ediger in Canada had been very extensively briefed, confidentially, a few days before that.

It is a very small discrepancy, and I don't mean to make a point of it. But I would at this time, Mr. Chairman, like to put two things into the record:

One is a staff-prepared chronology and document summary which I would like the witnesses to have at the witness table and in front of them.

Another, Mr. Chairman, is a chronology prepared—albeit under the gun, as it were—on very short notice, by Gulf Oil in response to a report recently made public by the New York Assembly. It is entitled: Key Dates, Gulf Minerals Canada Ltd., GMCL, and uranium marketing research organizations.

I would like those two in the record just to compare what small discrepancies there may be, and perhaps we can iron out what differences there are

Mr. Moss. At this time, the Chair would like to place a unanimous consent request that as counsel proceeds the documents referred to may be entered in the record at that point without further interruption. Is there objection?

Hearing none, that will be the order of the committee.

[Testimony resumes on p. 187.]

[The basic chronology and document summary and key dates: GMCL and UMRO referred to follow:]

PREPARED BY THE SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

BASIC CHRONOLOGY AND DOCUMENT SUMMARY

12/8/71 N. M. Ediger, Vice President and Manager of Gulf Minerals Canada Limited, meets with Jack Austin, Deputy Minister Canadian EM&R Department, and G. M. McNabb, Deputy Assistaht Minister at the latter's request in Ottawa. Ediger is informed that producer nations are meeting to establish a floor price for Uranium. (First memo inside Gulf summarizing club development)

1/72 D. Hunter promoted to Manager, Gulf Energy and Environmental Systems (uranium projects)

L. T. Gregg promoted to Manager at International Sales (uranium) Gulf.

W. D. Fowler to Manager, Uranium Supply and Services, Gulf Energy and Environmental Systems Co. and General Atomic Company (Gulf domestic)

2/8/72 Wall Street Journal reports on "secret" Paris talks.

2/11/72 Ediger is given confidential briefing by McNabb and O. J. C. Runnals, Senior Advisor, Uranium, Department of EM&R, Canadian government, on results of Paris meetings. There were apparently two meetings--one of government representatives and another of producer representatives. The government meeting set a floor price of $6.25 per pound through 1977, as a point of departure for "discussions." Ediger is given a rough draft of a proposed new Canadian law, the Mining Control Act.

2/18/72 S.A. Zagnoli and H. E. Hoffman participate in international uranium marketing discussions (D. H. Hunter February 18 memo)

2/14/72 Minister of Energy, Mines, and Resources office telephones N. M. Ediger, Manager, Gulf Minerals Canada, Ltd., to attend Canadian uranium producers meeting, February 16.

2/16/72 N. M. Ediger and W. Z. Estey (Canadian outside counsel to GMCL) attend meeting. Estey approaches Gordon M. McNabb, Assistant Deputy Minister, and Deputy Minister Jack Austin (Energy, Mines, and Resources Ministry) privately regarding Gulf sending a representative to March meeting of cartel in Paris. They "specifically recommend against Gulf's seeking an invitation." They do agree to keep Gulf informed. (Ediger file memo February 16, 1972)

2/17/72 L. T. Gregg gives "draft" memo to H. E. Hoffman summarizing developments in international uranium meetings.

2/18/72 D. H. Hunter sends Gregg draft memo to C. A. Rollander, President, Gulf Energy and Environmental Systems for discussions in Pittsburgh.

2/22-24/72 Cartel meets in Paris, France. It is agreed that 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.

2/22/72 W. Fowler monitoring uranium supply and demand in U.S. informs W. C. Galloway, Executive Vice President, Gulf Energy and Environmental Systems, and L. J. Colby that international producers of uranium "have jumped on OPEC band wagon."

3/14/72 The cartel meets in Paris

3/21/72 Meeting in Ottawa at "urgent" invitation of Canadian Minister McDonald, attended by Ediger and W. Z. Estey.

3/22/72 R. K. Allen, Counsel for Gulf Minerals Resources Company in Denver, telephones Irwin Coleman, Associate General Counsel, Gulf Oil Corporation in Pittsburgh, reporting that "certain concessions" with respect to the Rabbit Lake joint venture project with the German company Urancrz would be necessary to insure Canada's participation in the cartel. Subsequent memo of same date from Coleman to E. B. Walker, Executive Vice President, Gulf Minerals Resources Company, Pittsburgh, recounting the telephone call

3/23/72 Mr. McDonald requests meeting with Gulf in Ottawa for 3:30 p.m. of the same day to learn Gulf's reaction to the cartel proposal, and requests final decision by April 7, 1972.

3/24/72 Gulf's German partner in Rabbit Lake project, Uranerz, sends a representative to Denver to discuss the problem.

4/12/72 Memorandum from Irwin Coleman to Merle Minks, General Counsel of Gulf, carbon copies to Walker, Jackson, Allen and Hoffman: "We are being pressured to get into line by the Canadian government." "After 1977 demand will exceed supply." Reference to problems with American antitrust laws. Further problems noted with the German joint venture in the Rabbit Lake project. Zagnoli is noted to be studying the Rabbit Lake quota proposal to see if it will be economical. Memo notes that if the Rabbit Lake project is economical, then "we'll look at the antitrust risk." Memo anticipates another Paris meeting of April 20 or 21. Memo outlines the scenario by which the Canadian cabinet would approve the cartel plan, then the Minister of Justice would issue an opinion and promise of nonprosecution, and then the cartel agreement would be entered into.

The memo states: "I agree with Mr. Estey as far as Canada Law is concerned, the United States Law is of course another thing . . . if the plan outlined above is fully implemented, I hardly think that the Department of Justice would take action against us. Such action, if taken, would necessarily involve the other Canada producers as well as producers in other countries. The international political implications of the Department of Justice action under these circumstances should give us some insulation."

4/19/72 Gulf Counsel M. Minks records telephone conversation from Cologne with Messrs. Zagnoli and Allen regarding Gulf negotations (April 18) with German partner. The Germans indicate that they cannot participate because of antitrust laws.

4/20-21/72 Messers Zagnoli and Allen attend Paris producers meeting. Morning session devoted to arguing over allotments for various participants in the cartel. It is noted that the requested allotments exceed demand (26,000 tons) by 20% (supply=31,000 tons) that this is too much to be resolved, and that "the utilities would be delighted" to see this fight. There is a

Canadian producers and government officials caucus during the lunch time break in which the allotments are discussed. Afternoon session consists of arguments over whether or not the cartel agreement should extend beyond 1972. There is a second session the next day, April 21, 1972, in which the same subjects are discussed. Interim rates, rules, and allocations are agreed to and another cartel meeting is announced for Johannesburg for May 29-30, 1972.

4/28/72 Jackson memo to Coleman transmitting draft of "white paper" concluding that antitrust laws not violated because of absence of economic impact on trade or commerce of the United States and because of compulsion from the Canadian government.

4/28/72 Memo from R. D. Jackson, then an attorney with Gulf Oil Corporation, to Irwin Coleman, Associate General Counsel of Gulf Oil Corporation, carbon copies to General Counsel Minks and M. W. Ramsey, summarizing meeting of the day before involving Zagnoli, Jackson, and Ramsey, and stating that Zagnoli thinks everyone will agree to (1) the cartel arrangement among producers with no government signatory, (2) that the Rabbit Lake German joint venture would in fact be economical even under a reduced allocation pursuant to cartel rules, (3) that there would be reprisals against Gulf by the Canadian government if Gulf didn't go along with the cartel, (4) that Washington contacts should be initiated, (5) that Ramsey should go to Denver "next week" to finalize a draft of an economic impact statement worked out in Pittsburgh last week, and that there should be a prompt submission of same in Washington, Jackson thinks the impact statement should be worked into a "white paper" for the Department of Justice rather than a specific request for DOJ ruling, (6) reference to Claude Wilde regarding contacts in Washington.

The memo states: "Mr. Zagnoli is of the view that both the fact of the Cartel Agreement and the substantive content of that agreement are sufficiently definite to signify Gulf's proceeding as rapidly as possible to make whatever Washington contacts are thought advisable." Further, "I said that no determination had been made but that probably we would be making presentations to the Department of Justice, the Atomic Energy Commission, and the Department of Defense, State, Treasury, and Commerce. All of this in addition to proper discussions with the Canadian Embassy in Washington so that the Canadian Government could exert its influence through its normal channels to the American Government."

5/1/72 Coleman memo to Minks regarding international agreement. Saskatatchewan Provincial Government action stopped. "Everything had been done at the government level which could be expected.

5/9/72 Canadian producers and government officials meet in Ottawa to formulate an aide memoire on the cartel.

5/10/72 Telex from Ediger to Allen in Denver highlighting points of meeting.

5/11/72 Jackson sends Minks memo on May 10 meeting and Ediger telex.

5/17/72 Cover letter with minutes of the Ottawa meeting from Runnals to Ediger, saying among other things, "Mr. Austin asked if Gulf was prepared therefore to go ahead in Johannesburg and take the associated risk. Mr. Ediger replied in the affirmative, adding that Gulf hoped to be in a stronger position on the legal issues involved by the end of the month." Memo indicates agreement to participate at Johannesburg and to sign the aide memoire there. Memo goes on to list allocation of uranium production under the cartel agreement among five Canadian producers.

5/28-29/72 H. E. Hoffman, Associate General Counsel/Vice President, Gulf Energy and Environmental Systems Co., R. K. Allen, N. M. Ediger, and D. Hunter, Manager, Gulf Energy and Environmental Systems, Inc. (uranium projects) attend Johannesburg meetings of Canadian producers and international producers.

6/2/72 File Memo from Jackson with carbons to Minks, I. W. Coleman, Allen, and M. W. Ramsey recommending delay of preparation of white paper because of recent developments in Johannesburg.

6/8/72 Hunter memo to Hoffman, carbon copies to Galloway, Rolander, and Fowler, stating among other things: (1) that the overall uranium marketing strategy for Gulf must reflect the interrelationship existing between foreign and domestic markets and "thus, foreign and domestic marketing activities are inseparable and indeed should be treated integrily if we are to optimize the company position." (2) "Based on input provided by Gulf Minerals (GMRC), we conclude that corporation profit is greater if New Mexican production begins in 1978 rather than 1976."

6/15/72 O. J. C. Runnals' memo to Austin and carbon to McNabb summarizing minutes of Canadian uranium producers meeting in Johannesburg on Ma6 28. Ediger of GMCL is noted as saying that Gulf would have more problems with antiturst issue for the post-1977 period. Allen said that the best advice Gulf had been able to obtain from outside counsel was that they should not even file a white paper with the Department of Justice. Gulf Minerals had agreed to take a business risk, therefore, up until 1977 on the assumption that the U. S. embargo would not be lifted until 1978.

7/6/72 Jackson memo to Coleman summarizing May 28 Canadian producers meeting in Ottawa. Memo suggesting the previous reference of willingness to assume a business risk be made more pallatable to read "was willing to assume whatever risk was involved in complying with the directions of the Canadian government."

7/7/72 D. Hunter memo to S. A. Zagnoli confirming agreement reached that day to transfer L. T. Gregg to Toronto Canada. Such move is considered to enhance the posture that Gulf is maintaining that they are a Canadian producer.

7/6-7/72 Meeting of Operating Committee of Cartel in Cannes. In the U-Marketing Agreements, it was agreed that the Club would use the services of Andre Petit (personal assistant to Mr. Goldschmidt, the Director of CEA) on an interim basis. It was decided that Petit should be buried in CEA headquarters in Paris.

7/20/72 Jackson memo to Minks, carbon copy to Allen, Coleman, Estey, Ediger, O'Hara, Ramsey, and Zagnoli. Discusses antitrust evaluation saying that Ramsey's impact statement must be less precise and noting that the Canadian government directive is clearer than ever before. Memo further says ". . . 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." Further discussion of how the Canadian government leadership role will be evidenced appears at page 2 of memo.

8/10-11/72 D. Hunter meetings with Executive Gulf, New York City.

8/28/72 Ediger sends telex to Zagnoli, Allen, and W. C. Larabee at Gulf, Denver office wanting to know if cartel operating costs should be changed to Gulf Canada (Rabbit Lake) or to Gulf marketing costs.

9/5/72 Canadian uranium producers meet in Ottawa. In the confidential minutes (September 21, 1972) of the meeting, O. J. C. Runnals records the fact that the members raise the question whether or not Westinghouse should be approached directly. "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."

9/8/72 Ramsey paper outlining the expected impact of the proposed foreign Uranium Marketing Organization on U. S. trade is completed. The paper was requested by Gulf's lawyers "as part of their work product for purposes of counselling a course of action for Gulf."

9/28/72 Telex from A. Hunter to Director General of Uranex indicating that Westinghouse is quoting overseas uranium of foreign origin.

10/5/72 Jackson meets with O'Hara in Hamilton, Bermuda, where Jackson now is President of a Gulf Insurance Company subsidiary.

10/11/72 Jackson letter to O'Hara summarizing the main points discussed in their meeting of October 5, 1972. Included in summary is Jackson's statement: "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."

11/20/72 O'Hara memo to Ediger, basically reflecting Jackson's views The O'Hara memo uses identical language to Jackson's. Important carbon copies however: Allen, Estey, McAfee, Minks, Philips, Zagnoli. The memo restates the position as described in the memo of 10/11/72 on the points of eliminating the competition.

12/27/72 Ediger sends Zagnoli the Canadian quota allocation for 1978-80. The memo also makes the point that there may be problems if the ministerial directions are issued at the request of the producers.

2/23/73 W. Fowler sends following memo to D. Hunter regarding Exxon Nuclear:

"Tom Upchurch advised me that he had come down to Los Angeles on Monday to attend the AIF meeting to discuss the embargo question where other producers were present. EXXON has very conservative guidelines on such participation and when Tom discovered that the AIF representation was not acceptable (lack of a lawyer and/or M. Gordon), he elected not to participate and returned to Seattle.

"This may have some peripheral impact on your call to Ray and thought you should be aware."

3/73 Meeting of the Atomic Industrial Forum in Oakbrook, Illinois, at which it is alleged that the Subcommittee on Milling and Mining met in secrecy to arrange a trade between foreign uranium producers and American producers, to wit: if the

American producers would cease objecting to a lifting of the U. S. embargo, foreign producers would not undersell American producers in the American market. (Source: Staff interviews, testimony of Al Bethal before the Subcommittee on Oversight and Investigations, November 4, 1976, Sacramento, California).

Mid, 1973-1974 American Utilities Companies execute contracts with foreign producers with clauses tying the price to the "world market price." Specifically, Duke Power, 20 million pounds from Rio Algom of Canada; TVA, 17 million pounds from Rio Algom of Canada; Carolina Power and Light, an unknown quantity from Uranex (the French national producer, controlled by IMETAL) (Source: PG&E Report page 28, Staff interviews).

1/8/74 G. M. McNabb sends letter to N. M. Ediger requesting that L. T. Gregg should be one of the two Canadian representatives of the international uranium producers group and that he should represent the Canadian producers at the next meeting of the cartel in Johannesburg on January 31.

GULF OIL CORPORATION

POSITION PAPER

RE: URANIUM MARKETING ARRANGEMENT

June 9, 1977

KEY DATES:
GULF MINERALS CANADA LIMITED (GMCL)
AND URANIUM MARKETING AND RESEARCH ORGANIZATION (UMRO)

January 27, 1972 -- GMCL rejects a request from the Canadian government to attend a meeting of Canadian uranium producers for the purpose of discussing a forthcoming uranium meeting in Paris.

February 14, 1972 -- Canadian government informs GMCL it is to attend a meeting of Canadian uranium producers on February 16 in Ottawa. At that time, GMCL was made aware of the general nature of the Paris February 7-8 meeting of international uranium producers and governments.

February 15, 1972 -- Further demand from Canadian government that GMCL attend following day's meeting with the understanding the discussions would only be exploratory.

February 16, 1972 -- GMCL attends Ottawa meeting of Canadian uranium producers, where participatns are told specifics of the marketing arrangements discussed in Paris.

February 28, 1972 -- GMCL informed by Canadian government that GMCL should probably be represented at a Paris meeting scheduled for March 12-13, but no formal invitation was extended and GMCL did not seek an invitation.

March 20, 1972 -- GMCL called by Canadian government and invited to attend meeting of Canadian uranium producers later that day in Toronto. GMCL advised Canadian government it could not do so unless specifically directed to do so by Canadian government, and was told the evening meeting would be informal and not to receive commitments.

March 23, 1972 -- Three GMCL officials told by Canadian government that it might be necessary for the government to control uranium in a compulsory manner if the uranium producers could not agree unanimously on a national stance regarding protection of the uranium industry.

April 4, 1972 -- GMCL asked to attend meeting in Ottawa April 10 by Canadian government to discuss uranium marketing.

April 10, 1972 -- Canadian government-sponsored meeting held in Ottawa, with GMCL informing the government that GMCL could further participate only if it was determined GMCL would not be in violation of anti-trust or trade restraint laws, including those of the United States. Canadian government stated GMCL (and Uranex Canada Limited) would be directed to participate in the arrangement if the other Canadian producers acquiesced in being so directed. Neither GMCL nor UCL was given an opportunity to respond.

April 20-21, 1972 -- GMCL representatives attend Paris meeting with clearly stated positions that actions must be in compliance with applicable U.S. trade restraint laws, even when in conflict with stated Canadian national interests.

May 29-30, 1972 -- GMCL representatives attend Johannesburg meeting. Canadian delegation had agreed GMCL would not be asked to agree to join in a producer's request to the Canadian government for regulatory direction.

May 31, June 1-2, 1972 -- Johannesburg meeting of Uranium Operating Committee. GMCL did not attend.

July 6-7, 1972 -- Cannes meeting of Uranium Operating Committee. GMCL did not attend.

August 2, 1972 -- Issuance of amendment to Canadian Atomic Energy Control Regulations regarding price controls and allocations on the export of uranium "in the public interest in a direction given to the board by the Minister (of Energy, Mines and Resources)."

Mr. ATKISSON. Thank you, Mr. Chairman.

To the end that the documents we referred to may properly be addressed by the witnesses, do the witnesses have a set of the documents we will be referring to in front of them?

Mr. AcAFEE. We have nothing at this time.

[Documents are arranged chronologically in appendix A, see p. 455.]

Mr. ATKISSON. Mr. McAfee, I don't want to summarize your statement. You did a fine job of it. But clearly the fountainhead of Gulf's defense in this matter—I use the word "fountainhead," because counsel for Gulf, Mr. Jackson, used it once back on June 2, 1972. You will find a document dated June 2 in that package, from Mr. Jackson, in which he refers to the "fountainhead of Gulf's defense" as being, on the one hand, that while Gulf was participating in what was then called a marketing arrangement, it was being forced to by the Canadians.

That is correct; isn't it? That is element one of the defense [see appendix A].

Mr. MCAFEE. That is one of the points that we endeavored to make in our statement, Mr. Atkisson, yes, sir.

Mr. ATKISSON. The second point is, as you stated very clearly, that there was no measurable impact, notwithstanding the cartel, on American commerce.

Mr. MCAFEE. The reason is that the agreement specifically excluded the U.S. market. And, also, because of the existence of a U.S. embargo.

Mr. ATKISSON. Following that—the fountainhead of the defense—as Gulf Minerals Canada approached the formation of the cartel back in early 1972, is it not the case that various Gulf executives discussed preparing a document which reflected those two views—I believe loosely referred to as a white paper at some point.

Mr. MCAFEE. We may need to clarify exactly what you have in mind. Are you referring to a Gulf Minerals document or a Gulf Oil Corp. document?

Mr. ATKISSON. That's a good point. We'll get to that in a minute. Let me back up a minute.

Is it the position of Gulf that back in early 1972, Gulf's participation in the marketing arrangement was strictly contingent upon clearance by U.S. authorities as to possible antitrust violations?

Mr. MCAFEE. We were, and are, and as a matter of general policy, determined to do everything we can do to abide by the laws of all of the lands where we operate.

Therefore, we were very concerned that every possible step be taken to make certain that our actions in connection with this matter were completely in harmony with the laws of both the United States and Canada. Yes, sir.

Mr. ATKISSON. That was your view then, and it is your view today?

Mr. MCAFEE. You bet.

Mr. ATKISSON. I am referring to a document not in your package: On April 19, Mr. Ediger said that any adherence by Gulf to an arrangement agreed upon by other world producers would be contingent—and I underscore contingent—upon Gulf first obtaining from the U.S. Department of Justice an expression that such adherence would not result in a violation of U.S. antitrust laws.

You have no reason to doubt the accuracy of that statement by Mr. Ediger, do you?

Mr. McAfee. I don't know what the document is you refer to; but if that statement was made by Mr. Ediger, I have no reason to doubt that that represented his views at the time.

But as I pointed out in my statement, during the course of that very careful and exhaustive investigation and study of this matter to be sure that we were on-side—both in the United States and Canada—consideration was given at one time to seeking specific and direct clearance from the Department of Justice.

As things developed, and as the agreement was set up, and as the orders from the Canadian Government became so obviously clear, and having the benefit of the Justice Department memorandum advisory which I referred to, the company concluded that such specific clearance was not, in the circumstances——

Mr. Atkisson. Let's go back to that change in attitude.

By April 28, 1972, it was a foregone conclusion that some sort of statement was going to be prepared for the Department of Justice. Is that correct?

That is not referring to what happened later but just at that date.

Mr. McAfee. I was not directly involved at that time. I don't know those particular dates.

During that period, was when this study was being conducted.

Mr. Atkisson. Let me refer the witness and the members to a memorandum of April 28, 1972, from a Mr. Jackson to a Mr. Coleman [see Appendix A].

Mr. McAfee. Give me a moment to find the memorandum you referred to.

Mr. Atkisson. Staff is going to join you at the table to help you locate documents.

Mr. McAfee. That is very kind.

Mr. Atkisson. Paragraph 4 of that memorandum states:

> Mr. Zagnoli is of the view that both the fact of a cartel agreement and the substantive content of that agreement are sufficiently definite to signify Gulf's proceeding as rapidly as possible to make whatever Washington contacts are thought advisable.

So apparently at that point, it was the feeling that Gulf's position—the fountainhead of its defense—the two points that the Canadians were forcing you into the cartel and that there would be no measurable impact—that you were going to take those positions to the Justice Department, or somebody in Washington. In any event, Washington contacts were going to be made. Is that correct?

Mr. McAfee. As I've, said previously, consideration to taking those steps was given at one stage of the game. And at one stage of the game——

Mr. Atkisson. Thank you. That's all I asked—that that was the attitude as of April 28, 1972.

Mr. Moss. The Chair would just like to interpose that he is most anxious to be fair to the witnesses, but he is also mindful of the limitations of time and would ask that the responses be very tight and very direct, dealing only with the area of question and not going beyond that. We will develop as we proceed the details the committee requires.

Mr. McAfee. Thank you, Mr. Chairman. We will certainly be guided by that to the best of our ability.

Some of the questions, I'm sure you will appreciate, are fairly complicated, however, and can't be answered, yes or no.

Mr. Moss. I think before we are finished, we will have all of the answers. You will have had a fair opportunity, if we follow the procedure I have just outlined.

Mr. McAfee. Thank you, sir.

Mr. Atkisson. In mid-May—May 16—Mr. Ediger of Canada says again, in a meeting of the Canadian producers, that Gulf is "diligently pursuing a legal opinion as to its antitrust position." Does that square with your memory? Perhaps Mr. Zagnoli should answer that. Does that square with your memory of the facts at that time?

Mr. Zagnoli. To that extent, yes.

Mr. Atkisson. I would like to refer you to a memo dated June 15—and this should be from a Mr. Runnalls, a Canadian Government official. [See appendix A.]

Mr. McAfee. I believe it is Dr. Runnalls.

Mr. Atkisson. This memo is a summary of proceedings of a meeting the previous May 28. Is that correct?

[No response.]

Mr. Atkisson. At the bottom of page 2, ostensibly by Mr. Ediger, again, it is said:

> However, so far as Gulf was concerned, their hazards with U.S. antitrust legislation would increase as the end of the decade was approached.
>
> Mr. Allen said that the best advice Gulf had been able to obtain from outside counsel was that they should not even file a white paper with the Department of Justice. Gulf minerals had agreed to take a business risk, therefore, up until 1977 on the assumption that the U.S. embargo would not be lifted until 1978.

Mr. McAfee, what happened between the end of April 1972, and the beginning of June 1972, to cause Gulf to decide to drop the idea of going to the Justice Department to get authority to participate in an international cartel?

Mr. McAfee. I am not aware of any specific event that occurred in that period.

As I indicated earlier, it was the conclusion that was reached as a result of the way things developed and the best advice and counsel we could get that this step simply was not necessary because the situation was so clear that there could be no doubt about it.

Mr. Atkisson. Let's go back to the April 28 memo from Mr. Jackson. Let's go to the last page.

Perhaps this will shed some light on it.

Mr. Gore. Would counsel yield for a clarification of the last response?

Mr. Atkisson. Yes.

Mr. Gore. Did you mean that it was so clear that it was price fixing that there was no doubt about it?

Mr. McAfee. No; Mr. Gore.

Mr. Gore. It was so clear that it was not price fixing.

Mr. McAfee. It was so clear that this arrangement was completely in accordance with the laws of both the United States and Canada that further assurance from the Justice Department was felt not to be necessary—admittedly a matter of judgment.

Mr. GORE. I just wanted to clarify that, because it could have been taken either way.

Mr. ATKISSON. If I may quote from the document, Mr. McAfee, this is, again, Roy D. Jackson, Jr., then counsel for Gulf, writing to Mr. Coleman with carbon copies to Mr. Minks and Mr. Ramsey:

> As far as the Washington meetings are concerned, I said we are thinking in terms of reviewing the matter—not only with outside antitrust counsel but also with Claude Wild to arrive at an agreed course of action, both as to whom we contacted and how we made the contacts.

There is a curious use of the past tense in the latter part of that sentence which you may or may not be able to shed some light on.

Can either of you describe for the committee just what sort of Washington contacts were made, whether or not a white paper or impact statement, which Gulf had prepared, was carried by whomever was making the contacts, and who was contacted?

This statement seems to indicate that some sort of contact was made with somebody here in Washington.

Mr. MCAFEE. If I may say so, that would be a rather peculiar reading of this language from my country boy standpoint.

That isn't what I read it to say at all. As far as I know, no specific contacts in this connection were made of any substance. I'm not aware of any.

Mr. ATKISSON. Were any contacts, to your knowledge, made by the Canadian Government? I invite your attention to the last sentence.

Mr. MCAFEE. I certainly can't speak to any contacts made by the Canadian Government.

Mr. ATKISSON. "All of this in addition to proper discussions with the Canadian Embassy in Washington so that the Canadian Government could exert its influence through its normal channels to the American Government."

You just said that the reason you dropped the idea of going to Justice was that it was a foregone conclusion that you weren't in violation of the law? Isn't that correct?

Mr. MCAFEE. I'm not sure I used the words "foregone conclusion." I think I said that it became very clear.

Mr. ATKISSON. Isn't that all the more reason to seek the opinion—just to make it nice and neat? If it was so clear that Justice would have given you a favorable opinion, why on earth didn't you seek it?

Mr. MCAFEE. Finding our way thorugh the maze of the complicated laws we face is a difficult and time-consuming exercise. We do the best we can. We had the best counsel we could find; we had the best advice; and we had the very clear direction——

Mr. ATKISSON. Is your answer that you were operating on advice of counsel not to contact——

Mr. MCAFEE. And our best reading of the directives of the U.S. Justice Department.

Mr. ATKISSON. Is your answer also that no contacts with Justice were made in 1972 by any representative of the Gulf Oil Corp.?

Mr. MCAFEE. I do not know, Mr. Atkisson.

Mr. ATKISSON. Mr. Zagnoli, do you know?

Mr. ZAGNOLI. I do not know; I am not aware of any contacts.

Mr. ATKISSON. Do you have any way of finding out in a manner which would be able to be supplied to the record of this subcommittee?

Mr. ZAGNOLI. It is not apparent to me how to find out.

Mr. ATKISSON. Do either of you know Mr. Calude Wild?

Mr. MCAFEE. I do.

Mr. ZAGNOLI. I do.

Mr. ATKISSON. Was he a representative of Gulf at the time?

Mr. MCAFEE. At that time, he was a Washington representative of Gulf.

Mr. ATKISSON. Do you have any knowledge of whether or not Mr. Wild was instructed to contact anyone in the Justice Department, the Commerce Department, the State Department, or any other department in connection with the uranium cartel?

Mr. MCAFEE. I do not.

Mr. ZAGNOLI. I do not.

Mr. ATKISSON. Do you have any knowledge whether anyone else in the Gulf Washington office was so instructed?

Mr. MCAFEE. No.

Mr. ZAGNOLI. I do not.

Mr. ATKISSON. Do either of you know the personnel in the Washington office at that time?

Mr. MCAFEE. I do not know it in detail.

Mr. ZAGNOLI. No; I don't specifically know.

Mr. ATKISSON. Mr. Chairman, I would ask that that be supplied for the record—the names of the individuals for the first 6 months of 1972.

Mr. MOSS. Without objection, the Chair directs that the material be supplied to the committee for the record, and the record will be held at this point to receive that information.

[See appendix B, p. 641.]

Mr. MCAFEE. Mr. Chairman, just to be real sure we are understanding exactly what you are asking for, you would like the names of all the Gulf employees who were employed in the Washington office——

Mr. MOSS. We will give you after the hearing a list of the items that have been directed to be supplied.

Mr. MCAFEE. We will be glad to.

Mr. ATKISSON. The "fountainhead," again, is compulsion and impact. Let's go to compulsion just for a moment and discuss that.

I would invite your attention to document No. 1—the first document in the file—which purports to be a file not written by Mr. N. M. Ediger on February 16, 1972 [see appendix A]. First of all, who is Mr. Ediger?

Mr. MCAFEE. Mr. Ediger, at the time, was vice president and principal operating officer of Gulf Minerals, Canada, Ltd.

Mr. ATKISSON. At this time, Gulf had a relationship in Canada with an outside counsel, Mr. Estey, is that correct?

Mr. MCAFEE. That's correct.

Gulf Minerals had that arrangement.

Mr. ATKISSON. Mr. Austin and Mr. MacNabb were at that time Canadian officials with the Department of Energy, Mines, and Resources. Is that correct?

Mr. MCAFEE. Correct.

Mr. Austin was Deputy Minister and Mr. MacNabb, I believe, was Assistant Deputy Minister in the Department of Energy, Mines, and Resources.

Mr. ATKISSON. You stated in your opening statement that February 16 was really the first time that Gulf had any working knowledge of what had happened on an international level; is that correct?

Mr. MCAFEE. To the best of my knowledge, that is correct.

Mr. ATKISSON. The second to the last full paragraph, reads as follows:

"Subsequent to the meeting," and I assume that is the meeting where you were briefed, "Mr. Estey spoke to both Mr. Austin and Mr. MacNabb privately with respect to Gulf's attendance at the forthcoming meetings in Paris. They specifically recommended against Gulf's seeking an invitation, and it was agreed that Gulf would not participate. However, Mr. MacNabb did agree to keep us informed."

Does that sound like compulsion to you?

Mr. MCAFEE. No; not at that point—we were not compelled. I think that is the meeting we refused to attend.

Mr. ATKISSON. It doesn't sound like a refusal to me. It sounds like Gulf was seeking an invitation to it.

Mr. MCAFEE. We were not seeking an invitation.

Mr. ATKISSON. Is the memo just wrong?

Mr. MCAFEE. I can't vouch for the accuracy of the memo, Mr. Atkisson.

Mr. ATKISSON. Can you vouch for the customary accuracy of Mr. Ediger?

Mr. MCAFEE. Yes, sir, he is a very fine gentleman, and I have complete confidence in him.

Mr. ATKISSON. Thank you.

Mr. MCAFEE. Even though he is no longer with Gulf.

Mr. ATKISSON. There are a number of people in that category.

The second document, dated February 18, 1972, is a memo from D. Hunter to C. A. Rolander [see appendix A]. Can you tell us who Mr. Hunter is, or was at that time?

Mr. MCAFEE. I believe Mr. Hunter was an employee of the General Atomic Co.

Is that right, Mr. Zagnoli?

Mr. ZAGNOLI. Correct.

Mr. MCAFEE. I didn't know him personally.

Mr. ATKISSON. Is General Atomic Co. located in Canada?

Mr. MCAFEE. No.

Mr. ATKISSON. Mr. Rolander, what is his position?

Mr. MCAFEE. At the time, he was president of General Atomic.

Mr. ATKISSON. And General Atomic is not in Canada?

Mr. MCAFEE. No.

Mr. ATKISSON. These fellows don't have anything to do with GMCL?

Mr. MCAFEE. Not organizationally; they were not part of the GMCL organization. They worked with General Atomic which is an affiliate on the west coast in San Diego.

Mr. ATKISSON. The second paragraph of that memo states as follows:

Within this same vein there is a meeting which Mason Foster has set up with Sir Edwin McAlpine and the managing director of R.T.Z. for the 25th in London.

Who is Mason Foster?

Mr. McAfee. There was a Mason Foster—not spelled this way, but similarly—who was in our European operation at one time.

Mr. Atkisson. At the time, he was a Gulf official?

Mr. McAfee. If it is the Mason Foster I 'm thinking about, yes, sir.

Mr. Atkisson. R.T.Z. was a member of the cartel; was it not?

Mr. McAfee. I don't know.

Mr. Atkisson. You don't know, Mr. McAfee? You haven't reviewed any of the materials in view of the—— ,

Mr. McAfee. I have, but I don't know from personal experience.

Mr. Atkisson. You know from your review of the materials and various pieces of litigation that are going on in the country that R.T.Z. was, in fact, a member of the cartel. It was so important that it had the same status as a country; did it not?

Mr. McAfee. I don't know. I understand they were involved.

Mr. Atkisson. On February 18, 1972, 2 days after you say Gulf first learned of the international meetings, we find a Gulf employee—I suppose, in London—setting up a meeting with the managing director of R.T.Z.

Would that be your conclusion from this? ,

Mr. McAfee. That's what this memorandum seems to say.

Mr. Atkisson. The third document [see appendix A], dated April 12, 1972. ,

This is a memorandum from I. W. Coleman, dated April 12, 1972, to Mr. Minks. Both of those gentlemen are lawyers for Gulf, are they not?

Mr. McAfee. Mr. Coleman was; Mr. Minks is still general counsel.

Mr. Atkisson. I am quoting now. ,

Mr. W. Z. Estey has told me he felt the risk under Canada law to be minimal if the program as now contemplated is carried out. This program is as follows,

and then there are four items in this scenario.

1. A meeting will be held in Paris, on April 20 and 21, attended by the producers of the countries involved at which time an agreement in principle will be sought. The major issues will, of course, be allocation of quotas to each producer.

2. After an agreement in principle has been reached in Paris, the agreement will be presented to the cabinet in Ottawa for approval and a declaration that it is in the interest of Canada and represents the policy of the Canada Government.

3. After approval by the cabinet, and pursuant to such approval, each of the Canadian producers shall be directed by their proper government official to enter into and participate in that agreement.

4. Actually, prior to such direction an opinion will be rendered by the Minister of Justice of Canada which will prevent any action being taken under Canada law against participants in the agreement, at least as long as the present government is in power.

In your statement, you indicated that Canada was being very aboveboard about this; that they publicly announced that the Canadian Government would set quotas and prices. Is that correct?

Mr. McAfee. I indicated that Canada made no secret of it, Mr. Atkisson. They did issue a public statement. There were newspaper reports from time to time. It was general information in the indurtry.

At some date—I forget the exact date—in 1972, they made a rather specific public announcement of the matter.

Mr. ATKISSON. Isn't it a fact, though, that the Canadian Government policy was tied in precise fact—even down to the numbers—to the terms and conditions arrived at in Paris and Johannesburg and various other places by the cartel?

Mr. MCAFEE. You asked me——

Mr. ATKISSON. They didn't reveal that fact did they?

Mr. MCAFEE. You have asked me to express an opinion on what the policy of Canada was. I am not in a position to speak to that.

Mr. ATKISSON. Isn't it a fact that the quotas and prices set by the Canadian Government exactly followed the prices and quotas set by the cartel?

Mr. MCAFEE. I can't vouch for that. I do not know.

Mr. ATKISSON. Have you reviewed the materials in preparation either for this hearing or——

Mr. MCAFEE. I have reviewed the materials, Mr. Atkisson, as much as time has permitted since receiving the committee's invitation to be here on Monday afternoon at 3 p.m. That has put a certain limitation on my ability to completely familiarize myself with all of the documents you refer to.

Mr. ATKISSON. Mr. Zagnoli, do you have any personal knowledge of whether or not any GMCL officials on February 11, 1972, were given draft copies of the Canadian proposed laws and regulations concerning uranium export quotas and prices?

Mr. ZAGNOLI. I don't know.

Mr. ATKISSON. Were you ever asked, yourself, to comment on a draft of a Canadian law or regulation? Before it became a law or regulation?

Mr. ZAGNOLI. To my recollection, no.

Mr. ATKISSON. Do you know of anyone in the Gulf organization who was?

Mr. ZAGNOLI. I do not know.

Mr. MCAFEE. That is a rather broad statement you have made, Mr. Atkisson.

Mr. ATKISSON. I haven't made a statement; I've asked a question.

Turning your attention, again, to the June 15 memo, my last question on this subject—Dr. Runnals' memo——

Mr. LANDES. Would counsel yield for a moment?

Mr. ATKISSON. Yes.

Mr. LANDES. With respect to that question of the time that Mr. McAfee has had in which to review the documents, we did release the documents from New York State to you earlier, and we received last Thursday a 70-page response from Gulf Oil. So I think the record should be clear that the material has been in the hands of Gulf much longer than since Monday afternoon.

Mr. MOSS. Will the gentleman supply the 70-page statement for the record?

Mr. LANDES. I would be glad to do so, Mr. Chairman.

Mr. MOSS. The statement will be included at this point in the record.

[See appendix C, p. 645.]

Mr. ATKISSON. A final question, Mr. McAfee.

On the June 15 memo, page 6—and this is Dr. Runnals, again, reporting on a Canadian producer's meeting—states as follows:

"Mr. Austin," and that would be a Canadian official, "went on to say that there was a second tenet; namely, that the Government"—meaning the Canadian Government—"had had as its policy stance from the beginning that it would not force Canadian producers into an arrangement. This attitude had been clearly expressed in a message sent to each of the producers by the Minister of Energy, Mines and Resources on April 14." That would have been 1972.

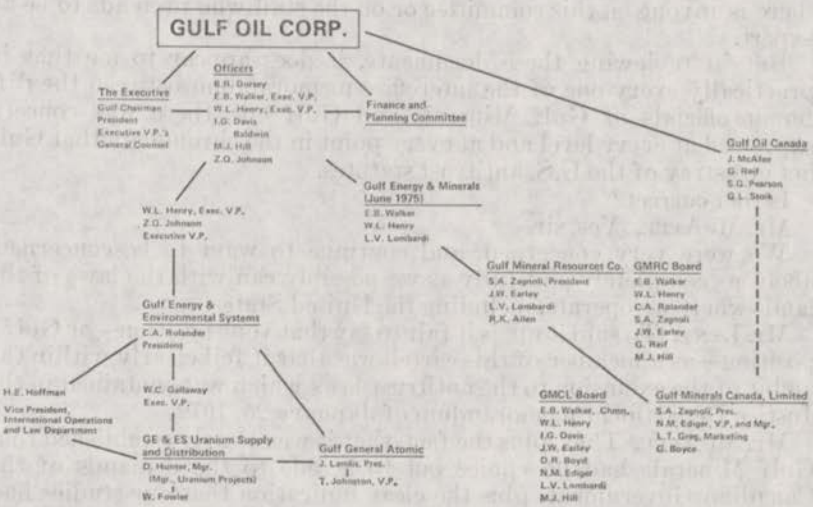
Do you have any comment on that statement?

Mr. McAfee. No, sir.

Mr. Atkisson. Mr. Zagnoli, just to clear up one point, and I will refer you to this chart.

[The chart referred to follows:]

GULF URANIUM PERSONNEL AND ENTITIES



Mr. Atkisson. With regard to this chart, we did not prepare it. It was prepared as part of the discovery process in the litigation going on around the country.

There may appear to be inaccuracies in it because it does not represent one slice of time.

As I understand it, the names are plugged into various positions over perhaps a 2- or 3-year period.

On the chart, you are indicated as president of GMRC. Is that correct?

Mr. Zagnoli. At what point in time?

Mr. Atkisson. I am asking you what point in time.

Mr. Zagnoli. In the period May 1971 to October 1973, I was the president of Gulf Minerals Resources Co.

Mr. Atkisson. Were you at any time during that period simultaneously president of GMCL?

Mr. Zagnoli. Yes.

Mr. Atkisson. Thank you.

Mr. Chairman, I have no further questions.

Mr. Moss. The Chair recognizes the gentleman from New York, Mr. Lent.

Mr. LENT. Thank you, Mr. Chairman.

Mr. McAfee, I want to thank you for your statement which I think has gone a long way to educate the members of the committee, and perhaps the public, as to just what is involved with the price of uranium.

I look at this hearing as raising two basic questions—at least in my mind.

The first question is whether there was any violation of the antitrust laws, and the second is the question of whether, there being a violation or not, the actions of this cartel did result in an increase in the price of uranium, or whether that increase came as a result of other factors which you alluded to in your statement.

I don't pretend to be any expert on the antitrust laws. I don't think there is anyone on this committee or on the staff who pretends to be an expert.

But in reviewing these documents, it does appear to me that in practically every one of the interoffice memorandum between the different officials of Gulf Minerals and Gulf Oil, there was concern expressed at every level and at every point in the chronology that Gulf not go astray of the U.S. antitrust statutes.

Is that correct?

Mr. MCAFEE. Yes, sir.

We were very concerned, and continue to want to be concerned, about as completely and fully as we possibly can with the laws of the lands where we operate, including the United States.

Mr. LENT. To sum it up, is it fair to say that your position—or Gulf's position—as a member of this cartel, was that it fell clearly within the ambit of the exclusion to the antitrust laws which was contained in the Justice Department memorandum of January 25, 1972.

Mr. MCAFEE. That, plus the fact, that it was clearly established that Gulf Minerals had no choice but to accede to the demands of the Canadian Government, plus the clear indication that our studies had brought forth that the arrangement—whatever it turned out to be—would have no material effect on U.S. markets, because of the two factors I mentioned—the embargo and the fact that the U.S. market was specifically excluded from the arrangement.

Mr. LENT. So you had, at least on your side, in what counsel has referred to as defense, against antitrust prosecution, first, the exclusion or exculpatory language contained in the Justice Department memorandum of January 25, 1972, Second, you had the fact that the cartel, by its terms, excluded U.S. sales entirely. Third, you had the U.S. law to the effect that there was an embargo against any importation of any of this foreign uranium.

Mr. MCAFEE. Plus the fact that we were required to participate by the Canadian Government.

Mr. LENT. Now if we could pass to the second question that I'm concerned with, and that is whether this cartel—legally or whatever—and, as I say, I am not an expert, and I don't mean to speak for anyone else on the committee—but whether or not the cartel resulted in an increase in prices for American consumers of uranium.

We have two diametrically opposed statements here. I have in my hand the report to the Committee on Corporations Authorities and Commissions of the State of New York Legislature, prepared by a gentleman named William F. Haddad, who is on the panel here, in which he says at page 1 of that report:

> With respect to its inquiry into the pricing patterns of alternative fuels, the Office of Legislative Oversight was made aware and provided certain public and private documents which leave little doubt that a world cartel was formed in Paris in 1972 to control the prive of uranium.

I think that is conceded by everyone.

> And, second, that this cartel was in large measure responsible for the 700 percent increase in the cost of uranium, resulting in higher energy costs to New York State residents.

As against that statement, which seems to leave no doubt about it, the cartel was the bogeyman in the scene, we have your statement which says that the cartel had nothing to do with the increased price. That is basically the conflict that I see here?

Mr. McAfee. If what you're saying is that I disagree vehemently and violently with Mr. Haddad's conclusion, you are absolutely correct.

Mr. Lent. To buttress your contention that the cartel had no impact here whatsoever in uranium pricing, you have cited a gentleman by the name of Paul Schmitt of the Nuclear Assistance Corp.——

Mr. McAfee. Assurance.

Mr. Lent. Assurance Corp. Who gives in his statement reasons for the cost increase—rising costs, expansion to produce the fuel, the increase in the oil prices, and the Westinghouse shortage—is there anywhere cited in Mr. Schmitt's statement that this cartel was a causative factor in the price increase?

Mr. McAfee. I can't honestly answer that personally. I haven't made a detailed study of it.

Mr. Lent. You cited a gentleman named James D. Hobbs from Fuel-Trac Report. Is there any reference in his statement to this cartel, as being the agent causing the increase in the price?

Mr. McAfee. I can't honestly say. The references are given, and I'm sure it can be looked up.

Mr. Lent. In sum then, it is fair to say that you attribute absolutely no increase in the price of uranium to American purchasers through the existence of this cartel which, as you indicated, was established basically to put a floor on what, at the time of its establishment, was a very depressed market.

Mr. McAfee. No discernible effect; that is correct.

Mr. Moss. The gentleman's time has expired.

The Chair recognizes the gentleman from Pennsylvania, Mr. Walgren.

Mr. Walgren. Thank you, Mr. Chairman.

I would first like to say that the two witnesses, and more of Gulf's personnel, are constituents of mine, along with personnel from Westinghouse.

I think it also fair to say that we first met this morning. That may be because I am a Democrat, but I still have an obligation to represent

the interests in Pittsburgh. In this case, I find myself quite torn between Westinghouse and Gulf.

Mr. McAfee. You are still my Congressman, Mr. Walgren.

Mr. Moss. The Chair would observe, if the gentleman would permit, that when he sits on this committee, he represents the Nation.

Mr. Walgren. The question that bothers me most is into whose hands we are delivering the cost of energy that the American public is going to have to pay.

I must say that when I first heard of this story and I heard of Westinghouse alleging that Gulf had conspired to fix the price of uranium and the impact that that had on their nuclear business and their ability to meet their commitments, I sort of smiled to myself. Knowing a number of lawyers for both Westinghouse and Gulf, I said: This looks like the boys are at it again. And that there would be a lot of employment and work time for the lawyers in Pittsburgh.

But when we received the transcripts of the documents that have been submitted to the committee, after they had been attempted to be kept secret, I have very grave reservations.

The transcripts read, in many parts, almost like a Watergate transcript. There is secrecy involved. The Secretariat, Mr. Pettit, who was appointed to be Secretariat and functioned as the central coordinating body for the cartel, is referred to as conveniently buried in a larger organization. The only implication can be so that he could function somewhat not in the full public view.

In reading the documents, I'm not so sure that the actual effect of the arrangement is what counts but what was intended—what was intended apparently by substantial levels.

I mean to differentiate between people and between levels of a corporation, because a corporation is a substantially complex body and certainly I don't mean any personal blame by this.

But the intent that was clear of certain portions of the Gulf Corp. in this is shocking.

I thought that the function I could perform would be to direct your attention to some of those portions of the transcripts and allow you, as the chairman of the board, and others through perhaps written submissions to the committee to explain whatever implications there might be there.

Going back to the thought of who we are commending the cost of energy to, I would like to note a memo from Mr. Fowler, who I understand was formerly the manager of domestic uranium sales of Gulf General Atomic—essentially a U.S. entity of Gulf, if I'm not mistaken.

Mr. McAfee. It was at that time.

Mr. Walgren. A memo dated February 22, 1974, in which Mr. Fowler states:

> Attached is information on the foreign producer status report. There is no question the international producers have jumped on board the OPEC bandwagon.

At this point I would also like, for later submission, to be able to include certain references throughout these documents that I'm sure your attorneys will highlight too in which it is clearly said that Gulf's marketing practice was to treat the domestic and the foreign sales of uranium as an integrated whole.

That appears in several instances in the documents, and I will submit them at this point for the record and in writing to you, gentlemen, and you may be able to respond at that time.

[See appendix B, p. 641.]

Mr. WALGREN. The critical problem I see is in the minutes of the Canadian uranium producers' meeting held September 5, 1972, with copies to Mr. Ediger—who I understand at that time was the president of Gulf Minerals Canada——

Mr. MCAFEE. He would have been vice president or general manager. I'm not sure which.

Mr. WALGREN. And I understand a copy to other officials involved.

The minutes report that they then reviewed what was known about negotiations between Sweden and U.S. Westinghouse.

There followed a general discussion of the impact of Westinghouse's bidding in Europe. It was believed that the maximum amount of uranium available to Westinghouse at that moment was 3,000 tons, considerably less than that required to fill Sweden's order.

Some members thought Westinghouse should be approached directly, whereas others' 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.

And those are the operative words: as a prelude to eliminating the competition once and for all.

Following that, Gulf's reaction to that was not what is revealed in the documents. Some Australian producers did not want to push the club's prices on the Japanese, on a moral basis.

Gulf's response to that was that: "We should really take note that this involves possible predatory action against American interests."

Mr. MCAFEE. May I ask what you are reading from?

Mr. WALGREN. This is a letter from Roy Jackson to Frank O'Hara, Esq., October 11, 1972. It is on the letterhead of Oil Insurance Ltd., Hamilton, Bermuda [see appendix A].

I understand Mr. Jackson was in the capacity of giving legal advice on an ongoing basis to Gulf throughout.

Mr. Jackson says that we should be sure—and that is paraphrasing—that this involves possible predatory action against American interests.

Then he goes on to say that Gulf should play along with the game, regardless of the predatory actions.

The words are as follows:

> My inclination is that Gulf's representatives should always record their strong objection and total disagreement with any such predatory cartel action affecting, or intending to affect, American trade or commerce—

But—and the "but" is mine—

> I do not think that recorded expressions of this sort will seriously hurt Gulf as far as the Canadian Government is concerned, and 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.

My problem is that if that is the reaction of Gulf to a direct statement of eliminating the competition and Westinghouse's role in that competition—if that is the reaction of going along with that kind of

approach out of economic necessity or being compelled—then it seems to me to raise serious questions about the range we should give our corporations in multinational energy enterprises.

Mr. McAfee. Are you inviting me to respond?

Mr. Walgren. Yes.

Mr. McAfee. Thank you.

With the greatest respect, the interpretation that you have given to what you have read, I believe, would be a complete misrepresentation of Gulf's attitude and Gulf's approach.

I would rather summarize it, sir, as being a further indication of Gulf's genuine and sincere and consistent and continued interest in making certain that all of her actions in this regard were completely in accordance with the laws and best moral business practices that we can possibly bring to bear.

Mr. Moss. The gentleman's time has expired.

Mr. Walgren. May I ask unanimous consent to enter into the record at this point (see p. 627) a memorandum from Mr. Fowler of Domestic Uranium Sales?

Mr. Moss. Under the previously agreed-upon right to enter the documents into the record, it is not necessary to individually request, unless they are items not previously before the members.

Mr. Walgren. Thank you.

Mr. Moss. The Chair recognizes the gentleman from Texas, Mr. Collins.

Mr. Collins. Thank you, Mr. Chairman.

What uranium mines does Gulf have in the United States?

Mr. McAfee. Unfortunately, we have none yet in operation, Mr. Collins. We are digging one mine in New Mexico, which is hoped to go into production late this year. We are in the midst of building a mine at Mount Taylor, which will be a very large mine, a very complicated one, and a very deep one. We have some other properties which we hope eventually to develop in the——

Mr. Collins. Have you been engaged in marketing or selling any domestic uranium in this country?

Mr. McAfee. Through General Atomic, at one stage of the game, we were hopeful of being able to develop a competitive reactor system to the ones conventionally——

Mr. Collins. General Atomic is 100-percent subsidiary?

Mr. McAfee. It was at one time; it is not now. It is a joint operation with——

Mr. Collins. Where is, just for general information—I didn't know much about uranium until 1 week ago when our counsel made a very intensive study—the uranium produced in this world?

Mr. McAfee. Let me answer your first question first, and then I will come back and deal with that.

Gulf has engaged, through General Atomic, in the buying and selling of some uranium in connection with our development of the HTGR reactor.

Mr. Collins. Where did you buy this uranium?

Mr. McAfee. Some of it in the United States; some of it elsewhere.

Most of the uranium produced in the world, to answer your next question—and I am not a uranium expert—certainly the major pro-

ducers are the United States, Canada, South Africa, France, and Australia.

Mr. COLLINS. What percent of the uranium in the world is produced in the United States?

Mr. MCAFEE. I don't have that figure.

Mr. COLLINS. Do you what percent we——

Mr. MCAFEE. Do you know, Mr. Zagnoli?

Mr. ZAGNOLI. I don't believe I can come up with——

Mr. COLLINS. Do you know what percent we consume in the United States?

Mr. MCAFEE. No, sir; I'm sorry. I am not that much of an expert. Those numbers are readily available. If you are seriously interested, we will be glad to get them for you.

Mr. COLLINS. Since 1971, have we increased our imports of uranium?

Mr. MCAFEE. Well, no. As I tried to bring out——

Mr. COLLINS. The United States.

Mr. MCAFEE. Since the early 1960's, and until the beginning of this year, there has been an absolute embargo on the importation of uranium from foreign sources into the United States.

Only the beginning of this year, it was raised to a very gradual extent. So there has been no importation of foreign uranium.

Mr. COLLINS. Have you heard or have you taken part in any cartel discussions within the continental United States regarding uranium?

Mr. MCAFEE. No—nor anywhere else.

Mr. COLLINS. I don't know much about cartels, but I'm from an oil and gas State—we don't have any uranium down in my State—but I tell you we have the greatest cartel in the world in oil.

When they talked about 700 percent, 10 years ago this oil was selling for $1.80 to $2, and this cartel has taken it up to $14.50.

Mr. MCAFEE. I may go back a little farther than you. I go back to east Texas at 10 cents a barrel.

Mr. COLLINS. That was back when it was in a free market. I wish they'd go back to that price myself.

Mr. MCAFEE. So do I.

Mr. COLLINS. Going back to reviewing cartels, this is something that concerns Congress very, very much. And the chairman is to be congratulated on how deeply we have gone into it.

Mr. MCAFEE. I agree.

Mr. COLLINS. In this cartel, this wasn't exactly a secret. We find out from our report that Nucleonics Week was reporting it in 1971; Wall Street Journal was reporting it in 1972.

Mr. MCAFEE. Yes, sir.

Mr. COLLINS. That the cartel existed.

You thought at the time that you were meeting the laws of the United States? Your officers thought you were meeting the laws of the United States?

Mr. MCAFEE. Yes, sir.

Mr. COLLINS. What brought on this U.S. embargo then?

Mr. MCAFEE. That embargo had been imposed many years before, in the early 1960's—I don't know the exact date—in order to protect the then-distressed U.S. industry which was overproduced, and the

price was below production costs. It was the U.S. device to do the same thing that Canada tried to do through this international marketing arrangement, which was to keep the domestic industry viable. It is a perfectly legitimate objective.

Mr. COLLINS. Did any other U.S. oil companies engage in production of uranium in Canada?

Mr. MCAFEE. I'm not aware of any other—unless you call INEXCO an oil company. They have some oil production, and they are also involved in uranium exploration.

Mr. ZAGNOLI. Yes; they have a deposit but no production.

Mr. COLLINS. We have had experience with Gulf before, and it is interesting to hear you say that you all are getting the highest price.

We had a hearing on Gulf about 3 months ago where you all hit an alltime jackpot low price. If you remember, that was in southern Louisiana where you contracted to deliver gas for 25 cents.

Mr. MCAFEE. Twenty-one cents.

Mr. COLLINS. I thought it had escalated to 25.

Mr. MCAFEE. Not yet.

Mr. COLLINS. You are paying 21 cents, and the going rate is $1.42.

Mr. MCAFEE. We are not paying, Mr. Congressman, we are selling it at that price, in accordance with our contract.

Mr. COLLINS. Against——

Mr. MCAFEE. $2 going market.

Mr. COLLINS. I thought it was $1.42 on interstate?

Mr. MCAFEE. But intrastate better than $2.

Mr. COLLINS. This is interstate gas, though.

So you don't do too much planning about how you take care of future markets. I'm surprised they have you figured that you are trying some way to regulate.

Have either of you ever participated in any type of cartel discussion directly?

Mr. MCAFEE. No.

Mr. ZAGNOLI. I attended two meetings of the Canadian producers under the auspices of the Canadian Government.

Mr. COLLINS. The Canadian Government arranged this meeting?

Mr. ZAGNOLI. Yes. It ran the meeting.

Mr. COLLINS. Was it press attended?

Mr. ZAGNOLI. No, sir.

Mr. COLLINS. Was it a closed-door meeting?

Mr. ZAGNOLI. Yes.

Mr. COLLINS. Why was it a closed-door meeting?

Mr. ZAGNOLI. I don't believe I can——

Mr. COLLINS. Were you on the program?

Mr. ZAGNOLI. No.

Mr. COLLINS. Let me ask something about the net profits—how much Gulf Minerals means to Gulf as a corporation. What percent of your net profits come from this Gulf Minerals subsidiary?

Mr. MCAFEE. I am pleased to be able to report that in 1976, for the first time, it got into the black—just barely.

Mr. COLLINS. We've been talking about you all just cleaning up at this deal. How come you're not making money? You sound like you are losing money in this subsidiary.

Mr. McAfee. Unfortunately, that has been the case up until now.

Mr. Moss. Would the gentleman yield?

Mr. Collins. I would be glad to yield to the chairman.

Mr. Moss. I think in fairness to this record and to this committee, there has been no charge that anyone has been cleaning up. This is an effort to determine the facts. We have not yet published any conclusion.

Mr. Collins. The chair is absolutely correct.

That is just my assumption. When I read this, there were sure some strong allegations.

When we took a price from $5 to $40—and in the statement it said that your costs were $6.50 and yet the price of uranium had gone from $5 to $40—what were you doing up there that you were losing money?

Mr. McAfee. We were just getting into production.

As I indicated in my statement, the Rabbit Lake project was begun in 1972 or 1973 and was not brought onstream, due to the time required for construction, until the middle of 1975; 1976 was really its first full year of production.

Mr. Collins. So as far as the parent company has been concerned, you have been ending up either advancing or guaranteeing loans or working capital for this corporation in order to expand its losing operations?

Mr. McAfee. We have been advancing the funds necessary for the construction, yes, sir.

Mr. Collins. Thank you, Mr. Chairman.

Mr. Moss. The time of the gentleman has expired.

The Chair recognizes the gentleman from Tennessee, Mr. Gore.

Mr. Gore. Thank you, Mr. Chairman.

Sometimes it is hard to even answer a friendly question. I noticed your difficulty in explaining why it was a secret meeting.

Mr. McAfee. We have had no problem at all answering any of the questions, Mr. Congressman. We'll do the best we can.

Mr. Gore. I wanted to clear up one item which the Wall Street Journal referred to in 1972.

It described a secret meeting, and the facts of the cartel were not included there.

I wanted to clear up another point. You keep saying there was an embargo on importation into the United States.

Mr. McAfee. Yes, sir.

Mr. Gore. Was there really an embargo on importation?

What if a company bought uranium—imported it—stockpiled it—and didn't use it. Was that prevented?

Mr. McAfee. I'm not an expert on it. Mr. Zagnoli may know. It was my understanding.

Mr. Gore. Well, it wasn't prevented.

Mr. Zagnoli. I don't think it was.

Mr. Gore. You're not trying to tell us that no U.S. utilities signed contracts with members of the cartel during this period are you?

Mr. McAfee. I can't speak to that, but I do know that if they had signed contracts, my understanding is they wouldn't have been allowed to fulfill the contracts and bring the uranium in that they bought.

Mr. GORE. You are mistaken on that.

Mr. MCAFEE. Thank you for correcting me, but you don't mind if I check it, do you?

Mr. GORE. Sure. I would request permission for the record to be held open.

Mr. MOSS. We will not only hold the record open for the submission of Mr. McAfee but we will also hold the record open to receive some factual data the committee has in its possession which clearly sets forth the conditions as outlined by the gentleman from Tennessee.

Mr. GORE. Thank you, Mr. Chairman.

[The following material was received for the record:]

The following partial rendering of domestic purchases from foreign suppliers was provided to the Subcommittee by the Energy Research and Development Administration on June 23, 1977

FOREIGN U_3O_8 PURCHASES BY DOMESTIC BUYERS[1/]

Buyer	Seller	Tons U_3O_8	Delivery Years	Approximate Contract Date	Remarks
Carolina Power and Light	Uranex (France)	4,075	1977-1985	5/73	Total Value $60 million
Duke Power	Rio Algom (Canada)	10,000	1981-1990	9/74	
Tennessee Valley Authority	Rio Algom (Canada)	8,500	1979-1990	9/74	
W.P.P.S.S.	Rio Algom (Canada)	500	1975-1976	5/75	$22/lb. price
Commonwealth Edison	Mary Kathleen (Australia)	2,700	1974-1979	8/70	Total Value $35 million

1/ As reported in the press and contained in our files.

Mr. GORE. In fact, the people that I represent in Tennessee get their electricity from TVA. TVA signed a contract with a cartel member on August 13, 1974, for 17 million pounds of uranium. The price was pegged to the world market price.

The consumers of electricity in Tennessee have been unknowingly paying money to the cartel because of price fixing, which Gulf apparently participated in.

Now if they bought uranium from a cartel member, with the price being pegged to the world market price, and you participated in fixing what the world market price is, now doesn't that affect U.S. customers. We are paying money to you on prices that you all fixed.

Mr. ZAGNOLI. If there is fixing here, it was done by governments. For example——

Mr. GORE. Did you participate in the meetings—did Gulf participate in the meetings?

And agreed to the price that was fixed—correct?

Mr. ZAGNOLI. I don't know. I did not personally attend the meetings where the prices were discussed.

Mr. GORE. The fact remains that TVA consumers are paying a price that was fixed by the participants in the cartel.

Now we can explore the compulsion argument if you want a little later on. I think that's a sham also.

Mr. MCAFEE. May I respond to your question, also, Mr. Congressman?

Mr. GORE. Sure.

Mr. MCAFEE. I think it does need very much further exploration as to the other terms of this contract that you referred to. I'm not personally familiar with them. I would hate to leave the impression that we agree with your allegation, because I just don't believe that's the way it is.

I do not believe——

Mr. GORE. We have held the record open.

Mr. MCAFEE [continuing]. That any of the actions of the marketing arrangement had any influence on domestic uranium markets.

Mr. GORE. You see you assumed that when the cartel started, but it didn't turn out that way. Gulf goofed.

Mr. MCAFEE. I'm not prepared to accept that.

Mr. GORE. I think that Gulf is on thin ice here really, because you assumed that the embargo kept domestic power producers such as TVA from contracting for future delivery of uranium. It did not.

First of all, this TVA contract had a force majeure clause in it, so that even if the embargo was not lifted in 1977, they were still obligated to pay for the uranium from R.T.Z.

Mr. MCAFEE. It was R.T.Z. they bought it from—not Gulf. That is clear isn't it, Mr. Congressman?

Mr. GORE. Let's get to Gulf then.

There was a second contract between TVA and Uranerz. You are in a joint venture with Uranerz.

Mr. MCAFEE. They are the Western partners.

Mr. GORE. This contract was signed on August 9, 1974, for delivery of 1.5 million pounds—delivery in 1978.

Gulf is in a joint venture with Uranerz.

TVA has confirmed to me this morning that the uranium that they are going to receive from Uranerz is from the Rabbit Lake deposit, which is being developed in a joint venture with Gulf and Uranerz.

The price was set for delivery in 1978 at $12.50.

In a meeting in Johannesburg, South Africa, on January 28, 1974, Gulf representatives participated with representatives from other companies to fix the price of uranium.

For uranium delivered in 1978, the cartel fixed price was $12.50.

Is that a coincidence?

Here we have a joint venture with Gulf—your company—and Uranerz selling uranium to TVA at a price that was fixed behind closed doors in South Africa by you and your so-called competitors.

Mr. McAfee. It sounds to me at $12.50 TVA got a bargain. The present going price is $40.

Mr. Gore. As a matter of fact, the cartel fixed price set a floor above which the U.S. market constantly kept jumping.

The market is a very complex one, as both of you are well familiar—I'm sure more so than I am.

But the cartel price and the U.S. price were intimately related.

Mr. McAfee. May I just correct that statement.

The facts are, and I believe the record will show it, that actually in recent years, the world price and the U.S. price have been well above any number that has been referred to, to my knowledge, under the marketing arrangement.

Mr. Gore. What you are saying, if I'm not mistaken, is that the TVA got a bargain because the cartel fixed price was lower than the present price. The cartel turned out to be more successful than anyone dreamed it would be, and the price eventually went higher. Because the cartel set a lower price, TVA supposedly ended up getting a bargain.

Is that your response?

Mr. McAfee. That's not what we are saying at all.

What we are saying is that the other factors that I mentioned so completely overrode any effect that the cartel might have had that it had no effect whatsoever, and the cartel price is academic at best.

Mr. Gore. However, these events involving the cartel occurred before many of the other factors that you are talking about.

Mr. Moss. We will suspend for 10 minutes.

[Brief recess.]

Mr. Moss. The subcommittee will come back to order.

The gentleman from Tennessee, Mr. Gore, has 1½ minutes remaining.

Mr. Gore. Thank you, Mr. Chairman.

Just to go over briefly a couple of points, the TVA contract was one of only several with utilities in this country which we entered into with members of the cartel during the period in question. It is a little mistaken to say that the embargo was one against importation. Many contracts were signed and many customers were obligated to pay millions of dollars and they are obligated to pay the prices fixed by this cartel. The price in the TVA contract which was fixed by the cartel in Johannesburg was presented to the cartel by the representative from Gulf, Mr. L. T. Gregg, who will testify here later and perhaps he can confirm this for the record. This is the information I have.

It affected U.S. commerce in many, many ways. One of the ways in which it affected it was that TVA put out requests for bids in 1973. They asked many producers to bid a price at which they would sell TVA uranium. Gulf and 51 out of the 53 contacted refused to bid.

Gulf was asked why it refused to bid and I'd like to enter into the record, Mr. Chairman, a copy of the deposition that the subcommittee staff has subpenaed where Mr. Gregg says that Gulf did not respond because it was a part of the contract that TVA would require Gulf to swear that they had not discussed the price that they were proposing with any of their competitors. And it says,

> One of the terms and conditions we objected to was the fact that you had to sign a certificate stating that you had not discussed the price you bid to TVA with anyone else. It was our practice when we quoted to a U.S. customer not to discuss the price with anyone else including the Canadian Government. We kept our U.S. activities entirely to ourselves. However, we felt the case could perhaps be made that because we were members of the club that any price we quoted to TVA by association would have been discussed with others. Therefore, we could not sign that certificate.

TVA asked Gulf afterwards about the world market price. They said how do you arrive at the world market price. Gulf replied in a letter to Mr. Eric Kvaven, who is the head of TVA's Division of Purchasing in the Nuclear Procurement Branch, "While we do not pretend to have had a great deal of experience along this line," in determining the world market price, "nevertheless, we have had some." He offers his views based upon that experience [see letter dated May 24, 1973, appendix F].

What Gulf has done, and other companies, is meet behind closed doors to fix the price of uranium. That price was charged to consumers of electricity in this country. The charge that they were required to do so by the Canadian Government is one which will be explored in much greater detail throughout this hearing. As I said earlier I think that charge is also a sham. In the next round of questioning, Mr. Chairman, I'd like to proceed along that line.

Mr. Moss. The Chair recognizes the gentleman from Pennsylvania, Mr. Marks.

Mr. MARKS. Thank you, Mr. Chairman.

Is this organization still in existence?

Mr. MCAFEE. It is not.

Mr. MARKS. When did it go out of existence?

Mr. MCAFEE. Effectively, in 1974, Mr. Congressman. I'm told there were some formalities that extended over into 1975.

Mr. MARKS. What brought about its termination?

Mr. MCAFEE. The fact that the world price so completely and utterly outstripped the ideas then existing as to what the world price should be. It just got completely beyond the realm of anybody's ideas as to what the price might have developed as a result of these other factors which I endeavored to point out in the course of my statement.

Mr. MARKS. Do you mean by that the price rose to a very high degree; is that what you're talking about?

Mr. MCAFEE. That is what I was talking about. In addition to that I have no other information. I'm not the expert on why the members of the arrangement decided to discontinue. That's their business.

Mr. MARKS. As I understand it Gulf was a part of that arrangement.

Mr. MCAFEE. At the direction of the Canadian Government, yes.

Mr. MARKS. However they came to be. But my question was going to be: Was Gulf instrumental in the termination of the arrangement, as you call it, or the cartel?

Mr. MCAFEE. I do not know.

Mr. MARKS. Was there a meeting, a formal meeting, of some sort in which it was determined that the cartel would in fact terminate it?

Mr. MCAFEE. I do not know.

Mr. MARKS. Can you give us some idea what the price was at that time when the cartel was dismantled?

Mr. MCAFEE. The price is a historical thing and it's a matter of looking up what it was whenever you consider that the effective termination took place. I just don't happen to have that at my fingertips. It was something in the neighborhood $10 or $12 a pound.

Mr. Moss. Would the gentleman yield briefly? The Chair would like to note the presence of the distinguished speaker of the State Assembly of the State of New York, the Honorable Stanley Steingut.

Mr. Speaker, would you care to join the committee? We would be very pleased to have you.

I thank the gentleman for yielding.

Mr. MARKS. Mr. McAfee, has there been any thoughts given to reorganizing this cartel?

Mr. MCAFEE. Not to my knowledge.

Mr. MARKS. Did Gulf participate with the other members of this organization in its dismantling? Was there a meeting of some sort to formalize it?

Mr. MCAFEE. You asked that question a minute ago and the answer was no then and it's still no, Mr. Congressman.

Mr. MARKS. Counsel suggests that I ask Mr. Zagnoli. Perhaps he would know as to how this organization was in fact terminated.

Mr. ZAGNOLI. I don't know but I'm quite certain that we didn't have any meeting or any other event that dismantled it.

It wasn't formal. It was the Canadian regulations.

Mr. MARKS. Mr. McAfee, in your statement you state that, on page 7, if I may read from that statement, "Greater pressures were then applied by the Canadian Government for GMCL to attend these meetings. Push was turning to shove. The record shows that the Canadian Government and the uranium producers were of the opinion that Gulf was overly sensitive to the cartel and U.S. antitrust implications. Indeed, we were. At no time did GMCL voluntarily seek to become a part of any producers arrangement. It was compelled to do so."

Would you recite for us again what compelled you to do it at that time?

Mr. MCAFEE. Before I do, Mr. Congressman, may I correct one thing? You're quite right that in the preliminary draft of the statement that I submitted the words are as you read them. As I edited them last night for clarity I changed the words "indeed, we were" to say "sensitive we were" to emphasize the fact that we were indeed

sensitive. I went on to say that whether we were overly sensitive or not is a matter of judgment.

Your question as to what the additional pressures were; is that your question?

Mr. MARKS. Yes.

Mr. MCAFEE. At this time I wasn't intimately involved, of course, as I have already pointed out. I am certainly aware that there were continuing indications from the Canadian Government that they wanted to set up this arrangement and they very definitely required Gulf's participation in it.

Mr. MARKS. What would have happened to Gulf if you hadn't participated?

Mr. MCAFEE. That's a hypothetical question and of course I don't know.

Mr. MARKS. I must assume that the company gave that some consideration at the time they decided to go along.

Mr. MCAFEE. We did. Some of the possibilities would include the elimination of our permit to mine. We very well could have been allocated an uneconomic level of production which would have made our project completely uneconomic. After all, we were building a plant that would process some 4½ million pounds a year of uranium.

Mr. MARKS. Were either of those two reasons or suggestions ever given to Gulf by the Canadian Government where they were told to?

Mr. MCAFEE. I'm not aware of any specifically.

Mr. MARKS. Would there be anybody here who would be able to answer that specifically?

Mr. MCAFEE. You might ask Mr. Zagnoli.

Mr. MARKS. Perhaps Mr. Zagnoli would like to answer that.

Mr. ZAGNOLI. The Canadian Government never explicitly stated what they would do if we didn't follow their regulations. But the message was very clear that the Canadian Government had determined that it was in the national interest to do what they were doing and they were directing us to do it. If I were to speculate on what would have happened, I guess the end result is that we couldn't have been in business in Canada. I don't know how we could be in business in Canada and not follow the lawful directives of the Government of Canada.

Mr. MARKS. On page 8 of the statement that you made, Mr. McAfee, you state:

> Thereafter, a final corporate determination was made that no laws were being violated and the suggestion was considered within the company that we seek a U.S. Justice Department ruling on the matter was dropped.

Mr. MCAFEE. Yes, sir.

Mr. MARKS. I don't think it has been made clear enough to us today the process that was used at that time. From your statement it would appear that the Justice Department's memoranda came in January of 1972 but it would appear as if you had perhaps already made that decision before you received the Justice Department's memoranda. So I'm wondering if you could explain to us or someone could explain to us what the procedure was that was used to make the determination that you need not at that point go to the Department of Justice or any other bureau of Government in the United States?

Mr. ZAGNOLI. This determination evolved over a period of time. It was finally concluded in about September of 1972. We had legal counsel and the legal judgments came before the final business decisions were made.

For example, we had a legal review when we were, in my words, ordered to go to Paris in April of 1972. It was determined that on the facts known then that we could go to the meeing without violating the law.

Mr. MARKS. May I ask you, sir, when was the decision made in point of time? I think that's not clear from the statement that Mr. McAfee gave.

Mr. ZAGNOLI. I was just going to say that was ad hoc. That is what we decided.

When Johannesburg came up, again with the directive to go to Johannesburg, the same process was followed. There was a legal review. We would follow the direction of the Canadian Government and be represented at Johannesburg.

Then in August Canada adopted and announced that in effect the rules of the club would be the rules that would guide us. It was stated. It was promulgated. It became the regulation of Canada. Shortly thereafter we received the final written legal opinion that this would not violate U.S. law.

Mr. GORE. Would the gentleman yield?

Mr. MARKS. I would be glad to yield.

Mr. GORE. Thank you, Mr. Marks.

I didn't want the impression to be left that this Justice Department memorandum was directed at Gulf. This memorandum is conditioned on the fact that it not have any impact on U.S. commerce which this arrangement did. It was not directed at Gulf. This is just something in the reams and reams of documents that the Justice Department puts out that your antitrust lawyers dug up after the fact; is that not the case? It wasn't directed at Gulf; was it? It was not in response to an inquiry about your participation in this cartel?

Mr. MCAFEE. Not to my knowledge.

Mr. GORE. I wanted to clear that up.

Mr. MOSS. The time of the gentleman has expired.

The Chair recognizes the gentleman from Nevada, Mr. Santini.

Mr. SANTINI. Thank you, Mr. Chairman.

I wish to include in the record at the inception an extraction from "Commodity Data Summaries—1977—Bureau of Mines," page 183.

Mr. MOSS. Without objection the material will be included in the record at this point.

8. Events, Trends, and Issues: Domestic uranium production increased substantially in 1976 and is expected to continue rapid growth in the next decade to meet the requirements of commercial power reactors. Demand for uranium is expected to increase at an annual rate of about 15% through 1980. Higher uranium prices have been a major incentive leading to increased exploration activity and development of new mine and mill capacity. Open pit mines currently dominate ore production, but by 1980 underground mines are expected to dominate output because the lower-cost reserves are located at greater depths. Recovery of uranium by percolation leaching and solution mining and from phosphate rock processing is expected to increase substantially in the next few years.

A possible shortage of uranium supplies in the long term is a major concern of the electric power industry. ERDA is conducting a nationwide survey to evaluate domestic uranium resources. A preliminary report was issued in 1976. Successful development of the breeder reactor and the reprocessing of fuels would ease demand for uranium later in the century.

Uranium enrichment remained an exclusive operation of the Government through ERDA; however three private groups have announced plans to enter the enrichment business provided the necessary legislation is approved. Development of fuels-reprocessing and waste management industries continued to await policy and licensing decisions.

Slippages in nuclear powerplant schedules continue owing to licensing delays, increased costs, shortages in equipment, supplies, and labor, and reduced growth rates for electricity.

9. World Concentrate Production and Reserves:

	Production		Reserves
	1975	1976 e/	(@$30 per lb.)
United States	11,600	13,500	640,000
Australia	-	500	430,000
Canada	4,631	7,600	225,000
France	2,228	2,200	71,000
Gabon	1,209	1,200	26,000
Niger	1,820	2,000	65,000
South Africa, Republic of and Territory of South-West Africa	3,096	3,200	359,000
Sweden	-	-	390,000
Other Market Economy Countries	e/450	450	243,000
Central Economy Countries	NA	NA	Moderate
World Total	e/5/25,034	5/30,650	2,400,000

10. World Resources: In the United States, economic deposits and most resources are found chiefly in sandstones and associated rocks. Low-grade, high-cost, domestic uranium resources in black shales and phosphorites are large, but production from these sources would require the mining and processing of vast quantities of rock with potential environmental impacts. ERDA estimates that U.S. potential resources at $30 per pound U_3O_8 total 2,920,000 tons U_3O_8 of which 1,060,000 tons are probable resources (those estimated to exist in known uranium mining districts). Available data indicate that U.S. reserves and probable resources at $30 per pound U_3O_8 are adequate to supply fuel over the 30-year lifetimes of all existing, planned, or projected reactors expected to be in domestic service by 1990.

The largest foreign deposits are mainly in quartz-pebble conglomerates and veins; however, many of the foreign uranium deposits currently under development occur in sandstone, calcrete, and igneous rock.

11. Substitutes and Alternates: There are no readily available substitutes for uranium in the production of nuclear fuels; however, thorium and plutonium are used to supplement uranium fuels in reactor research. Lead and other dense metals substitute for uranium in non-nuclear applications.

Excerpt from Commodity Data Summaries,
Bureau of Mines, January 1977

Mr. SANTINI. I will quote in part because it discusses a point of some particular magnitude, I believe.

A possible shortage of uranium supplies in the long term is a major concern of the electric power industry. ERDA is conducting a nationwide survey to evaluate the domestic uranium resource. A preliminary report was issue in 1976. Successful development of breeder reactor and the processing of fuels will ease the demand for uranium later in this century.

I observe in conferences with Bureau of Mines representatives that 1977 will be the first year that the United States will find itself in the posture of importing rather than exporting its domestic uranium supply. The problem is essentially one of where are we going in the balance of the 20th century with this critical resource. This resource and many others are posing some very critical dilemmas for the Nation in terms of its reliance and for its business representatives in terms of which course they are going to plot.

Copper is a classic illustration—15 percent dependent, subject to at least significant potential of cartel response in the copper arena. Lead, zinc, and every mineral, fuel or nonfuel, that we pursue creates this dilemma. I will say at the inception that I approach, I hope, with an objective frame of mind but you test and strain that objectivity seriously. You suggest that in 1972 when you were contemplating involvement in this obvious arena of delicate legal implications that you made a preliminary legal decision to seek advice and guidance from the U.S. Department of Justice. Then in the context of what has to be federally construed as self-serving internal business and legal judgment, the decision was made not to pursue any specific guidance from this Government with regard to the implications in terms of its antitrust laws and to proceed willy-nilly or "at risk" down your own course of international involvement in a judgment that I think your predecessors will probably rue for a long time to come.

This case offers itself as a precedent that will guide our future business interests and our future concerns about mineral resource involvement in the world market. It is extraordinarily difficult for me to accept as genuine, sincere, or moral the decision in 1972 to get into this whole cartel mess or potential legal mess. It was made without seeking one iota of guidance, advice, opinion as to that specific involvement at that specific time in the Canadian proposal.

You have set your premise twofold in terms of defense—and I think defense is probably an appropriate characterization at this time. Your fountainhead is compulsion, one; impact, two. If either one of these two defenses collapses then so does your culpability or responsibility in terms of this involvement. I think the no-impact is tenuous. I think the compulsion is the stronger of your two arguments because there is no question that that is involved.

In the context of compulsion why in God's name did you not seek any kind of advice, guidance, direction in terms of an objective entity of the U.S. Government—the Justice Department—about the legality or illegality and eliminate the necessity of us even being here today?

Mr. MCAFEE. May I comment, Mr. Chairman, in response to the gentleman's statement?

Mr. MOSS. The gentleman has asked you a question and you may, indeed, comment.

Mr. MCAFEE. Thank you.

The gentleman has expressed a number of judgments and opinions to which, of course, he is entitled. I would disagree with at least some of those judgments. I would like to correct the record to make it very clear that we did not proceed "willy-nilly" without seeking advice and counsel. We sought the best advice and counsel that we could seek. There may be differences of opinion as to the stature of the legal firms that we employed for this purpose both in Canada and the United States. But it was the best we knew to do.

Mr. SANTINI. Did you seek any independent, outside, objective, if you will, advice or guidance in terms of your role in this business?

Mr. MCAFEE. We did. We used that advice very assiduously.

Mr. SANTINI. Where did you obtain that objective advice?

Mr. MCAFEE. The outside firm we used principally was the firm of Howrey & Simon. They are well respected in legal circles, particularly in dealing with antitrust matters.

Mr. SANTINI. Did they prepare a memorandum and submit it to you in regard to your legal inquiry?

Mr. MCAFEE. Not to me because I was not directly involved.

Mr. SANTINI. Did Gulf receive a memorandum of opinion with regard to the legality of their involvement in this issue?

Mr. MCAFEE. I believe that is true.

Mr. SANTINI. Mr. Chairman, is it possible that we could have the privilege of examining that document?

Mr. MCAFEE. You're getting into a legal matter now and I am not the one that ought to answer that question.

Mr. MOSS. The Chair makes an interim ruling to leave it to the judgment of Gulf. They have represented that they sought sound legal advice. If they sought it and received no memorandums setting forth that advice then in the chairman's judgment they were indeed foolish. If they want the record to reflect that they were foolish that is their choice and not mine.

So, at the moment the Chair will not require the matter. We will take it under advisement for a final ruling later.

Mr. SANTINI. I thank the Chair and I pursue the matter because it has been offered as a defense or an explanation in terms of the judgments that were exercised at that time and place in terms of involvement in this particular cartel relationship.

Mr. LANDES. Would the gentleman yield for a question?

I'm not familiar with the Justice Department's procedure but is there such a procedure where some company who is about to engage in some form of business that is questionable can go in and submit this—lay this before the Justice Department and get a ruling in advance?

Mr. SANTINI. I am informed that informal opinions are sought and pursued on many different variety of issues and certainly antitrust is one of those.

Mr. LANDES. There is no compunction in any event on the company to go forward and seek such an opinion?

Mr. SANTINI. No, there would be no legal requisite to follow the opinion. I am advised, however, that there would be a great deal of solace and comfort if the opinion were favorable. There would be a negative reaction if the opinion were unfavorable.

My point is that it appears that a business judgement was made not to even seek that opinion or guidance for fear that in the context of an unfavorable response that they would not then be able to pursue what has been characterized as the Canadian Government mandate in this area. So they chose not to get outside advice, opinion, or reaction from a governmental agency but rather to employ an outside law firm who in terms, I assume for a fee, would respond objectively to whether or not they could or could not save their investment in Canada.

Mr. Moss. Will the gentleman yield?

Documents already referred to and now included in this record show that for a period of at least 4 months Gulf considered following the course the gentleman has suggested and then abandoned that and sought the opinion of the outside counsel.

Mr. McAfee. If I may say so, you are indulging in some conjecture as to what those reasons were for making that change in business procedure.

Mr. Moss. The conjecture is the privilege of the member and the Chair is stating that following the rules.

Mr. McAfee. I accept that ruling, Mr. Chairman.

Mr. Moss. The gentleman may continue.

Mr. Santini. I would pursue the thought process one step further. I think there is a test of reasonableness here that we can apply in assessing the facts that have been advanced and developed to date on this issue. What would have been a reasonable business legal judgment in the context of 1972 in the decision that Gulf had to make? I think the reasonable course to pursue would have been to seek some objective guidance from the governmental agency charged with enforcing antitrust laws of whether or not there would be a violation.

I think to refuse to obtain that advice or to make a business judgment not to seek that advice suggests that there was something less than total good faith in the pursuit of this business endeavor because it was apprehended that if the advice were negative you would be caught between the rock and the hard place. You would have to then divest yourself of further involvement in your Canadian uranium enterprises. I appreciate that that would have adverse business consequences but it would have avoided the legal pitfalls that were elected to be pursued as a matter or risk—and risk it was—that you have chosen here.

Mr. Moss. The time of the gentleman has expired.

Mr. Santini. May I ask unanimous consent, Mr. Chairman, that Mr. McAfee could be permitted to respond?

Mr. Moss. Is there objection? Hearing none, the Chair recognizes Mr. McAfee for response.

Mr. McAfee. Mr. Chairman, thank you. The gentleman has stated a number of opinions with which I respectfully disagree.

Mr. Moss. The Chair recognizes the gentleman from New Jersey, Mr. Maguire.

Mr. Maguire. Thank you, Mr. Chairman.

There has been a good deal of discussion thus far this morning back and forth about various aspects of this case. I want to just review very briefly what I think are several obvious facts.

First of all, I take it that there was cartel; correct?

Mr. McAfee. You may term it as such. As we have clearly stated in our submission, Mr. Congressman, there was an international intergovernmental marketing arrangement.

Mr. Maguire. Mr. McAfee, the documents of the Gulf companies involved repeatedly refer to this as a cartel; is that not correct?

Mr. McAfee. I understand that's correct.

Mr. Maguire. So it was, in fact, a cartel?

Mr. McAfee. It's a matter of definition.

Mr. Maguire. Is it also correct that the Gulf Minerals Resources of Canada, Ltd., company participated in that cartel?

Mr. McAfee. Gulf Minerals Canada, Ltd., was the name of the company. It was a Gulf subsidiary which was required by the Canadian Government to participate.

Mr. Maguire. It is also true that this cartel did in fact fix prices of uranium in the international market; is that not correct?

Mr. McAfee. I understand that to be the case. I cannot speak from personal knowledge.

Mr. Maguire. In looking back over the record you have come to that understanding?

Mr. McAfee. Yes.

Mr. Maguire. I am very concerned as I think all my colleagues here are about the failure of Gulf to go to the Justice Department in 1972 to discuss the matter. You have said that it rose out of your decision that the issue was not one that was unclear but rather one that was clear and there was no problem. Nevertheless, the public interest is involved here as well and that whatever degree of clarity you might have had with respect to how you thought the situation sorted itself out that it would have been advisable, would it not, to have checked with the authorities at the Justice Department or elsewhere who might have had a responsibility to protect the public interest.

Mr. McAfee. We are, indeed, very much concerned—just as much, with respect, as any member of this committee or anyone in this room—with public interest. It was a matter of judgment and perhaps the judgment was wrong. But the fact of the matter is in our judgment we concluded—I was not personally involved—but the corporation concluded that all things considered seeking specific clearance for this particular enterprise was not necessary at the time under the circumstances.

Mr. Maguire. Mr. McAfee, I have reviewed the documents and I found that during the spring and summer of 1972 there was increasing concern among officers of your company with respect to the legality of the situation—not decreasing concern—increasing concern.

On April 19 there was a memorandum which said that, "All participation and any discussion by Gulf be conditioned upon subsequent clearance by U.S. authorities." That was described as a possible break point. Clearly that is what people were talking about at that time.

We subsequently had a white paper actually drafted on April 28. The memorandum says, "A draft of the white paper is here attached for your comment."

If we go on and look through the record we find that in May a memorandum by Mr. Ediger indicates that he was so concerned about what might happen at Johannesburg where the arrangements of the cartel

would be finalized that he kept his mouth "shut" about the subject of whether or not Gulf would actually be present at the Johannesburg conference.

He then goes on to say:

I told the group that Gulf was diligently pursuing a legal opinion with respect to its position in the United States and because of the potential gravity of the matter it would take time.

All of the momorandums from this period go back and forth on the theme of "Let's make sure that the Canadian Government takes the lead so that we are protected." And at the same time some other memorandums suggest that the Canadian Government was concerned about the legalities from its point of view and kept wanting the producers to take the initiative. Is that not also correct as to the way things generally developed?

Mr. McAfee. That is not correct.

Mr. Maguire. Perhaps you had better correct me.

Mr. McAfee. If it is wrong in any sense of the word to be concerned about wanting to make certain that we abide by the laws of the land then I'm guilty because that's what we wanted to do, that's what we continue to do, and that's what we were endeavoring to do. I see nothing reprehensible whatsoever in Gulf's then concern with wanting to make sure that we observe the laws of the United States and of Canada.

Mr. Maguire. Mr. McAfee, the record states that in April, May, June, and on through to September 1972 that you were increasingly concerned about the legality of what you were doing.

Mr. McAfee. We wanted to be sure we were right.

Mr. Maguire. During that same period of time you moved from a position of "We must go to the Justice Department to discuss this and get clearance" to a position of "Let us not go to the Justice Department" and nothing you have said here today gives me one little bit of reason to believe that that was because you were suddenly unconcerned about the issue but rather because it might have been too troublesome for you. Is that a misreading of the record?

Mr. McAfee. Yes, sir, it is.

Mr. Maguire. Can you support your contention?

Mr. McAfee. Yes, sir. Perhaps it was said while you were not in the room, Mr. Maguire. You were unfortunately not able to be here the whole time

Mr. Maguire. I have read all the documents, Mr. McAfee, and I have listened to most of the discussion.

Mr. McAfee. I can only tell you again that it was the considered judgment at the time that going beyond what we did was not necessary in the circumstances because of the development or the crystallization of the arrangement where it became clear beyond the shadow of a doubt that the compulsion of the Canadian Government could be substantiated publicly and privately and every other way which the documents will clearly do. And that the U.S. market was clearly excluded from the arrangement and that we had increasing guidance and counsel from outside counsel as well as internal counsel in both Canada and the United States that the arrangement was clearly within the laws of both the United States and Canada.

Mr. MAGUIRE. Mr. McAfee, have you commented yet on the memorandum of June 8, 1972, from Mr. Hunter to Mr. Hoffman which says:

> Thus foreign and domestic marketing activities are inseparable and indeed should be treated integrally if we are to optimize the company position.

How is that consistent with the notion that you could separate out your foreign operations and therefore not be in violation of U.S. antitrust laws?

Mr. MCAFEE. Mr. Congressman, to answer your first question, I have not commented on that.

Mr. MAGUIRE. Would you care to do so?

Mr. MCAFEE. If you want me to I will.

Mr. MAGUIRE. I would appreciate it [see appendix B].

Mr. MCAFEE. Actually the separation of the U.S. market from the rest of the world market wasn't our doing. It was something done by the U.S. Government by imposition of the embargo and by the other governments in specifically excluding the U.S. market.

Mr. MAGUIRE. This memo says they are inseparable.

Mr. MCAFEE. I can't vouch for that memorandum. I didn't write it and I've never seen it to the best of my knowledge.

Mr. MAGUIRE. Would the staff supply a copy of that memorandum to the witness, please?

Mr. McAfee, even as late as September 5 there were——

Mr. MCAFEE. Do you want me to speak to this memorandum?

Mr. MAGUIRE. Yes, if you would. If you have enough time to study it or we can come back to it if you prefer.

Mr. MCAFEE. I'm not familiar with this and I'm unable to comment on it.

Mr. MAGUIRE. Perhaps we could hold the record open, Mr. Chairman, for Mr. McAfee's comment on that particular memorandum at a later time in writing [see appendix B].

Mr. McAfee, as late as September 5, September 25, October 11, November 20, 1972, memorandums were still circulating among your lawyers and inside the company drawing attention to a statement:

> 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.

Now the memorandums suggest that your people were increasingly concerned even later in 1972 about that situation of eliminating competition and the effect that it might have upon your case that you might be in violation of the laws of this country. At that point was there any suggestion that the idea of a white paper or a consultation with the Justice Department ought to be reopened in the light of these memorandums?

Mr. MCAFEE. We were continually concerned that at no time as the situation proceeded did we find ourselves in violation of any laws either of the United States or Canada.

Mr. MAGUIRE. May I be permitted an additional 30 seconds, Mr. Chairman?

Mr. MOSS. Hearing no objection, you are recognized for 30 seconds.

Mr. MAGUIRE. Wouldn't you agree with me, Mr. McAfee, that if a group such as this cartel meets to fix prices with the motive of eliminat-

ing the competition once and for all that the activity, if it isn't criminal because of the complexity of the laws nationally and internationally, that it sure ought to be? Do you agree with that?

Mr. McAfee. No, I would not agree with that considering the circumstances that were involved.

Mr. Moss. The gentleman's time has expired.

The Chair recognizes the gentleman from New York, Mr. Landes.

Mr. Landes. Thank you, Mr. Chairman.

I've listened very intently and I frankly start with some astonishment at the assumption that when one engages in a secret marketing agreement—and I think the record is clear that the agreement was secret although some allegations and surmise about it appeared in some publications—when one engages in that marketing agreement with so slender an assumption that it is shielded from the antitrust laws as an opinion of the Justice Department unrelated to your specific instance and one which builds into it an assumption that there is no involvement of the U.S. Market. We're dealing with a very complex question of marketing manipulation. The notion that one does not get some connection with the Justice Department which gives one clear guidance strikes me, frankly and candidly, as an indication that one did not wish to know.

Now I would just like to lay some very simple questions with direct reference to your testimony.

On page 4 you state that you neither agree to or disagree with the actions of GMCL at that time but were merely advised of them. In what capacity were you advising them?

Mr. McAfee. In my capacity as president and chief executive officer of Gulf Oil Canada Ltd. as I clearly pointed out in the statement.

Mr. Landes. Were you also a director of Gulf Oil Co. at that time?

Mr. McAfee. Of Gulf Oil Canada Ltd., yes.

Mr. Landes. Were you a director of the parent corporation?

Mr. McAfee. No.

Mr. Landes. Were you a director of Gulf Minerals Canada Ltd.?

Mr. McAfee. No.

Mr. Landes. You were advised simply because your corporation owned some stock or what was the reason for your being advised?

Mr. McAfee. The statement I thought was pretty clear on that, Mr. Landes, but if you want me to repeat it, if the chairman wants me to repeat it I'll be glad to.

Mr. Moss. The Chair must point out that the questions are put for supplying information to the committee. It is the judgment of the person putting the question and if he puts it he obviously wants an answer.

Mr. McAfee. I'll be glad to answer it.

Gulf Oil Canada had a 5.1-percent interest in the Rabbit Lake development. This arose out of prior involvement in the mineral business which I won't take the time to go into. As the president of Gulf Oil Canada Ltd.—after all, even though it was very small from Gulf Oil Corp.'s standpoint it was a significant investment from Gulf Canada's standpoint and it was my business to keep in touch with that investment to be sure that the Gulf Minerals Canada people were doing a pretty good job of running it. So I made it my business both by personal conversations with Mr. Ediger from time to time,

by certain reports which I received on a more or less infrequent basis, and by generally keeping up with the situation.

Mr. LANDES. And did you generally keep up with the situation thereafter so that you knew, for example, what the agreement was that was made in Paris on pricing and so forth?

Mr. MCAFEE. In very general terms only.

Mr. LANDES. With respect to the price agreements, were your U.S. marketing divisions advised of those pricing agreements?

Mr. MCAFEE. I missed your first question, Mr. Landes.

Mr. LANDES. Are all the Gulf divisions in the United States—the one shown on that chart for example as G.E. & E.S. Uranium Supply and Distribution—kept advised of the marketing price?

Mr. MCAFEE. That's not our chart and I don't really understand that chart. It is confused and I believe there are some errors in it.

But forgetting that for the moment, the whole Gulf system was reasonably well informed as to the development of Gulf minerals activities.

Mr. LANDES. Was your General Atomic subsidiary, which was an American producer, advised of the world market price—the world market agreements?

Mr. MCAFEE. I must correct you, Mr. Landes. Gulf General Atomic was not, is not, and never has been a producer of uranium.

Mr. LANDES. Was it a marketer of uranium?

Mr. MCAFEE. It was primarily a developer of nuclear power systems a part of which was a supply of nuclear fuel and a part of which involved the buying and selling of uranium in connection with those reactors.

Mr. LANDES. In connection with that buying and selling and supplying was it advised of the agreements made by the world cartel on pricing?

Mr. MCAFEE. I have no knowledge of any specific advice. I would presume they were generally aware of such things as anybody in the industry would have been. I think it was common knowledge, Mr. Landes.

Mr. LANDES. Would Gulf advise other U.S. producers of the agreements made by the world marketing arrangement?

Mr. MCAFEE. Not to my knowledge.

Mr. LANDES. Would you assume that they did?

Mr. MCAFEE. No.

Mr. LANDES. You have stated that the legal reviews were made by Howrey & Simon. They are a very prestigious Washington antitrust firm. To your knowledge as chairman of the board of Gulf now or previously did they at any time have informal or formal discussions with anyone in the Justice Department with reference to whether Gulf was violating antitrust statutes?

Mr. MCAFEE. I do not know.

Mr. LANDES. Would you find out for us?

Mr. MCAFEE. May I seek advice of counsel at this point?

Mr. MOSS. Of course you can.

Mr. MCAFEE. The answer is yes.

Mr. LANDES. Would you also find out for me whether your representative in Washington, Mr. Wild, in any way indicated to the

Gulf Oil Co. that he had or not had discussions with anyone in the Justice Department on that subject? [See appendix B.]

Mr. McAfee. I missed the first part of your question.

To my knowledge Mr. Wild did not have discussions in this matter. Nobody in Gulf did and Mr. Howrey advises me that his firm did not either.

Mr. Landes. No one went to Justice and had——

Mr. McAfee. That is my understanding, Mr. Landes. I have repeated it and repeated it again.

Mr. Marks. Would the gentleman yield?

I don't think the question has been asked yet and we're interested. Did Justice ever come to you? If this organization was known about did Justice or any other department of the Government ever come to Gulf?

Mr. McAfee. Not to my knowledge.

Mr. Moss. Would the gentleman yield very briefly?

In order that the record be very clear because this question has been asked several times and I want the record now to be very exact. It is your testimony that at no time did anyone from Gulf contact Justice to discuss this matter?

Mr. McAfee. To the best of my knowledge, Mr. Chairman, that is correct.

Mr. Moss. Then you are giving a qualified answer.

Mr. McAfee. I can only testify as to what I know.

Mr. Moss. I realize that. But the statement—and if I have the reporter read it back to you—that you made a few moments ago had no such qualification.

Mr. McAfee. If I omitted the qualification at any time, Mr. Chairman, I apologize.

Mr. Moss. The Chair wants the record to be accurate.

I thank the gentleman from New York for yielding.

Mr. Landes. I used to be, years ago, a counsel for the Atomic Energy Commission and I'm just wondering whether you could make that same answer apply to both the Atomic Energy Commission and the State Department. Did any representative of Gulf or its counsel discuss this international marketing agreement and get an opinion on it from either the Atomic Energy Commission or the State Department?

Mr. McAfee. Not to my knowledge.

Mr. Landes. Would you check as chairman of the board and inquire whether anyone did?

Mr. McAfee. I will.

Mr. Landes. Let us know.

With reference to Gulf as an American producer of uranium, did Gulf participate in any way in the decision of the Atomic Energy Commission to eliminate the embargo on the import of foreign uranium? Was the opinion of Gulf sought?

Mr. McAfee. Not to my knowledge.

Mr. Landes. Is it not correct that the Atomic Energy Commission did not eliminate that embargo without consulting U.S. producers and seeing whether any of them objected?

Mr. McAfee. I do not know.

Mr. LANDES. Was it a major purpose of the cartel to get the U.S. embargo limit lifted?

Mr. MCAFEE. Not to my knowledge.

Mr. LANDES. Was it a major purpose of the cartel to eliminate middlemen like Westinghouse?

Mr. MCAFEE. Not to my knowledge.

Mr. LANDES. You're chairman of the board of this corporation and used to head a major Canadian subsidiary. I am frankly struck with your lack of knowledge as to matters so definitely related to major investments. I understand there is over $50 million invested in Rabbit Lake alone by Gulf Oil.

Mr. MCAFEE. That's correct.

Mr. LANDES. You're saying that you have no idea whether that investment was stabilized. It's not in your knowledge as to whether Gulf was consulted by the Atomic Energy Commission on whether that company in Canada could export uranium?

Mr. MCAFEE. Mr. Landes, I've endeavored to answer your questions just as straightforwardly as I know how to answer them. Where you have asked me beyond my area of personal knowledge I can only give you the truthful answer when I don't know. There are many days when I wish I knew a great deal more than I know.

Mr. LANDES. It is the feeling of many that companies like Gulf are really too big for any man's knowledge to embrace.

Maybe you could tell us who in Gulf would be able to answer unequivocally whether Gulf was, in fact, consulted and participated in any U.S. Atomic Energy Commission deliberations with respect to the lifting of the embargo on foreign uranium?

Mr. MCAFEE. You've already asked us to supply information relative to this. We'll be glad to include that in the information we develop and submit.

Mr. MOSS. Without objection, the information will be included in the record at this point when it is supplied to the committee [see appendix B].

Mr. SANTINI. Will the gentleman yield for a moment to pursue a line of inquiry that you have initiated here.

Mr. McAfee, you have indicated that you were advised—I believe page 4 of your testimony stated that you were advised of the actions and activities of the club. Who advised you of this first?

Mr. MCAFEE. Mr. Ediger.

Mr. SANTINI. When were you given that advice?

Mr. MCAFEE. From time to time we were in reasonably close touch. We weren't in the same office but we were in the same city and I would see Mr. Ediger occasionally. He would come along and sometimes I would visit his office.

Mr. SANTINI. When were you first advised?

Mr. MCAFEE. I have no specific date in mind. I couldn't have been advised before Mr. Ediger knew.

Mr. SANTINI. Do you have a month in mind, a year?

Mr. MCAFEE. I presume it was shortly after Mr. Ediger first knew which I think the record shows was sometime in February, 1972.

Mr. SANTINI. Where were you so advised?

Mr. MCAFEE. I expect it would have been in my office in Toronto. I have no recollection of a specific time or place.

Mr. SANTINI. Did you play an active and ongoing decisionmaking role in January of 1972?

Mr. MCAFEE. In what?

Mr. SANTINI. In the determinations to participate in the "club"?

Mr. MCAFEE. No, sir. I've already indicated that I was not directly involved in the management of Gulf Minerals. I did not play a direct role in making that decision.

Mr. SANTINI. Was your advice sought on what that role should be?

Mr. MCAFEE. If I had any strong opinions perhaps I would have felt free to express them. But it was mostly just for information.

Mr. Moss. The question was very specific. Was your advice sought?

Mr. MCAFEE. No.

Mr. SANTINI. If the same types of circumstances that existed in 1972 should reoccur during your term as Gulf's board chairman, should we expect to see Gulf follow a similar course of action?

Mr. MCAFEE. I'm doing the best job I can of serving as chairman and chief executive of Gulf Oil. We're all of us trying to do our business just as well as we know how. We will continue to do so.

Mr. LANDES. No one is taking issue with the quality of your work product.

What are you going to do in the future if the same situation arises? That should be an important part of our determinations here.

Mr. MCAFEE. If the same situation in all respects were to arise again, Mr. Congressman, I would be prepared to do exactly what we did because I think what we did was right.

Mr. Moss. The time of the gentleman has expired and the Chair recognizes the gentleman from New York, Mr. Riford.

Mr. RIFORD. Thank you, Mr. Chairman, I appreciate the opportunity of participating.

I'm interested in the price of uranium as it affects people in my State. During the period of time that we have been discussing when short sales were being made by Westinghouse, I believe you indicated in your statement, as the primary reason for this increase.

Mr. MCAFEE. Certainly one of the most important, yes.

Mr. RIFORD. Were other concerns making short sales of uranium at that time?

Mr. MCAFEE. I am not aware but it doesn't rule out the possibility.

Mr. RIFORD. You refer on page 14 of your statement to two contracts that the United Nuclear Corp. had with General Atomic at low prices. Was that a short sale?

Mr. MCAFEE. No; we were doing just exactly what Westinghouse should have done. As we contracted to sell uranium to the utilities we went out and covered ourselves with contracts from the suppliers to supply it. That's what we're talking about.

Mr. RIFORD. During the time that the embargo on the importation of uranium existed I read somewhere that uranium ore could be brought into this country but it could not be enriched; is that the correct——

Mr. MCAFEE. I'd like Mr. Zagnoli, who is a lot closer to that end of the business than I am, to respond to that.

Mr. ZAGNOLI. I believe you could bring in uranium ore. A more precise way of describing the embargo and the way it was enforced is

that the AEC would not enrich foreign uranium for use in U.S. reactors.

Mr. RIFORD. Without that enrichment process it was of no value for reactors?

Mr. ZAGNOLI. At least for U.S. reactors.

Mr. RIFORD. So presumably in your judgment, sir, that would have at best a limited effect on the price structure of uranium at any given time.

Mr. ZAGNOLI. Effectively, you could not use foreign uranium in U.S. reactors.

Mr. RIFORD. I'm interested further in the economic impact on U.S. commerce during the period of time that the cartel or the marketing arrangement was in effect. What was the relationship during that period of time of domestic uranium versus foreign uranium? Can you recall comparative market prices?

Mr. ZAGNOLI. The tabulations I've seen indicate that the foreign prices were generally lagging behind the U.S. prices.

Mr. RIFORD. The U.S. prices were higher than the world market prices?

Mr. ZAGNOLI. Yes.

Mr. RIFORD. The cartel then wasn't doing much of a job.

Mr. ZAGNOLI. Right, rather ineffective.

Mr. RIFORD. So if the embargo had not existed foreign uranium could be purchased at a lower price than domestic uranium so that the embargo did in fact keep the domestic uranium price up.

Mr. ZAGNOLI. That would be my judgment.

Mr. GORE. Would the gentleman yield briefly to that point?

One of the documents already submitted for the record is an analysis by an employee of Gulf, Mr. Fowler who is the former director of the domestic uranium sales. He says, and I quote:

> What appears to be happening is the international producers are in effect setting the world price 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 doesn't give them substantial margin above the floor being quoted by non-U.S. producers; and (c) thus in essence the international producers can stop any transactions by constantly nudging the floor upward. In the interim the U.S. buyer becomes increasingly frustrated, offers a higher price in order to get some response and the cycle starts over again.

It is intimately related to the U.S. market. I thank the gentleman for yielding.

Mr. MAGUIRE. Would the gentleman yield also?

Another document dated March 1, 1973 [see appendix A], states that "We will work with Gulf Minerals Ltd. to try to put pressure on the Australians to block the proposed arrangement with Westinghouse."

While you're saying that Westinghouses should have covered themselves, the documents also indicate that Gulf was engaged in a cooperative effort with others to prevent Westinghouse from getting the supply.

Mr. MCAFEE. That doesn't necessarily follow from what you quoted at all.

Mr. MAGUIRE. It appears to be what it says here.

Mr. MCAFEE. It may appear in your judgment to be that.

Mr. MAGUIRE. Do you have the document?

Mr. MCAFEE. I presume it's in the stack of stuff.

Mr. MAGUIRE. I would welcome your comment on it either now or at a subsequent date because that looks to me like it says exactly that.

Mr. MCAFEE. Expressing an opinion of that particular employee presumably at that time. That certainly does not represent corporate policy then or ever.

Mr. MAGUIRE. Mr. Hunter is manager of GE & ES Uranium Supply.

Mr. RIFORD. The document the gentleman just read from was March 28, 1974. In your judgment did this actually happen? Did the international producers stop transactions by nudging the floor upward?

Mr. MCAFEE. No.

Mr. RIFORD. What did happen?

Mr. MCAFEE. I mentioned the factors that we think caused the increase in the price of uranium in the United States. The governmental actions both on the part of the U.S. Government, foreign governments, inflation and other cost increases, the effect of the Arab embargo and the OPEC price increase, and most important Westinghouse's policy of selling short and keeping that demand off of this protected market. Then when they reneged on their contracts, when they made it public they were not going to be able to deliver they dumped this whole big, tremendous built-up demand onto the protected market which was not able to absorb it. Nobody thought to repeal the laws of supply and demand. So, strangely enough, when the demand exceeded the supply the price went up. It's that simple.

Mr. RIFORD. Were all the short sales that were made to utilities; there were not other buyers than utilities, no middlemen or no other processors?

Mr. MCAFEE. I'm no expert on that. I would presume that the bulk went to utilities who are the users of uranium. I don't know.

Mr. RIFORD. Thank you, sir.

Thank you, Mr. Chairman.

Mr. Moss. The Chair recognizes the minority counsel, Mr. Wunder.

Mr. WUNDER. Thank you, Mr. Chairman.

Mr. Zagnoli, I'd like to ask you another question about the Fowler memorandum dated February 22, 1974.

Based upon your knowledge of the uranium industry, did U.S. producers refuse to sell at any price that didn't give them a substantial margin above the floor being quoted by non-U.S. producers?

Mr. ZAGNOLI. I have no knowledge that was ever done.

Mr. WUNDER. Mr. McAfee, did Gulf encourage the Canadian Government to become more actively involved in this marketing arrangement so that Gulf would have a better antitrust defense?

Mr. MCAFEE. Heavens, no.

Mr. WUNDER. You never went to the Canadian Government and said, "Listen, we may have a potential U.S. antitrust problem but we might be able to be covered if you passed a law to compel us——"

Mr. MCAFEE. No, we didn't want to be involved in any way. We were forced by the Canadian Government to do so.

Mr. WUNDER. Did Gulf or any person on Gulf's behalf ever approach the White House during this period and ask for them to wave the wand, so to speak, or approve this participation by Gulf in this marketing arrangement?

Mr. McAfee. Not to my knowledge.

Mr. Wunder. Mr. Zagnoli, are you familiar with the Johannesburg rules?

Mr. Zagnoli. I've seen them.

Mr. Wunder. Is a Mr. L. T. Gregg a person familiar to you?

Mr. Zagnoli. Yes.

Mr. Wunder. To your knowledge, did Mr. Gregg help draft the Johannesburg rules? Did he play any role in that?

Mr. Zagnoli. Which Johannesburg rules are you referring to? I'm aware of two meetings in Johannesburg, one in the middle of 1972, and one in 1974.

Mr. Wunder. Were there rules adopted at both meetings?

Mr. Zagnoli. I thought the rules were adopted in 1972.

Mr. Wunder. OK, that meeting. Did Mr. Gregg attend that meeting?

Mr. Zagnoli. No.

Mr. Wunder. There was a subsequent meeting in Johannesburg?

Mr. Zagnoli. I think there was one in 1974.

Mr. Wunder. We'll have to reserve that for Mr. Gregg.

Mr. Landes. Will the counsel yield?

We heard Mr. McAfee state before about being forced into this by the Canadian Government. Is there anything in your record or are you prepared to state now any specific record of the Canadian Government of any specific course of conduct they would take with respect to Gulf if it did not participate in this international marketing arrangement?

Mr. McAfee. No. To its very good credit the Canadian Government doesn't operate by threat. I think it's to their credit that they don't. Certainly there was no question about the force of their insistence that we joint that. There are many ways of expressing that force as I'm sure you appreciate.

Mr. Landes. Which way was there that they actually utilized to express that force?

Mr. McAfee. I don't know how familiar you are with the way the Canadian Government operates. I have great respect for them. They have various informal indications which might be misunderstood if you don't clearly understand the way in which they operate.

Mr. Landes. What was the informal indication that you understood to mean you were forced?

Mr. McAfee. The final and—the thing that must be observed as the formal forcing was the promulgation of the export rules and regulations of the Canadian Government which required the prices and all the other terms and conditions to be approved by the Atomic Energy Control Board. They simply adopted the rule and the procedure and the regulation that they would not approve any non-U.S. export contracts unless they met the rules which had been agreed to in the international marketing arrangement.

Mr. Landes. Would you not have been bound by that whether or not you joined the international marketing arrangement?

Mr. McAfee. If we had been in the uranium business in Canada we certainly would have. It was the law of the land.

Mr. Wunder. When utilities sued Westinghouse for breach of contract, did they join you as a defendant, meaning Gulf or any of its subsidiaries?

Mr. McAfee. No, I believe that's a legal question. I'm no lawyer, just a simple-minded engineer and businessman. I think that we were brought into this suit against our will and against all propriety by Westinghouse. I don't think we were a codefendant because we had no involvement. If we were we were wrongly charged.

Mr. Wunder. Utilities didn't name you as a defendant when they sued Westinghouse.

Mr. McAfee. You'd better let me check with counsel on that.

Is that right; we're not named in any of these suits, are we?

No, that's the suit of the utilities against Westinghouse. We're not named.

Mr. Wunder. Have any of the utilities involved in the case indicated it was the cartel that caused the price of uranium to go up?

Mr. McAfee. I'm not familiar with the proceedings of the cases involved. I'm sorry.

Mr. Wunder. Of the trade publications, have any of those to your knowledge identified the cartel as one of the reasons for the rapid rise in domestic uranium prices?

Mr. McAfee. Not to my knowledge.

Mr. Moss. The Chair had just a few brief questions and announcements.

First of all, I invite your attention to the letter of April 28, 1972 [see app. A], from Roy D. Jackson, on page 2, fifth paragraph, where it appears that you, Mr. Zagnoli, were told that:

> "If the economic impact study worked out in Pittsburgh last week retained its validity after further review and discussions in Denver next week, it would likely be my recommendation to yourself and Merle that we shape our white paper essentially as an information document rather than one seeking any sort of specific approval from the Department of Justice. [See app. A.]

At that time the active course being considered by your organization was to seek to clear directly with the Department of Justice; is that correct?

Mr. Zagnoli. That was an active consideration all through the period up to September 1972 as far as I know.

Mr. Moss. But my question was not was it "actively" being considered, but it was the "course" being considered alternatively whether to go the white paper route or to go with the formal request of Justice to give an informal opinion. Isn't that what that fifth paragraph states? I will read it again.

Mr. Zagnoli. What is the question?

Mr. Moss. The question was: Doesn't that paragraph state rather clearly that the recommendation to yourself and Merle was for shaping a white paper rather than one seeking any sort of specific approval from the Justice Department? In other words, you had two courses actively under consideration. You had narrowed it down to two courses. You had determined to do one or the other; isn't that correct?

Mr. Zagnoli. I do not recall this.

Mr. Moss. You have the same gift that I have. You can read the English language and that on its face says precisely what I have just told you.

Mr. Zagnoli. I agree.

Mr. Moss. You agree?

Let me go to the economic impact statement. I assume this is the one that you're discussing in the three-page document "Foreign Uranium Marketing Arrangements" dated September 8, 1972. It's a three-page text with table attachments numbering three in all.

Mr. McAfee. There is a pencil date of 9–8–72; is that the one?

Mr. Moss. That is correct.

This is the economic impact study that was referred to in the previous communications; is that correct?

What I'm laying the groundwork for is that this document we are now discussing is the document upon which you relied for determining to go neither of the routes—the white paper or seeking the Department of Justice advice.

Mr. McAfee. Who do you want to answer?

Mr. Moss. Only the one who is able to.

Mr. Zagnoli. This was made a part of the legal opinion and it's only part of the reason for not going to the Department of Justice, is what I'd say.

Mr. Moss. I'm only talking about the economic impact portion. That's what we have just been discussing dated the 8th day of September 1972, and containing in that dialog the fifth paragraph of the communication of April 28, 1972, which I have already read and which we have discussed at some length.

I also told Mr. Zagnoli that if the economic impact study worked out in Pittsburgh last week retained its validity after further review and discussions in Denver next week and that's the one we have just been discussing then a decision would be made and a decision was made. The decision was not to accept either alternative discussed in the April 28 communication.

Mr. Zagnoli. Yes.

Mr. Moss. Now there is a great deal in this record that states for all practical purposes that you yielded most reluctantly to the pressures of the Government of Canada to become a member of this club and an active participant in its deliberations. Do I characterize that correctly?

Mr. McAfee. Quite correct.

Mr. Moss. In the memorandum which was prepared Mr. Runnalls—"Specially Confidential" is the marking on it—it refers to the meeting at the President Hotel in Johannesburg at 8:30 a.m. on May 28, 1972.

It contains this language:

> Mr. Austin, who represented the Canadian Department of Energy, 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. This attitude had been clearly expressed in a message sent to each of the producers by the Minister of Energy, Mines and Resources on April 14. All Canadian producers were faced with a law that could not be amended by the Cabinet. Furthermore, all advisers to the Cabinet had suggested that 1977 was the latest date that should be considered.

In any event, that statement says that you were not under pressure. It therefore leaves my record with a serious conflict.

Mr. McAfee. May I comment, Mr. Chairman.

Mr. Moss. Therefore, I am going to refer this entire transcript to our Department of State and ask that they transmit it to the Government of Canada seeking their cooperation in reviewing the transcript and advising this committee whether in fact the statements made on

this record under oath reflected the policy then being pursued by the Government of Canada. That will be accomplished at the earliest possible date.

The Chair now recognizes Mr. McAfee. You wanted to comment.

Mr. McAfee. I would like to comment.

Whether Mr. Austin said what he is quoted as saying in that memorandum or not, whether he meant what you thought he meant, regardless of what was said or what was meant by it, the facts are that the Government of Canada required us to participate.

Mr. Moss. You notice that I pass no judgment as to whether or not they did. But I make it clear that I'm going to the extreme length of following a new avenue in an effort to determine whether or not they did because it is important that we have an accurate record.

The Chair recognizes the gentleman from New York, Mr. William Haddad, well known to the committee from the New York State Assembly, Committee on Corporations, Authorities, and Commissions.

Mr. Haddad. Mr. McAfee, I was raised with country boys and I would describe you more as a country preacher trying to sell an argument.

Mr. McAfee. Am I to take that as a compliment?

Mr. Haddad. You may take that as a compliment. I think you're a man of integrity. You were brought into Gulf to clean up the Watergate mess. I have a great deal of respect for you based on what I have heard from people in your own corporation.

I am greatly troubled by what is either a purposeful vagueness or seriously inadequate briefing. There are no two people in this country more familiar with the events under consideration than you, Mr. McAfee, who was advised during that period of time; and Mr. Zagnoli, who was the link between Canada and the United States.

What I would like to do with my time is to refresh your memory. You have before you the same documents that I have before me. The documents we obtained came from Westinghouse: They are from your files. I cannot believe in a matter of this importance you have not reviewed or your staff has not reviewed the documents with the meticulousness of this staff.

On the matter of purposefulness, I would like to direct your attention to a letter of January 8, 1974, from Mr. McNabb [see appendix A].

While you're looking could you characterize for me your feeling about Mr. Ediger. Is he a good executive, an accurate executive?

Mr. McAfee. Earlier on I spoke to that question, Mr. Haddad. I believe I expressed myself as I sincerely believe that he is a very fine man. I have a very high regard for him both personally and as a business associate, and professionally.

Mr. Haddad. I'd like to read this letter to you.

"Dear Mr. Ediger"—it's from the Canadian Government, one of the ministers involved, Mr. McNabb—

> 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'm writing to ask, therefore, that you make every effort to assign Mr. Gregg to this task for the period of calendar year 1974.

Is this an example of the compulsion that you're referring to in your statement?

Mr. McAfee. It's an ongoing example of the way the whole operation was directed by the Canadian Government. Mr. McNabb was Assistant Deputy Minister of Mines and Resources at the time—Senior Assistant Deputy—and Mr. Ediger was head of Gulf Minerals Canada Ltd. This specifically and formally asked Mr. Gregg to be made available to serve as a Canadian representative in this connection. Do I understand it right, Mr. Zagnoli?

Mr. Zagnoli. Yes.

Mr. Haddad. This is an example of what you meant by compulsion? An ongoing example?

Mr. McAfee. An ongoing example, yes. After all, this is 1974 and the thing had been going on for some time. It had long since been set up under compulsion.

Mr. Haddad. Do you know who drafted that letter?

Mr. McAfee. Mr. McNabb signed it. I don't know who drafted it. I expect he did it himself.

Mr. Haddad. That letter was drafted by the Gulf Oil Co. by Mr. Gregg and submitted to Mr. McNabb for submission to Mr. Ediger.

I'd now like to take you to another item. You appear to indicate that there was no benefit to the Gulf Oil Corp. or any of its subsidiaries from the cartel or the so-called cartel.

Mr. McAfee. I'm sorry. I was still thinking about this last item.

Mr. Haddad. Would you like to respond to that?

Mr. McAfee. I sure would.

This is a formality. It just confirms what I presume was a previous discussion. I expect McNabb asked Ediger to provide him with Gregg's service and asked what kind of a letter would Ediger require to be able to make him available for this service. I don't see anything unusual about that.

Mr. Haddad. It is a question of who is doing the shoving. Throughout this record, the chairman has attempted to clarify that. People are taking different positions and different postures. You have Austin talking about the Canadian Government's position up until a mysterious curtailment of that position. Gulf at every opportunity said they were not going to do anything without Justice.

Mr. McAfee. If the Canadian Government didn't want Mr. Gregg to serve in this capacity, Mr. McNabb wouldn't have signed this letter whoever drafted it.

Mr. Haddad. We will discuss that with Mr. Gregg tomorrow or when he appears before us.

It appeared from your testimony that the cartel was ineffective; is that correct?

Mr. McAfee. It certainly is.

Mr. Haddad. Can I quote you a letter from October 26, 1973, from Mr. Ediger to Mr. Zagnoli.

We have continuously objected to the existence of the uranium club and Canada's participation in it. However, in fairness it appears to have resulted in a new degree of market stability and higher prices which should assure the more orderly development of reserves and long-term surety of the supply for the nuclear and electric power plants of the world.

I would tend to think that Mr. Ediger thought that the cartel was working.

Mr. McAfee. My particular reference was with respect to the U.S. market. Mr. Ediger's reference was to the world market.

Mr. Haddad. Let me separate the two then. Was the cartel successful in the world market from your review of the record?

Mr. McAfee. Perhaps, but if so it was only moderate because it was overtaken by events.

Mr. Haddad. Mr. Zagnoli, what is your answer to that question.

Mr. Zagnoli. When was that? 1973?

Mr. Ediger was still slightly speculative. The plant wasn't operating in 1973.

Mr. Haddad. Was the cartel successful overseas?

Mr. Zagnoli. In my view it did raise the prices overseas. But if I may I would like to make a distinction for Gulf in this regard. It has a bearing on whether we wanted to join the cartel to start with, whether we had motivation. We had reached an agreement with the German company. We sold them half the deposit—49 percent. In return for that we had a guaranteed market for the first 3 years for virtually all of Gulf's production. The guaranteed prices were as good as the first prices that the club was proposing.

We had several counts more to lose. We had secured our market through this preferred position in the German market.

What I'm trying to get across to you is that as far as seeking a cartel with all the possibility of problems, we wanted no part of it.

Mr. Haddad. My question is very simple, and I hope your answer is simple.

Was the cartel effective in raising prices?

Mr. Zagnoli. I would have to say it appeared to be effective.

Mr. Haddad. Was it effective in setting world quotas? You had 100,000 tons of supply and 26,000 tons of demand.

Was it effective in setting world quotas? Was it controlling on Gulf's markets?

Mr. Zagnoli. It was effective in allocating the market.

Mr. Haddad. Mr. Zagnoli, you are very vague. You were intimately involved in this. I have the records in front of me. You have read them. I have read them. Please, please don't insult our intelligence.

Was it effective in setting world quotas; yes or no?

Mr. Zagnoli. Yes.

Mr. Haddad. What percentage of the world quota did Canada get?

Mr. Zagnoli. I think 31 to 33 percent, as I recall.

Mr. Haddad. What percentage of that was Gulf's?

Mr. Zagnoli. I frankly don't recall.

Mr. Haddad. Thirty percent?

Mr. Zagnoli. Just a minute. I would have to do some mental arithmetic. I don't think I can do it that fast.

Mr. Haddad. I believe it was 30 percent.

Mr. Gore. If counsel will yield briefly, you have elicited the admission from Mr. Zagnoli that the cartel was effective in raising the price. I would like to make an addendum.

It was also effective in raising the prices to all U.S. utilities who purchased supplies of uranium in the foreign market during this period.

Is that not correct, Mr. Zagnoli?

Mr. ZAGNOLI. I do not know.

Mr. GORE. Why don't you know? If the price was effectively raised by the cartel and the utilities purchased supplies of uranium in that market, it did raise the price that those utilities paid; correct?

Mr. ZAGNOLI. For one thing, you can't be certain. This is hypothetical.

What would have happened if the cartel hadn't operated? It is my opinion that the prices would have been somewhat lower so to the extent that U.S. utilities bought overseas they probably paid a higher price.

Mr. GORE. All right. Now, what you have said is that the cartel raised prices higher than they otherwise would have been. Gulf participated in the cartel. U.S. utilities bought uranium at a price that was fixed higher than it otherwise would have been.

That—and I am not a lawyer—appears to me to be a violation of the U.S. antitrust laws.

Mr. ZAGNOLI. I am obviously not a lawyer, either.

Mr. SANTINI. You are to be commended for your lack of legal expertise. I think that distinguishes you.

What that reaches toward an undermining—if you will pardon the pun in this context—of the fountainhead of your defense—no impact. You have just conceded on the record before this committee that it did have impact.

Mr. ZAGNOLI. I would say the impact was insignificant.

Mr. GORE. If the counsel will yield further, it was not insignificant to the purchasers of electricity in the TVA region whose prices have gone up as a result. It may be insignificant for a corporate executive who looks at it with dispassionate eyes, but it is not insignificant for those who pay ever-increasing electric bills.

Mr. Moss [gaveling]. Don't ever presume to do that in this committee. You will let the Congressman ask the question. When he has one for you, he will address it to you. Don't interrupt.

Mr. GORE. I thank the Chairman.

My statement was that it may appear insignificant for you, but it was not insignificant for those whose electric bills are going up as a result.

I thank the counsel for yielding.

Mr. HADDAD. Did you have a response to that, Mr. McAfee?

Mr. MCAFEE. No; thank you.

Mr. HADDAD. Mr. McAfee, you used an expression that I learned in college and which I support as a matter of political principle. The law of supply and demand.

In defense of something, you said that it did not repeal the law of supply and demand.

Didn't the cartel, the club, the yellowcake caper repeal the law of supply and demand, in effect, with 100,000 tons of supply versus 26,000 tons of demand, sitting down and dividing up the quota? Did that not repeal the normal function of the marketplace in the capitalistic society?

Mr. MCAFEE. I still believe in the law of supply and demand, Mr. Haddad.

Mr. HADDAD. I hope so.

Mr. MCAFEE. You know, what is improper for individuals and companies seems, somehow, to be quite OK for governments to involve themselves in. Certainly any of these interferences with the normal trade and normal operation of the marketplace—be they a marketing arrangement or an effective embargo, price control or any of these other things—are, indeed, interferences with the normal operation of the law of supply and demand.

With the greatest respect, Mr. Haddad, I would submit that that really is part of our problem in this whole area and in a lot of other areas today; that there has been too much interference with the normal laws of supply, demand, and marketplace; of letting the people decide what the real values are, letting the people decide what their priorities are.

Mr. HADDAD. I think we agree.

Mr. MCAFEE. I would respectfully submit that a return to that sort of a world would be a very decided improvement.

Mr. HADDAD. Return to that world by governments. What about companies?

You sat as a partner. Now, you also obscured something which I would like to review. You went to Capetown—not you, sir; Gulf went to Capetown. You said Gulf was represented by GMCL when, in effect, two of the four or three of the four executives were from Gulf U.S.A.

It was not Gulf Canada. Excuse me. Let me make the point that I started out to make.

Your company sat as a partner in doing exactly what you condemn governments for doing; is that not a fact?

Mr. MCAFEE. That is not a fact.

We sat as an instructed participant acting at the behest of the Canadian Government, in this case. And incidentally I don't know a thing about Capetown. Was it not Johannesburg?

Mr. HADDAD. I beg your pardon; Johannesburg, yes.

You are saying that you did not participate actively, Gulf did not participate actively, that you did not help shape the rules?

Mr. MCAFEE. No, Mr. Haddad. As the record says clearly, as we have endeavored to say in our statement clearly, and we have repeatedly said today, we were required and we did—as a result of Canadian pressure—participate in the operation of this intergovernmental marketing arrangement.

Mr. HADDAD. Did you have a German partner in the business at Rabbit Lake?

Mr. MCAFEE. We have indicated that we did, and we do.

Mr. HADDAD. Did they have the same pressures from the Canadian Government?

Mr. MCAFEE. The German company is under the same restrictions of the Canadian Government so far as exporting Canadian uranium is concerned; therefore, they, too—just like we or any other Canadian producer—have to meet the requirements of the Atomic Energy Control Board with respect to all contracts for the sale of uranium outside of Canada regarding price and volume and all other terms—the same as we.

Mr. HADDAD. Mr. Zagnoli, how did the Germans act? Gulf acted by jumping in with both feet, helping to shape the agreements, suggesting price increases, et cetera.

How did the Germans react—your partners in Canada—to the same law?

Mr. ZAGNOLI. First, I would like to say that I did not agree with your characterization of Gulf's action.

How did the Germans act? The Germans were concerned, they had legal concerns as we did because of Germany's antitrust laws and, I think, even your Euratom Agreement or the Treaty of Rome.

So they had concern over this arrangement.

If I might say, the biggest concern—not the biggest, but a concern between the partners which took a great deal of our time after the Canadian Government began to impose this on us was that it would impact on the two companies in a different way—these rules that were going to be adopted.

We had to meet with them to try to negotiate how we would adjust the impact to make it equitable on the two parties.

Mr. HADDAD. I am not talking about the quota system.

Did you get a telephone call from Cologne the day before you went to Paris, from the Germans, or did you make one from Cologne?

Mr. ZAGNOLI. I went to Cologne before Paris. I did not remember a telephone call.

Mr. HADDAD. What did the Germans tell you?

Mr. ZAGNOLI. I do not know.

Mr. HADDAD. Didn't they tell you that their antitrust laws were too tough for them to get involved, and that the Common Market antitrust laws were too tough for them to get involved?

That, in fact, they had a very secretive way of staying involved, that they never attended the meetings overseas, and that you would brief them or somebody from Gulf would brief them after the meeting—and they stayed in business in Canada and did not receive any penalty from the Canadian Government?

Is that not a fact?

Mr. ZAGNOLI. I do not remember the telephone call and I do not remember the specifics of the telephone call if there was one.

Mr. HADDAD. You do not remember the Germans saying that they were in trouble with their antitrust laws?

Mr. ZAGNOLI. I do recall, as I stated before, that the Germans have a problem in Germany and with Euratom countries.

Mr. HADDAD. I am using up time here. I want to get to another point.

Mr. McAfee, you make it appear that Gulf Oil U.S.A. had no benefits from all of these arrangements.

Is that accurate that the cartel arrangements were of no benefit to Gulf U.S.A.?

Mr. MCAFEE. Yes, that is correct—certainly not during the period in question.

Mr. HADDAD. Who is Roy D. Jackson, Jr.?

Mr. MCAFEE. There was a Roy D. Jackson, Jr., who, at one time, was an attorney for Gulf Oil.

Mr. HADDAD. Reporting to the executive committee, or what was his relationship to it?

Mr. MCAFEE. He was a member of the law department.

Mr. HADDAD. Did he draft the legal memo which is in discussion here?

Mr. MCAFEE. I don't know what you are talking about.

Mr. HADDAD. There was a memo drafted which was seen by Mr. Zagnoli and others about Gulf's ability to participate in the cartel.

Mr. MCAFEE. Mr. Jackson, I believe, was involved in some of the legal considerations, Mr. Haddad.

Mr. HADDAD. I am going to read you something from a memo of June 2, 1972 by Roy D. Jackson. It is called Worldwide Uranium Marketing Organization. I think it puts a different light on Gulf's participation than you have led us to believe.

It is at least as important for Gulf to become a sophisticated and substantial participant in the worldwide uranium matters as it was for us to undertake similar efforts with respect of oil and gas 30 or 40 years ago.

Having a representative on this Governing Board of the World Marketing Organization would be helpful in achieving this objective.

What is your view about that statement?

Mr. MCAFEE. My view of that statement is, Mr. Haddad, that it is just as correct as can be in the sense that we needed to know about this business, just as we needed to know 20 or 30 or 40 years ago about the oil and gas business—and that is what Mr. Jackson is talking about, not the inference that you improperly—if I may say so, sir—imply; that he was talking about a cartel.

We were never involved in an oil cartel. What he is talking about is very, very true. What he is talking about, I believe, is learning the business.

Look, this is a complicated business, and we were relative newcomers to it. He was referring to the fact that we did need—and we still need—to increase, improve, and enhance our expertise in this very complicated area.

We think we know a little about the oil business—well, I say that. I don't know whether we do or not anymore, really, but we certainly have developed certain knowledge.

He felt, and I believe he is right, that we needed and we still need to develop a better understanding of the uranium business if we are going to be in it.

Mr. HADDAD. I am addressing myself to a "substantial participant" in worldwide uranium matters. As a matter of fact, following June 2, 1972, Gulf jumped in with both feet. They were very active in the cartel—Gulf Canada——

Mr. MCAFEE. Gulf Minerals.

Mr. HADDAD. Gulf Minerals, I beg your pardon. They were very active in the cartel, participated in meetings, shaped the agreements. Actually, in 1974 at Johannesburg, they wrote the agreement.

Mr. MCAFEE. That is your statement. I cannot support it. You may be right. I don't know.

Mr. HADDAD. Mr. McAfee, you don't know who wrote the 1974 statement, seriously?

Mr. MCAFEE. Not personally, no.

Mr. HADDAD. Mr. Zagnoli, do you know who wrote the 1974 statement? You have expressed some ignorance earlier about the details but I bet I could question you on four or five paragraphs in this and you would know it intimately.

Mr. ZAGNOLI. I know that L. T. Gregg was there, and I know he was participating—I think as an alternate—by that time on the Canadian team.

I don't know, firsthand, that he actually drafted that.

Mr. GORE. The response of Mr. McAfee interested me.

You said you did not know, personally. Have you been told that he did draft it?

Mr. MCAFEE. No.

Mr. GORE. You have not been told that he did draft it?

Mr. MCAFEE. No.

Mr. GORE. In all the briefings that you had, you were not told that Mr. Gregg presented the figures and the documents referred to at the January 28, 1974, meeting in Johannesburg?

Mr. MCAFEE. I don't recall having been told that.

Mr. GORE. That is a different answer, now. That is a different answer. Your answer is not no; it is that you don't recall.

Mr. MCAFEE. I don't recall.

Mr. GORE. You don't recall. That is sometimes significant.

Mr. MCAFEE. It may be, but, look, Mr. Congressman, you know—well, forget it.

There is a limit to what one person can absorb about a very complex matter such as this. I would really, Mr. Chairman, ask the committee's indulgence in this regard and forgive me if I am not completely familiar with all the details.

Mr. MOSS. I assure you that I attempt to indulge the witnesses as long as I can do so and maintain reasonable decorum in the committee.

Mr. MCAFEE. Thank you, sir.

Mr. HADDAD. I have one final question, Mr. Zagnoli.

Were you aware of a memorandum from Mr. Jackson discussing the antitrust implications of the Canadian participation in the world cartel?

Mr. ZAGNOLI. Was I aware of a memorandum?

Mr. HADDAD. Memorandum, legal brief—I don't want to call it a legal brief because it is more like a memorandum—discussing the antitrust implications of U.S. involvement, Gulf Canada involvement in the cartel?

Mr. ZAGNOLI. I respectfully submit to you that I don't know to what you are referring.

Mr. HADDAD. We have testimony before us that indicates that the Gulf employees were provided with a memorandum from Mr. Jackson which indicated that you would be safe under U.S. antitrust laws, and that you were very uneasy about that document up to and including 1974, or when you left that operation.

We have received testimony that you not only knew about the document, but consistently expressed uneasiness with its conclusions as regards antitrust violations.

Mr. ZAGNOLI. Let me try to answer this way: I was given a legal opinion in 1972 which concluded that what we were doing would not violate U.S. law. It also concluded that, there being no violation of law, there was no need to go to the Justice Department to talk to them.

Mr. HADDAD. Were you uneasy about that document?

Mr. ZAGNOLI. No; I am not uneasy about the document. What I am always sensitive to, of course, is the possibility that we could inadvertently violate U.S. law. I was very sensitive to that.

I had no basis for questioning that document. In fact, I would have to characterize myself as being confident that it was a valid opinion.

Now, my only uneasiness would be that I just know enough to know that opinions can be wrong, and that finally there are differing opinions and they are decided somewhere else.

When I received that document that said, "This is not violating U.S. law." My connection with Gulf Minerals Canada continues. Gulf Minerals Canada reports to me today. I have not severed the relationship with Gulf Minerals Canada.

Mr. HADDAD. The reason I asked that question, obviously, was that Gulf, itself, was so certain of that document that it did not take it to the Justice Department. You referred to the fact that they did not take it.

Yet you are the link between Canada and the United States, and you admit that you were uneasy about it because you are uneasy about any situation involving antitrust so it is not as conclusive a piece of information as Mr. McAfee had indicated.

Mr. ZAGNOLI. No. I concluded that—and this was a personal decision, of course, on my part—I had been given good counsel, that this was an opinion. I read it, I thought about it, and I felt that it was valid.

Mr. HADDAD. Did you check it out with another lawyer?

Mr. ZAGNOLI. I did not.

Mr. HADDAD. Did you check it out with anyone else?

Mr. ZAGNOLI. I did not.

Mr. LANDES. May I ask one question of Mr. McAfee?

Mr. MOSS. Certainly.

Mr. LANDES. On that point, you stated in your statement that "thereafter a final determination was made that no law was being violated."

Who participated in the corporate determination, and was there a discussion of the matter by the parent board of Gulf Oil Co.?

Mr. MCAFEE. I have no knowledge as to whether it was ever a matter of discussion in the board of the Gulf Oil Corp., Mr. Landes, because I was not a member and I did not participate in, at least, not all of their meetings.

Similarly, I do not know from—I just don't know who participated in the final corporate decision.

Mr. LANDES. You say, in your statement, "a final corporate determination was made." When you wrote that statement, did you have in front of you a written record of a final corporate determination made by somebody, or did someone tell you this was made? If so, who?

Mr. MCAFEE. No; it certainly was not a list of people or anything like that. I guess the statement reflects what was actually done. The decision was taken.

It does not purport to say who took the decision.

Mr. LANDES. What you mean by that statement, simply, is then that—you speak so certainly. You say that opinion "was concurred in by outside antitrust counsel." One gets the impression that a corporation meeting took place in one or another corporation, they determined no law was being violated, they submitted that to an outside trust counsel, and the outside trust counsel concurred.

Now, who sat down and made that decision?

Mr. McAfee. Mr. Landes, your characterization might be one scenario of how corporate decisions might be reached, and sometimes they are reached that way, but that is not the only way.

Mr. Landes. Who do you think made that decision?

Mr. McAfee. You are asking me for an opinion, now. Do you want my opinion?

Mr. Landes. You would know. You wrote the decision that the determination was made.

Did you mean that it was made just by no one doing anything else, or do you mean that someone determined it? If so, who?

Mr. McAfee. I mean exactly what I said.

Mr. Moss. Would the gentleman yield?

Mr. Landes. Certainly.

Mr. Moss. I wanted to acquaint you, for purposes of guidance, that opinion and hearsay are admissible as testimony before a committee of the Congress.

Mr. McAfee. Thank you, sir.

Mr. Landes. Is this corporate determination which you refer to then in your statement something that I am to take, on reading it, as not the determination of any embodied human being or any embodied bodies of human beings sitting together, but simply something you wrote on a general assumption that somebody did something, but you don't know who did it and when?

Mr. McAfee. No.

The decision was taken by a real man made of real flesh and blood, and I don't know who it was.

Mr. Landes. I see. Well, so that we can question him on the basis for that decision, and as you are the current chairman, I would feel—having made the statement such a person made the determination—you would provide us with the name of the person so that we may inquire of someone who knows more about the subject than yourself.

Mr. Moss. Would you endeavor to do so, Mr. McAfee?

Mr. McAfee. I will endeavor to do so, Mr. Chairman, but without being able to assure that I will be able to do so.

Mr. Moss. I recognize that. We will reserve the record at this point and await further communication from you on that point.

[See appendix B, p. 641.]

Mr. Moss. The Chair would recognize the counsel for one question, but before doing so I would like to state that, Mr. Zagnoli, I have here the memorandum of the telephone conversation that was discussed and that took place between you and Mr. Allen in Cologne, Germany on April 18, 1972.

It has the initials at the bottom "MPM" and it reads, "Summary of Telephone Conversation with Messrs. Zagnoli and Allen in Cologne, Germany, April 18, 1972," and then goes into the substance of the conversation.

Mr. Zagnoli. Yes.

Mr. Moss. It is in the record, and it will not be necessary for us to seek it from you.

Mr. Zagnoli. All right.

Mr. Moss. One question from counsel and then the Chair is going to recognize the gentleman from New York, Mr. Lent.

Mr. ATKISSON. It is not being contended, is it, Mr. McAfee, that at the board level of the parent Gulf Corp.—Gulf U.S.A.—this arrangement was not fully known: is it?

Mr. MCAFEE. I just don't know. I have no reason to know one way or the other.

Mr. ATKISSON. Let me read to you from a document that is in your package dated May 1, 1972. It is a short letter to Mr. Mink, then a Gulf counsel, now general counsel, from Irwin W. Coleman, another counsel.

The documents are chronological, now. It reads as follows:

"Reference: International Arrangement, Uranium". This is from Pittsburgh, now.

Mr. Roger Allen called me from Denver today and advised that, following your suggestion, Mr. W. J. Estey had talked with Beverly Matthews and brought him up to date as to what had transpired with particular reference to action taken by the Canadian Cabinet . . .

And then it goes on and mentions Mr. Matthews again.

Who is Mr. Matthews?

Mr. MCAFEE. Mr. Matthews is a very distinguished Canadian lawyer, Mr. Atkisson, who is a great friend of mine and for whom I have the highest admiration. He also served, for several years—for quite a few years—on the Boards of both Gulf Oil Canada, Ltd. and the Gulf Oil Corp.

Mr. ATKISSON. Thank you.

I have no further questions.

Mr. MOSS. Mr. Lent?

Mr. LENT. Thank you, Mr. Chairman.

I really suppose I don't have any questions. I would like to make the point that, in my opinion, the second-guessing that the committee is indulging in with respect to whether or not the officials of Gulf should have or should not have sought out an advisory opinion—which, I understand, would not be binding in any event—from the Justice Department, rather than to simply do as they did—which was to retain eminent counsel to give them an opinion—that that whole line of discussion is beside the point, really, as to whether or not there was or was not a violation of the U.S. antitrust laws.

Whether or not those laws were violated is a question which is not within our province to determine. This is something which is peculiarly, under our system, within the province of the Justice Department.

It is my understanding that the Justice Department is making some sort of an inquiry at the present time as to whether or not there is any violation. I really think that this committee ought, instead, to develop economic evidence, if it is available, as to whether or not the existence of this cartel did or did not, in any way, influence adversely the price American consumers have to pay for uranium in the powering of their plants and the heating of their homes.

I just want to say that I am a little disappointed that it seems that the committee has—at least at this stage—not developed economic evidence to show this linkage and, instead, has concentrated on what I feel is a matter which is peculiarly within the ambit of the Justice Department.

Mr. Moss. The gentleman far too narrowly castes the jurisdiction of this committee.

It is interstate and foreign commerce, generally. It is specifically the Department of Commerce. It is specifically the Federal Trade Commission. It is significant sections of both the Clayton and the Sherman Acts. It is to examine any action in restraint of trade. It is to examine any combination in restraint of trade.

It is a very broad, a very far-reaching, all-encompassing jurisdiction. It also touches upon the availability of energy, the costs of energy, the policies underlying the regulations that are promulgated by the various governmental agencies—both foreign and domestic.

We are not limited by the narrow question that has been stated here. We will be concerned with the economic question, and that work is now being carried on by the staff of the committee and by appropriate consultants to the committee.

This record is merely preliminary at this point. It will be filled much fuller before we have concluded the hearings.

The Chair recognizes the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman.

I recognize the distinction between this forum and a court. I would submit as a matter of opinion, having covered trials as a newspaper reporter, that this appears to me, quite clearly, to be the kind of case that a jury would spend about 30 seconds on. I think it is that clear.

There has been no response whatsoever on the TVA contracts. The record will reflect that the TVA purchased uranium at the price which was set by the cartel, a price which Mr. Zagnoli has testified was higher than would have otherwise been the case.

The effect of the cartel on the U.S. market is quite clear. The allegation that the embargo, in any way, prevented purchases is false.

Duke Power apparently purchased 20 million pounds of uranium at a price that was pegged to the world market price fixed by the cartel. Carolina Power & Light purchased an—we cannot find the exact amount of that purchase—amount which was pegged to the world market price which, in turn, was fixed by the cartel.

So TVA is only one of several. Many, many U.S. consumers are paying more money and will pay even higher electric bills because Gulf and other companies fixed the price of uranium.

Now, much has been made about what Gulf did during this period. It was asked whether Gulf inquired of the Justice Department.

A document already in the record and already referred to dated April 28, 1972 [see appendix A] from Mr. Roy D. Jackson, who was and is, I suppose, an attorney for Gulf Oil——

Mr. MCAFEE. He is retired.

Mr. GORE. He is retired—was an attorney for Gulf Oil at the time said that,

> As far as the Washington meetings are concerned, I said we are thinking in terms of reviewing the matter not only with outside counsel, but also with Claude Wilde to arrive at an agreed course of action, both as to whom we contacted and how we made the contact.

Now, this is the same Claude Wilde who was convicted, on October 13, 1973, of making illegal corporate contributions to politicians in Washington, D.C. In March of 1976, he was indicted again on several counts on related charges.

I am wondering if the suggestion that Claude Wilde will know who to contact in Washington, D.C., was an indication that you are prepared to go outside of the normal channels of requesting a Justice Department memorandum on the propriety of your activities?

Mr. McAfee. Mr. Congressman, Mr. Chairman, with the greatest respect, I think to bring that sort of an innuendo into this inquiry—which, I presume, Mr. Chairman, is a genuine desire on the part of the committee to get at the facts—is a bit of a cheap shot.

The answer to your question, directly, is certainly no.

Mr. Gore. I think that Gulf has taken a number of cheap shots at the U.S. public. I do not think it is a cheap shot at all.

We have a demonstrable record here. Gulf has conducted itself in this manner. There is no denying that.

As Mr. Haddad suggested earlier, the circumstances of your installation as president are directly related to the actions that Gulf has taken over the years in this regard, and the fact that Mr. Wilde is the one that comes up when you talk about who you are going to contact in Washington, I think, is relevant. I think it is relevant. I do not think it is a cheap shot.

Mr. McAfee. All right.

Mr. Wilde was the Washington representative at the time. That is why he was mentioned as a possible means—if it were concluded that it was necessary or desirable to make specific inquiries of anyone in the Government, Mr. Wilde would have been focal point for making such inquiries.

Mr. Gore. I think that what you have done here is also a cheap shot at the American public; to fix the price and force them to pay something that they would otherwise not have to pay.

You know, we have conventions that are built up in laws over years and years and years. One of them is that if something belongs to you and you don't want to give it up and somebody comes and takes it by force, that is stealing—and we say that is wrong.

Another convention that we have is that we like to let the free market set prices—supply and demand. We say that if a group of corporations get together in secret and decide what they are going to charge the American public and eliminate competiton from the picture, that is wrong, too, and it is similar to stealing because it is taking wealth and property from the American consumer under unjustified circumstances and in violation of the law.

Now, you say, in response, that Gulf Oil was some kind of corporate Patty Hearst; that you were——

Mr. McAfee. No, no—I am sorry—I don't believe I——

Mr. Gore. That you were told to do this, that you were forced to do this, and that only afterward did you develop an enthusiasm for the task.

Now, you say that—well, a lot of what you say is that you don't remember and that you don't recall. You say, "Canada told us to do it." The chairman has entered into the record the statement of the Canadian Government that they did not do so.

I want to refer to something else in the record. This is a memorandum dated February 17, 1972, from Mr. Gregg to Mr. Hoffman [see appendix A], and it refers to you, Mr. Zagnoli, and I would ask for your response.

It says that when Mr. Ediger outlined what was going on—the formation of the cartel—"When informed of all of the above, Mr. Zagnoli's initial reaction was rather violent."

It says, in Mr. Ediger's view, "The club * * *—notably Dennison and R.T.Z.—* * * is playing a game in which they hope to (*a*) keep Gulf as "the new boys on the block" away from the poker table, and (*b*) block the Australians from starting production.

"Note: In my view, this latter will be quite difficult as some really big money—Shell, Standard of New Jersey, Anglo-American, and Getty—is rapidly entering the Australian uranium picture." That is initiated by L. T. Gregg.

"When informed of all of the above, Mr. Zagnoli's initial reaction was rather violent."

Why was that? Were you afraid you were being left out of the club?

Mr. ZAGNOLI. In answer to your question, no.

Mr. GORE. Why was your reaction violent?

Mr. ZAGNOLI. I don't know that my reaction was violent. That is Mr. Gregg's characterization of my reaction. I don't remember it.

You see, the others were scrambling for this little bit of business. The best thing they wanted was for Gulf to stop building this plant and, at the same time, every one would get a bonus, and they might get our German market.

We had secured that market. We were in a position that the others were striving to get to. We had a preferred position in the German market with a guaranteed sale. We were not going to get rich at it, but if we could operate the plant at capacity——

That is one of the reasons why we resisted so strongly when they were trying to take our sales commitment away from us, but the margin was not so great that if our volume went down in that remote area where the costs are fixed, the unit costs would go out of sight, so we could not stand——

I do not know if I am interpreting what Mr. Gregg is saying. I am unable to. I do not know what he means by "violent," but that is not to be interpreted, as far as I am concerned, that we were trying to get into any club.

Mr. GORE. OK.

Let me go on. I have another memorandum,—this is a letter, rather. It is dated October 11, 1972 [see appendix A].

This is from Roy Jackson to Mr. R. O'Hara, both with Gulf. I thing it is significant because it shows that, as far back as this time, you were already anticipating the defense that you might present if and when your actions are discovered and brought into the light of the day.

Mr. Jackson says, here, "Whatever the occasion for expression of this position . . ."—and this is back in 1972, mind you—". . . 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."

So you were preparing this long ago. Canada disagrees that they compelled you to do so. There is evidence that Gulf had discussions

with the Canadian Government, insisting that this appearance be made as strong as possible—that the Canadian Government's alleged compulsion be underscored at every opportunity.

I want to read you, again, a letter from Mr. Ediger to Mr. Hoffman when he says—and he is talking about an upcoming meeting with the Canadian group. This is a spokesman for Gulf. Mr. Ediger was the manager of Gulf Minerals Canada, Limited.

> We intend to suggest amendments which will emphasize the fact that our participation is a result of direction from the Canadian Government. Therefore, we will likely suggest that the second sentence in paragraph (c) be changed to indicate that Gulf and UCL are complying at the request of the Canadian Government.

Here is another memorandum which is already in the record from Dr. Runnalls where he says that Mr. Allen, who was a counsel for Gulf—Is he still a counsel for Gulf?

Mr. McAfee. For Gulf Minerals; yes.

Mr. Gore [reading]:

> * * * replied during the meeting that, from Gulf's standpoint compliance with the laws of the host government would be an overriding consideration. Gulf is in the position of constantly seeking to underscore the fact that the Canadian Government is insisting that they act as they do.

You have heard a lot of talk over the last decade about energy companies fixing the price of energy, and it is usually allegations. It is usually some shadowy kind of thing, and it is difficult to get your hands on it.

This is, in the parlance of Watergate, a smoking gun. You participated in a cartel. You fixed the price of uranium.

It is astounding, and it is an amazing array of documents that were delivered to this subcommittee in response to the subpenas which we issued. It is a most unusual case. It is an historic case; one which I believe will have an enormous impact on the debate over energy policy in this country.

Gulf, even now, is asking the Congress to deregulate natural gas, to get the Government completely out of the picture, to remove their role as protectors of those who buy natural gas.

Yet, at the same time, another subcommittee of the Congress—this one—is reviewing evidence that Gulf has fixed the price of nuclear energy. I think it will have an effect on the energy policy debate.

I have used more than my time, Mr. Chairman. I thank you for your indulgence; and I invite you to respond to that if you wish, Mr. McAfee.

Mr. McAfee. Am I permitted to, Mr. Chairman?

Mr. Moss. Would you like to respond? You may.

Mr. McAfee. I disagree as thoroughly with most of what the gentleman has said as I can possibly disagree with anything. He is wrong, and I would hope that further consideration by the committee of the real facts, which have been presented to you today and which are available to you, will lead the majority of the committee, Mr. Chairman, to understand that what the Congressman has said is completely wrong.

Mr. Gore. Thank you for your response.

Mr. Moss. Is there further discussion?

Mr. LANDES. Mr. Chairman?

Mr. Moss. Mr. Landes?

Mr. LANDES. I have just one comment and one question.

Mr. Moss. Certainly.

Mr. LANDES. I do want to express my appreciation for the Chairman's interest not only in the direct provable impact of the world-agreed upon market price, but also on the antitrust aspect, and this is because of the special relationship of New York to this proceeding.

New York, right now in its legislature, is faced with the question of the siting of nuclear generating plants. In fact, all generating plants. We are holding hearings on this at this moment.

The strongest argument for the nuclear generating plants, as offered to us, is a need for balanced energy policy and a need for nuclear plants to provide an alternative to fixed pricing in the world oil market.

Therefore, New York's interest is not only in the past impact on prices, but when we commit our utilities to invest in generating facilities, we immediately pass on the cost of that construction to our ratepayers. Cost of work in progress is now under some circumstances permitted by our Public Service Commission as a direct charge to the ratepayer.

It is a significant factor for us, in New York, to realize that we are apparently being told by the evidence offered here that foreign governments, in conjunction with major uranium producers abroad—whether or not they are essentially also other energy suppliers and whether or not they are owned by American companies—are immune to the U.S. antitrust laws.

We are also being told that whether or not this particular marketing arrangement continues, at this very date, to agree, we can anticipate that—as it has an affirmative effect on some of these companies and governments—we will have to expect that to be a factor in our nuclear facilities. On Long Island, this represents over $1 billion being invested at the ratepayers' expense.

I would like to ask one question of Mr. Zagnoli.

Do you know Dr. Art Matheson?

Mr. ZAGNOLI. Yes, I do.

Mr. LANDES. He attended, as I understand it, a meeting of the Atomic Industrial Forum's Mining Committee in Oakbrook, Ill., in March of 1973, as the representative, apparently, of Gulf Oil. Is that correct?

Mr. ZAGNOLI. I don't know, for sure, whether he attended. He was at General Atomic, I believe, at the time which was part of the corporation.

Mr. LANDES. Did he report to you?

Mr. ZAGNOLI. No.

Mr. LANDES. There is no memo in the files of his report with respect to that meeting?

Mr. ZAGNOLI. A report to me?

Mr. LANDES. Yes.

Mr. ZAGNOLI. I am not aware of it.

Mr. LANDES. Did he report to anybody on that meeting?

Mr. ZAGNOLI. I do not know.

Mr. LANDES. I see. Did he report to you, Mr. McAfee?

Mr. MCAFEE. I did not get the name, Mr. Landes.

Mr. LANDES. Dr. Matheson.

Mr. MCAFEE. I am not acquainted with Dr. Matheson; I am sorry.

Mr. LANDES. We would appreciate your adding to the record any reports in your files from Dr. Matheson with respect to the meeting of the Atomic Industrial Forum's Mining Committee in March 1973 in Oakbrook, Ill. [see appendix B].

Thank you.

Mr. Moss. Are there any further questions?

If not, at long last, gentlemen, you are both excused under the subpena that was issued, and the Chair would announce that tomorrow's witness list will include Mr. L. T. Gregg, who was actually present at the meetings in Paris and Johannesburg; Mr. Dan Hunter, who also was present at meetings; Mr. W. A. Ramsey, who prepared the white paper that was to be submitted to Justice; and Mr. W. D. Fowler, another former Gulf official who prepared another memo which contradicted the "white paper."

With that, the committee will stand adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 2:30 p.m., the committee adjourned to reconvene at 10 a.m., June 17, 1977.]

INTERNATIONAL URANIUM CARTEL

FRIDAY, JUNE 17, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman), presiding.

Mr. Moss. The hearing will be in order.

We continue today with our joint inquiry with the New York State Assembly, Committee on Corporation, Authorities, and Commissions into what, by anyone's account, was a fully operational, price fixing, quota setting, international uranium producers' cartel. One of America's great corporate giants, Gulf Oil, was a member. There is no doubt about that now.

Nor can there be any serious doubt, after yesterday's begrudging admissions, that cartel activities did in fact affect domestic American commerce.

Yesterday, we heard from Gulf's highest official that the Canadian Government was responsible for that American-based company's participation. That may be so; it may not be so. The record at this point is unclear. That is why, yesterday, I asked the State Department to request of the Canadian Government that it respond—that the Canadian Government tell us, and the American people, just what sanctions Gulf might have actually suffered had it pursued a course different from that which emerged yesterday.

Apparently, Gulf gave serious thought to presenting its dilemma to appropriate American authorities—a plan which was, in mid-1972, after the cartel got rolling, abandoned. Or was it? Perhaps a contact was made. Certainly that would seem to be the prudent, and by Gulf's assertion that the law clearly was in its favor, the easy thing to do. The subcommittee will diligently pursue that question in the weeks ahead. The point is, yesterday our hearing raised several unanswered questions.

Yesterday's witnesses were policymakers. Today, we hear from persons more directly involved in the actual functioning of the cartel. Mr. L. T. Gregg, our first witness, ultimately became a Gulf representative on the operations committee of the cartel. Mr. Donald Hunter was at that time Mr. Gregg's nominal superior, and beyond his own involvement in the events of the day, was kept informed of what was going on. That much is clear from the documents now in the record.

After we hear from Mr. Gregg and Mr. Hunter, we will inquire of Mr. W. Ramsey just what the circumstances were of his involvement with the "white paper" Gulf originally contemplated submitting to the Justice Department, and of Mr. W. A. Fowler, another former Gulf official, as to what caused him to disagree so diametrically with Ramsey's view that the cartel would have no impact on this country.

The Chair would once again like to thank the New York State As-Assembly Chairman Irwin J. Landes and ranking minority member Lloyd S. Riford, Jr., and Mr. William Haddad, Director of the Office of Legislative Oversight for the joint efforts which have resulted in this unusual cooperative investigatory hearing. The staffs of the subcommittee and the assembly committee have, from the outset, worked closely together and shared resources in an effort to fully develop the facts involved.

Mr. Gregg, would you stand and be sworn?

Are you accompanied by counsel?

Mr. GREGG. Yes, Mr. Chairman.

Mr. MOSS. Will he be called upon to give testimony other than advice to you?

Mr. GREGG. No.

Mr. MOSS. Do you solemnly swear that the testimony you are about to give this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GREGG. I do.

Mr. MOSS. Will you identify yourself for the reporter and for the hearing record.

TESTIMONY OF LAWRENCE T. GREGG, FORMERLY MANAGER OF URANIUM MARKETING, GULF MINERALS CANADA LTD., ACCOMPANIED BY JOHN HENRY BREBBIA, COUNSEL

Mr. GREGG. My name is Lawrence T. Gregg.

Mr. Chairman, I am accompanied here today by Mr. John Henry Brebbia of Alston, Miller & Gaines, Washington, D.C.

From approximately September 1972 until August 1974, I was the manager of uranium marketing for Gulf Minerals Canada, working out of that company's Toronto office. I was transferred to that position from General Atomic Co. in San Diego, pursuant to the memorandum attached to my statement as exhibits A and B. In August 1974, I was transferred from Gulf Minerals Canada to the Atlanta sales office of General Atomic. I left General Atomic in December 1975 to join my present employer, Nuclear Assurance Corp., in Atlanta.

While I was with Gulf Minerals Canada, I had occasion to participate in various meetings of representatives of the Canadian Government and Canadian uranium producers and in various meetings of the uranium club. From January 1974 through April 1974, I served as one of two Canadian representatives to the operating committee of the club. I did not participate in the club after my transfer from Gulf Minerals Canada to General Atomic in Atlanta in August 1974, and my knowledge of club activities is therefore limited to the time prior to that transfer.

My participation in the club as a representative of Gulf Minerals Canada was carried out at the direction and with the approval of my superiors at Gulf Minerals Canada and in reliance upon legal advice provided, to the best of my knowledge, by the law department of Gulf Oil Corp. The substance of that legal advice was, as best as I can recall, that as long as Gulf Minerals Canada's participation in the club was at the direction of the Canadian Government and as long as the U.S. domestic market was excluded from any club arrangements, neither Gulf Minerals Canada nor its personnel would incur liability under the antitrust laws of the United States.

I am here before this subcommittee today to answer fully and candidly any questions that may be asked of me. In that regard, however, I must ask the subcommittee to bear in mind that some of the events in question occurred approximately 5 years ago and my testimony is necessarily limited to the best of my present recollection of those events.

Thank you.

[Exhibits A and B referred to follow:]

FROM D. Hunter AT San Diego IN REPLY REFER TO

TO Mr. S. A. Zagnoli AT Denver DATE 7/7/72

SUBJECT Foreign Marketing

Confirming our agreement of today, we have reviewed the situation existing in the world marketplace over the last several weeks and believe that the interest of the corporation would be better served with a modification to our current pattern of operation. The interrelationships which exist between the UEB agreement which you are currently renegotiating and our marketing activities make it highly desirable for the foreign marketing operation to be physically located with the production function at Gulf Minerals Canada. These considerations are further strengthened by the posture which we must maintain as a Canadian producer. In light of this it is appropriate for us to transfer Mr. L. T. Gregg as Manager of International Sales to Toronto at a very early date.

As we have agreed, the operating instructions relating to the interplays of marketing with production will be provided by Mr. Ediger and yourself to Mr. Gregg. Mr. Gregg will continue to administratively report to me in San Diego. We believe this revised mode of operation will improve the integration of the marketing and production phases of our foreign uranium business while at the same time preserve overall marketing and sales guidance.

Mr. Gregg will visit Toronto on Tuesday, July 11, and I have asked that he and Mr. Ediger reach agreement regarding the timing for the move as well as the proposed broad operating guidelines. I think we are in agreement that the above noted action will serve to improve Gulf's position in the world marketplace.

cc: N. Ediger
W. C. Gallaway
L. T. Gregg
H. E. Hoffman
C. A. Rolander, Jr.

EXHIBIT A

INTERNAL CORRESPONDENCE
GULF ###

FROM D. Hunter AT

TO Distribution AT

IN REPLY REFER TO

DATE August 15, 19

SUBJECT

Effective Monday, August 21, Mr. L. T. Gregg will transfer to Gulf Minerals Canada Ltd. as Manager, Uranium Marketing. In this position Mr. Gregg will be responsible for world-wide sales of uranium from Gulf's Rabbit Lake Project in Saskatchewan.

D. Hunter

DH/blp

Distribution

L. J. Colby
W. D. Fowler
W. C. Callaway
A. P. Graff
F. S. Glendinning
H. E. Hoffman
T. A. Johnston
D. J. Kowal
J. W. Landis
A. R. Matheson
C. A. Rolander
H. C. Vivian

N. E. Carey - Washington
N. M. Ediger - Toronto
F. U. Fischer - Zurich
M. Saito - Tokyo
S. A. Zagnoli - Denver

EXHIBIT B

Mr. Moss. Mr. Gregg, at the outset, I would like to confirm the fact that the subcommittee would want under no conditions to have you go beyond your best recollection in responding to any question.

Mr. Atkisson?

Mr. ATKISSON. Thank you, Mr. Chairman.

Mr. Gregg, I note you are appearing with counsel today. I know, also, personally from having been involved very heavily in this investigation for many months that you have been questioned in other forums about these matters, among them some civil litigation and also a grand jury investigation.

Were you represented by counsel in those proceedings?

Mr. GREGG. Yes, sir, I was.

Mr. ATKISSON. As you are today?

Mr. GREGG. Yes.

Mr. ATKISSON. Is Gulf Oil Co. paying for any of your personal attorneys' fees?

Mr. GREGG. Not currently.

Mr. ATKISSON. I see. Have you sought that?

Mr. GREGG. We have, on numerous occasions, requested indemnification and payment of legal expenses from Gulf Oil Corp., yes.

Mr. ATKISSON. Has that request been—thus far, at least—refused?

Mr. GREGG. It has not been refused. It has not been acted upon currently.

Mr. ATKISSON. Thank you.

Let's go to the chronology of events as they apply strictly to you. I realize you outlined them in rough in your opening statement.

When was the first date, as best you can recall, that you first learned of the cartel or marketing arrangement?

Mr. GREGG. In approximately mid-February of 1972.

Mr. ATKISSON. Who advised you of the cartel's existence?

Mr. GREGG. Mr. Ediger.

Mr. ATKISSON. Mr. Ediger who was at that time where?

Mr. GREGG. He was general manager of Gulf Minerals Canada in Toronto.

Mr. ATKISSON. Where did he so advise you? Did you go up to Canada for that purpose?

Mr. GREGG. No. He telephoned me. I was in San Diego at the time that he telephoned me from Toronto.

Mr. ATKISSON. And his advice to you then was by telephone; is that correct?

Mr. GREGG. It was by telephone. There may have been a memo that he also sent. I do not recall for certain.

Mr. ATKISSON. You later went to Canada, did you not?

Mr. GREGG. Yes.

Mr. ATKISSON. When were you informed that you were to go to Canada?

Mr. GREGG. In early—to mid-July 1972.

Mr. ATKISSON. Between February of 1972, when you first learned about the cartel, and mid-July of 1972, when you were transferred to Canada, did you yourself have any involvement whatever with the cartel?

Mr. GREGG. No direct involvement, no.

Mr. ATKISSON. Were you kept informed of its activities?

Mr. GREGG. I was informed on several occasions of certain events, yes.

Mr. ATKISSON. Who was your immediate superior up to July 1972?

Mr. GREGG. Mr. Don Hunter.

Mr. ATKISSON. Were you aware during the period you remained in the United States that efforts were being made by the Gulf Oil Corp. to clear its involvement in the arrangement with appropirate American authorities?

Mr. GREGG. Mr. Atkisson, I do not recall whether I was told that at the time or whether I learned that once I got to Toronto in early September 1972.

Mr. ATKISSON. Excuse me. It was in July of 1972 that you were told you would be going to Toronto. And then it was in September of 1972 that you actually physically went to Toronto?

Mr. GREGG. That is right.

Mr. ATKISSON. Is it a fair characterization to say that Gulf executives you knew at the time were sensitive to the antitrust implications of Gulf's involvement in the cartel?

Mr. GREGG. Yes; it is a fair characterization.

Mr. ATKISSON. Can the characterization go further to employ the word "nervous" about it?

Mr. GREGG. I would not necessarily use that characterization. I think "sensitive" is appropriate.

Mr. ATKISSON. Were you nervous about it?

Mr. GREGG. To the best of my recollection, not particularly nervous, no.

Mr. ATKISSON. You were aware, I take it, that Gulf was seeking the advice of counsel on the matter in any event?

Mr. GREGG. Yes.

Mr. ATKISSON. Are you familiar with a gentleman named Jackson, Mr. Roy Jackson?

Mr. GREGG. Yes.

Mr. ATKISSON. And you were aware that there were other counsel, both in and outside of the Gulf organization whose advice was sought on this matter?

Mr. GREGG. I either was told that at the time or later became aware of it, yes. I am not sure which.

Mr. ATKISSON. In your mind and in the minds of your superiors who were kept advised of events in the cartel, was there one piece of advice emanating from one person that seemed to be more important than anyone else's in alleviating Gulf's sensitivities over the antitrust implications of the cartel?

Mr. GREGG. I do not recall anything like that, no.

Mr. ATKISSON. Perhaps I should clarify the question. Was Mr. Jackson's advice or any of the memoranda emanating from Mr. Jackson more important than the word from anybody else?

Mr. GREGG. Mr. Jackson did prepare a rather lengthy opinion which was made available to me when I physically got up to Toronto. I studied it and discussed it with Mr. Ediger.

Yes; that document—and, therefore, I suppose, Mr. Jackson—reliance upon that document.

Mr. ATKISSON. Reliance was placed on the Jackson memo. Do you recall the date, by the way, of that memorandum?

Mr. GREGG. No, sir, I do not. It was sometime in the summer or very early fall of 1972.

Mr. ATKISSON. Do you recall where, at the time you saw this memorandum, Mr. Jackson physically was?

Mr. GREGG. I believe he told me he was working out of Bermuda. I had met him in Toronto at a meeting, I believe, sometime in July of 1972.

Mr. ATKISSON. As a matter of fact, he became president of a Gulf subsidiary in Hamilton, Bermuda that was in the insurance business; isn't that correct?

Mr. GREGG. Yes, sir.

Mr. ATKISSON. When did you ultimately become a representative on the operations committee of the cartel?

Mr. GREGG. January 1974.

Mr. ATKISSON. Do you recall the circumstances under which you became such a member?

Mr. GREGG. Yes.

Mr. ATKISSON. Could you tell us about that please?

Mr. GREGG. In October 1973, at a meeting of the club in London, Mr. McNabb approached Mr. Ediger and me and said that he would like very much for me to become a member of the operating committee representing Canada since the terms of the two current members for Canada were expiring at the end of 1973.

Mr. ATKISSON. Mr. Gregg, at your left arm there, there is a packet of documents. They are arranged sequentially by date. I would refer you—about three-fourths of the way through—to a letter on Canadian Government letterhead dated January 8, 1974. It is addressed to Mr. Ediger, manager, Gulf Minerals Canada Limited, over the signature of Mr. G. M. McNabb [see appendix A].

Do you recognize the letter?

Mr. GREGG. I do.

Mr. ATKISSON. Did you yourself have anything to do with the drafting of that letter?

Mr. GREGG. As I best recall, Mr. Ediger and I jointly drafted this letter or something very close to it and sent it to Mr. McNabb.

Mr. ATKISSON. Just behind that, there is another letter also dated January 8, 1974, again to Mr. Ediger, again signed by Mr. McNabb.

Do you also jointly draft——

Mr. GREGG. I do not have that one.

Mr. ATKISSON. Perhaps I can read it to you; it is very short. It is stapled to the first one.

Mr. GREGG. I see now that the first letter you were referring to was the letter from Mr. McNabb dated January 8 requesting that Mr. Ediger and I attend a meeting in Johannesburg. I was a bit hasty in looking at that letter.

Mr. ATKISSON. All right. Did you also jointly draft that letter?

Mr. GREGG. I do not believe that Mr. Ediger and I jointly drafted this letter, requesting that we go to Johannesburg.

Mr. ATKISSON. All right, so it is only the other letter which begins, "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" and so on.

You did help draft that letter?

Mr. GREGG. As I best recall, Mr. Atkisson, Mr. Ediger, and I did draft a letter which we sent Mr. McNabb. Yes—this other letter of January 8.

Mr. ATKISSON. All right. Thank you.

Turning your attention to the club and how it functioned. Did you yourself participate in drafting the rules that governed the organization at any time?

Mr. GREGG. Yes, on two occasions.

Mr. ATKISSON. Also in your documents there—I believe it is separate—there is a fairly lengthy document entitled at the top, "Clean Draft, March 4, 1974, Rules for Orderly Marketing." [See appendix A.]

Do you recognize that document?

Mr. GREGG. I do.

Mr. ATKISSON. Did you have anything personally to do with the drafting of that document?

Mr. GREGG. Yes. I was one of four people who participated in drafting that.

Mr. ATKISSON. Does this document fairly represent the rules by which the uranium cartel operated?

Mr. GREGG. Yes, as of March 4, 1974.

Mr. ATKISSON. So, in other words, the rules were changed from time to time, refined and so on: and your participation, I take it, was largely in that refining process?

Mr. GREGG. In this istance, yes.

Mr. ATKISSON. All right.

I would ask you in your own words to describe the salient features of the rules. I might say for the record that, to my knowledge, this is the very first time in any public forum that the rules have been described, and by someone who was directly involved.

There have been a lot of documents floating around since last summer—first coming from Australia and lately from Canada. But this is the first time anyone has ever been able to tell us what the intent was behind each term and how it was put into effect.

Let's start with Markets and Market Quotas; that is point 2.

Can you briefly describe for us how that worked?

Mr. GREGG. Yes. The initial allocation of markets to the five country groups participating in the club was done, as I best recall, at Johannesburg in late May of 1972. There were then adjustments to the percentages to the various groups as time went on.

As it says here, there were three periods—1972 through 1977: 1978 through 1980; and 1981 through, it looks like, 1983, maybe 1985——

Mr. ATKISSON. Excuse me, Mr. Gregg. Let me establish something more basic just at first.

There was a quota system.

Mr. GREGG. Yes.

Mr. ATKISSON. And that quota system divided up the market; did it not?

Mr. GREGG. It divided up the non-U.S. market, also excluding the home markets of Canada, South Africa, France, and Australia.

Mr. ATKISSON. All right. These percentages we see on the first page: Canada, 27 percent; NUFCOR, 21 percent; and so on—that is a percentage of demand; is that correct?

Mr. GREGG. It is a percentage of uncommitted requirements in that period of time; yes.

Mr. ATKISSON. What are those numbers based on? Are they arbitary?

Obviously, the five major members, the five components of the cartel, do not have even numbers; it would all be 20 percent.

Why do the numbers differ? Why does Canada have 27 percent and Uranex, the French proprietary company, only 20 percent?

Mr. GREGG. Basically, it is a reflection of two things. First is the relative production capacity in one country versus another. As an example, in the first period—1972 through 1977—it was felt that Australia would have little, if any, mines in production in that period.

Mr. ATKISSON. Were the members of the cartel always happy with those numbers?

Mr. GREGG. No, not always. There was a great deal of debate and negotiation among the members.

Mr. ATKISSON. That, in fact, was what cartel meetings were held for; is it not?

Mr. GREGG. It was certainly one of the principal reasons; yes.

Mr. ATKISSON. Can you tell us how the quota system was administered?

Mr. GREGG. Yes. A secretariat was established which was located in Paris.

Mr. ATKISSON. How did that work?

Mr. GREGG. It consisted of one individual and a secretary. His function was to, literally, administer these rules and, in particular, the quota allocations as new business would come along.

As an example, let's say that a member would find out that there was a requirement for uranium by a given utility, say, in Spain, for example. He would then—the member who finds this out—notify the secretariat in Paris, who would then immediately notify—almost always by Telex—the other four country groups. The secretariat would determine, along with that notification of the piece of new business, which of the five country groups was next in line to get new business.

Mr. ATKISSON. To be the leader.

Mr. GREGG. To be the leader, yes; based upon the unfilled portion of these allocations.

Mr. ATKISSON. So there was a rigged bidding process by which one country group would be designated by the secretariat to be the leading bidder; is that correct?

Is it also correct that, within the country's group, it was left to them to figure out which company within the country group would be the specific leader?

Mr. GREGG. Well, that is correct in the case of Canada and Australia because they are the only two of these five-country groups that had effectively more than one producer.

Mr. ATKISSON. Once the leader was chosen, what was the leader allowed to do under the club rules, once it was designated by the secretariat?

Mr. GREGG. There was a set of minimum prices for each year of the period being considered. The leader was allowed to make his quotation or his bid either at those minimum prices or anywhere above those minimum prices. He was not obligated to quote exactly the minimum price. He could quote more than the minimum price.

Mr. ATKISSON. Did the secretariat also choose a runnerup?

Mr. GREGG. Yes; that was another function.

Mr. ATKISSON. And he also chose all others? Everybody else fell into the all-other category.

What, under the club rules, were the runnerup and all others required to do?

Mr. GREGG. The runnerup was obligated to make his quotation if he chose to enter a bid to this particular piece of business—at a specific minimum differential above whatever the leader quoted. And then the all-other category, if they chose to enter bids also, were obligated to make their bids at a specified minimum differential above the runnerup's price.

Mr. ATKISSON. What would happen if a member of the club broke out one of those rules?

Mr. GREGG. There would be discussion of it at the next operating committee meeting.

Mr. ATKISSON. Would some sort of penalty be assessed?

Mr. GREGG. Yes. There were, on several instances, penalties or sanctions imposed for various infractions.

Mr. ATKISSON. So, the cartel did have a self-enforcement policy and it did, in fact, carry it out?

Mr. GREGG. Yes.

Mr. ATKISSON. How was the secretariat financed?

Mr. GREGG. The expenses of the secretariat were financed by contributions from each of the five-country groups in direct proportion to their percentage shares of the market, the quota allocations. And these assessments were made quarterly, as I recall. He would—as in any business activity—present a budget. It would be a proposed budget for the following year, say, and it would be discussed and then approved. Then he would present an accounting at the end of each quarterly period with his assessment. This would then be paid by the members.

Mr. ATKISSON. Mr. Gregg, I would ask you to turn to your document set again. There is a Telex of August 28, 1972——

Mr. MOSS. Before we get to that, I would like to recognize the fact that we have present with the subcommittee today the very distinguished chairman of the full Committee on Interstate and Foreign Commerce, Hon. Harley O. Staggers. Mr. Chairman, we are pleased to have you join us.

Chairman STAGGERS. Thank you.

Mr. MOSS. Please proceed.

Mr. GREGG. Could you give me that date again, please?

Mr. ATKISSON. August 28, 1972.

Mr. GREGG. I have it now.

Mr. ATKISSON. I invite your attention to the last item on this Telex which, by the way, is addressed to Mr. S. A. Zagnoli, Mr. R. K. Allen, and Mr. Larrabee in the Denver office.

Item: "PS to Denver office, Will SERU operating costs be a charge against the Rabbit Lake project or against Gulf marketing costs. I pre-

sume the latter, even though GMCL might initiate the cheque"—"should we initiate the cheque" and then, "X-invoice." Signed M. Ediger. And then, in handwriting, at the bottom of that item, it says, "Yes to marketing."

Does that mean anything to you?

Mr. GREGG. I understand the context of it; yes.

Mr. ATKISSON. What is SERU?

Mr. GREGG. SERU was an acronym for the organization in France from which the individual chosen as secretariat came.

Mr. ATKISSON. All right; so the secretariat we were just talking about worked for SERU?

Mr. GREGG. Yes, he did—he did not work full time for the club.

Mr. ATKISSON. What was the other hat he wore?

Mr. GREGG. The other part was for this organization SERU.

Mr. ATKISSON. Is SERU part of the French Government in any way?

Mr. GREGG. It is my understanding that it is a wholly owned subsidiary of the French Atomic Energy Commission.

Mr. ATKISSON. And is the French Atomic Energy Commission referred to commonly as the CEA?

Mr. GREGG. It is.

Mr. ATKISSON. The CEA, does it not, has a proprietary interest in a cartel member, Uranex; is that correct?

Mr. GREGG. The CEA owns an equity interest in Uranex; yes.

Mr. ATKISSON. Thank you.

Back to this Telex. In the handwriting, "Yes to marketing," a question is apparently being put to the Denver office of Gulf about who should pay for Gulf's share of the cartel's secretariat. Is that correct?

Mr. GREGG. That is my interpretation of this: yes.

Mr. ATKISSON. The Rabbit Lake project, of course, refers to the Canadian uranium joint venture that Gulf had with a German company?

Mr. GREGG. Yes.

Mr. ATKISSON. The question is quite legitimately asked whether the costs for operating the cartel's secretariat should be assessed against that Canadian interest or Gulf marketing in Denver. Is that correct?

Mr. GREGG. I do not know what Mr. Ediger is referring to in the words "Gulf marketing costs."

Mr. ATKISSON. Why would the question be put to the Denver office?

Mr. GREGG. Our administrative affairs at Gulf Minerals Canada were, by and large, administrative and financial affairs, except for payroll—were, by and large, handled by the Gulf Mineral Resources Co. personnel in Denver.

Mr. ATKISSON. In Denver, in the United States—the administrative matters of GMCL were handled in the United States.

Mr. GREGG. Some of them were—not all.

Mr. ATKISSON. But the payment of Gulf's share of the secretariat was an item that was handled in the United States; is that correct?

Mr. GREGG. I do not know. This Telex of August 28 is asking the question to what account should these costs be allocated—should it be allocated to the Rabbit Lake project account or to something that he has called "Gulf marketing account"?

I do not know what he means exactly by the words "Gulf marketing."

Mr. ATKISSON. Do you know what he means by the words "X-Invoice"?

I assume that would mean cross invoice.

Mr. GREGG. It means cross invoice.

What he is getting at in that last sentence is that GMCL Toronto could write the check and sign it and send it to the Canadian Government, where they would consolidate all of these from the other Canadian producers; then the Canadian Government would send Canada's check to Paris.

So, if GMCL were to do that, then we would—GMCL could have cross-invoiced or back-invoiced against another account somewhere else.

Mr. ATKISSON. All right. I have just two more items.

One, in addition to the market allocation rules you have described and the pricing rules, the club evolved other items that were to be included in the contracts; did it not—such as a force majeure provision? Can you tell us what the force majeure provision was under the club rules?

Mr. GREGG. "Force majeure" is a term or concept in contract law that, in effect, says, if the obligations of a contracting party are stopped or at least prevented from performing them because of reasons totally outside his control——

Mr. ATKISSON. Excuse me. Would a good example of that be if a uranium buyer in the United States purchased uranium, a force majeure clause might let him out of his obligation to buy if, for example, the U.S. embargo on importation uranium were not lifted?

Mr. GREGG. I can conceive that a buyer would use the embargo as a force majeure so that he would not have to take delivery and pay for the uranium.

Mr. ATKISSON. All right, then the club had a strict rule against allowing that or anything else to be invoked as a force majeure to allow buyers to get out of their obligations to buy uranium from cartel members; is that correct?

Mr. GREGG. It states in the rules three conditions which would not be accepted as force majeure on the buyer's part.

Mr. ATKISSON. One of them was the lifting of the U.S. embargo; was it not?

Mr. GREGG. I do not see that in these rules.

Mr. ATKISSON. To your knowledge, was it ever a condition of the club rules?

Mr. GREGG. No.

Mr. ATKISSON. Other items I do see now: Nuclear plant breakdown; permit withdrawal—that would be a governmental act; lack of operating license—another governmental act—will not be accepted as a force majeure on the buyer's part.

That was a part of the rules; was it not?

Mr. GREGG. Yes.

Mr. ATKISSON. But for the operations of the cartel, do you think that rule would have been common in the world market?

Mr. GREGG. Do I understand your question, Mr. Atkisson, to be: If there had been no cartel, would this still have been a normal type of condition of contract?

Mr. ATKISSON. Yes.

Mr. GREGG. I believe that makes good business sense from the producer's standpoint.

Mr. ATKISSON. From the producer's standpoint; but not such good business from the buyer's standpoint.

Mr. GREGG. Well, perhaps; but that would be the subject of negotiation between producer and buyer.

Mr. ATKISSON. Were you ever directed to keep your activities on the cartel confidential?

Mr. GREGG. Yes, I was so directed by Mr. Ediger.

Mr. ATKISSON. Did the manner with which you would talk about cartel activities change if you ever crossed the border from Canada into the United States?

Mr. GREGG. I would not, as a practice, talk about club activities when I was in the United States.

Mr. ATKISSON. Were you more sensitive to that problem in the United States than you were in Canada?

Mr. GREGG. Yes.

Mr. ATKISSON. Is it fair to say that Gulf Oil—indeed, all the cartel members—wanted to keep the arrangement secret?

Mr. GREGG. It is a relatively fair characterization. There were, occasionally, opinions expressed that maybe the best thing to do was to bring it all out in the open.

Mr. ATKISSON. Did utility representatives ever quiz you about a cartel, any kind of cartel? Did they ask you about world market prices and how they were arrived at? Anything of that sort?

Mr. GREGG. Yes.

Mr. ATKISSON. What was your response when you were so quizzed?

Mr. GREGG. I would evade the issue.

Mr. ATKISSON. Is it fair to characterize that as stonewalling the information on the cartel?

Mr. GREGG. That is a fairly good characterization.

Mr. ATKISSON. That, as a matter of fact, is a characterization you yourself have used before; is it not?

Mr. GREGG. Yes.

Mr. ATKISSON. Thank you.

I have one final question.

You worked, when you were in the United States, with a Mr. Fowler; did you not?

Mr. GREGG. I did.

Mr. ATKISSON. Do you have a high opinion of his abilities as a businessman and analyst?

Mr. GREGG. I do.

Mr. ATKISSON. Thank you.

I have no further questions, Mr. Chairman.

Mr. MOSS. The Chair recognizes the gentleman from New York, Mr. Lent.

Mr. LENT. Thank you, Mr. Chairman.

Mr. Gregg, one of the critical points here seems to be whether the Gulf Minerals Canada was more or less forced or coerced or required to participate in this cartel by the Canadian Government or whether, on the other hand, this was an arrangement of convenience between the Canadian Government and Gulf.

Is it a fact that you were advised by Mr. Ediger at a very early date, right after the Paris meeting in February of 1972, that the Canadian Government was interested in working toward an international marketing arrangement?

Mr. GREGG. Yes, I was.

Mr. LENT. There is, I believe, in your possession a February 15, 1972, memo to you from Mr. Ediger concerning a meeting that was coming up the next day by Canadian producers to review the Paris meeting. In that memo, Mr. Ediger quotes G. M. McNabb, the Assistant Deputy Energy Minister of Canada, as saying it is "very essential that Gulf Minerals attend the meeting on Wednesday from Canada's point of view and in Gulf's long-term interest."

Do you recall receiving that memorandum?

Mr. GREGG. Mr. Lent, I have a memorandum here dated February 16, 1972. It is a file note of six pages signed by Mr. Ediger.

Is that the one to which you are referring?

Mr. LENT. Yes; I stand corrected. That is a February 16, 1972, memorandum.

Mr. GREGG. Mr. Lent, I do not recall whether I received a copy of this memo at that time while I was in San Diego or whether I first saw it at a later time in Toronto.

Mr. LENT. Well, you did write a memorandum dated February 17, 1972, to Mr. Hoffman on the subject "Summary of Developments in International Uranium Meetings." In that memo you indicate that Mr. Ediger was given a copy of a draft of the proposed Uranium Mining Control Act.

Mr. GREGG. Yes.

Mr. LENT. Can you tell us who prepared that draft?

Mr. GREGG. The draft of the Uranium Mining Control Act?

Mr. LENT. That is correct.

Mr. GREGG. No, sir, I do not know who prepared that draft.

Mr. LENT. Was Mr. Ediger to comment on that draft? Was that the purpose in which it was submitted to him?

Mr. Moss. We are going to recess for 10 minutes. When we return, the gentleman from New York will be recognized to resume the questioning.

There is a vote on the floor.

[Brief recess.]

Mr. Moss. The committee will be in order.

The gentleman from New York, Mr. Lent?

Mr. LENT. Mr. Gregg, as I recall, we were trying to establish the environment under which Mr. Ediger was given an opportunity to comment on the draft of the proposed Uranium Mining Control Act.

Can you tell us whether he did provide comments?

Mr. GREGG. Mr. Lent, I do not recall with certainty whether he did provide comments on that proposed act or not. This memo of mine—February 17—said that he is to provide comments on it.

Mr. LENT. How would you describe or characterize the relationship that existed, on the one hand, between Mr. McNabb of the Canadian Government and you and Mr. Ediger on the other with respect to the involvement of Gulf Minerals in the cartel? Was it a hostile relationship? Was it restrained and formal? Was it cooperative? Was it cozy?

Can you give us some characterization of that relationship?

Mr. GREGG. From the period of September 1972, when I went up to Toronto and started working closely with Mr. Ediger and then met Mr. McNabb for the first time, until I left in August of 1974, I would say that, overall, through that entire period, the relationship was cooperative. It was not hostile. Initially, perhaps, it was somewhat restrained on Mr. Ediger and my part.

Mr. LENT. Here, you, on behalf of Gulf, and Mr. Ediger were brought right into the legislative process of the Government of Canada and asked to comment on a proposal before it was actually put in final form. Isn't that sort of a cozy relationship?

Mr. GREGG. Mr. Ediger was asked to comment on it. At this time I had no relationship with either Mr. Ediger or Mr. McNabb. In fact, the telephone conversation from which this memo resulted on February 16 was the first time I had ever spoken with Mr. Ediger.

Mr. LENT. Do you have any idea whether these rules and regulations and the text of this Uranium Mining Control Act were instigated by Gulf Minerals?

Mr. GREGG. No; I have no knowledge of that.

Mr. LENT. You realize, of course, that part of the Gulf Minerals defense in connection with the antitrust charge is that, well, we couldn't help ourselves; we had to go along with the Canadian Government.

What I am trying to determine is, what came first, the chicken or the egg here? Did the Canadian Government call Gulf on the carpet, so to speak, and say you have to join this cartel and you have to live within these rules and regulations? Or did Gulf go to the Canadian people you were working with and say, "We have to protect ourselves from the American antitrust laws, and the best way we can protect ourselves is for you fellows to put us under some very strict rules and regulations and require us to join this cartel"?

Mr. GREGG. Mr. Lent, the only response I can give to that is that I later became aware that the Canadian Government had been considering a Uranium Mining Control Act of some type, since, perhaps, as early as 1969 and that it had gone through a number of drafts and revisions. I further became aware, as I best recall, that other Canadian producers were consulted by the Government about the terms of this proposed control act, in addition to Gulf Minerals.

Mr. LENT. Can you tell us at whose direction you participated in the drafting of the so-called Johannesburg rules of March 4, 1974?

Mr. GREGG. That document was a——

Mr. LENT. We know what the document was.

You participated in the drafting of it, as I understand the previous testimony. I am now trying to find out, were you acting under the direction of Gulf Minerals, under the direction of the Canadian officials you were working with—whose direction?

Mr. GREGG. That task was performed by me as a part of my duties on the Canadian team at the operating committee. The document was a compilation into one piece of paper of a number of previous documents that had been issued.

Mr. LENT. But who asked you to participate?

Mr. GREGG. I do not recall the individual.

Certainly my participation in it was approved by Mr. Ediger.

Mr. LENT. Well, you may not recall specifically who requested, but was it someone from Gulf or was it someone from the Canadian Government?

Mr. GREGG. Mr. Lent, as I best recall, Dr. Runnals, who was the other Canadian member on the Operating Committee, and I discussed the desirability of having a clean pulling together of all the previous documents. We advanced that idea at the Johannesburg Operating Committee meeting in January 1974. The other members said, "That is a good idea; why don't you form a task force to do that thing?" And then we proceed from there in March.

Mr. LENT. One last question.

You participated in the meeting of the Canadian producers on September 5, 1972, I understand. That is the meeting at which the minutes reflect the statement concerning Westinghouse. The statement contained in that meeting, as I understand it, is "The consensus was finally reached 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."

You were a participant at the meeting. You are familiar, I assume, with those minutes—at least that part of the minutes.

Can you tell us what that meant, as you viewed it as a participant at that meeting?

What does it mean "to eliminate the competition"?

It is the minutes of the September 5, 1972, meeting.

Mr. GREGG. My understanding of the intent of that statement is that——

Mr. LENT. Referring to page 3, the second paragraph.

Mr. GREGG. Yes; I found it.

Mr. LENT. The sentence beginning, "The consensus finally reached."

Mr. GREGG. My understanding of the meaning of that sentence or intent of that sentence was that it did not relate specifically and solely to Westinghouse but to all reactor manufacturers and fuel fabricators who, in effect, were between the uranium producers and the utility customers.

Mr. LENT. Well, would you say then that the purport of that statement was that the middleman be eliminated?

Mr. GREGG. The words "eliminating it once and for all" are used here.

Would you restate that question please?

Mr. LENT. Would you say that the purport of that statement in the minutes was that the middleman should be eliminated and that there should be direct sales between the producer and the consumer?

Mr. GREGG. The desire of the majority of members of the club was to have direct sales between the producer and the consumer.

Mr. LENT. There is nothing in that statement of minutes which violates your recollection or is contrary to your recollection of what was said at that meeting?

Mr. GREGG. No; there is nothing in here that contradicts my recollection.

Mr. LENT. And, in your experience, Mr. Austin was an accurate notetaker?

Mr. GREGG. No; I believe Dr. Runnalls wrote this memorandum.

Mr. LENT. I am sorry. I withdraw that question.

I have no further questions.

Mr. Moss. The Chair recognizes the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman.

Mr. Gregg, I would like to commend you on being so candid about this whole sequence of events. It is helping us get to the truth about these matters.

As I understand your responses to counsel earlier, the cartel operated by dividing up territories and designating a leader within said territories.

You said that when a utility or a Government customer entered the market for uranium, whoever heard about that first brought it up at the meetings and it was discussed; correct?

Mr. GREGG. Not exactly. Whoever heard about it first transmitted that information to the secretariat in Paris, who then sent it out to the other members.

Mr. GORE. This was the guy that was "buried" in another organization?

Mr. GREGG. Yes.

Mr. GORE. At that point, at the next meeting of the cartel, you would say, "All right, company A has this territory, so company A will bid at a particular figure, and then everybody else will bid a little bit higher than that." Is that roughly how it went?

Mr. GREGG. No.

The allocations were not done on the basis of territories.

Mr. GORE. How did you determine which buyer would be matched up with which seller?

Mr. GREGG. The selection of the leader was done by the secretariat on the basis of whose quota at that point in time was least filled.

Mr. GORE. OK. So, depending on who was lowest in the quota at that time, one company would be designated as the one which was going to get that contract; and the cartel would say, "All right, the company whose turn it is will bid a specific figure; and then all of the other companies will bid a little bit higher than that figure."

Is that correct?

Mr. GREGG. That is basically correct; yes.

Mr. GORE. At what point did you become aware that TVA was in the market for a large amont of uranium?

Mr. GREGG. Sometime in 1973, around late spring or summer, we received an inquiry from TVA.

Mr. GORE. Mr. Fowler discussed this with a Mr. Kvaven, who was head of purchasing for TVA. Mr. Fowler instructed you to contact TVA and clarify for them what the world market price really meant, how it was set, and so forth; correct?

Mr. GREGG. I met Mr. Kvaven in Chicago and had a discussion with him about that and other topics. I then later wrote a letter to him giving some suggested or example methods of arriving at world market price.

Mr. GORE. Who else was at that meeting?

Mr. GREGG. The meeting in Chicago—actually it was in Oak Brook, Ill.—well, there was a large number of people. I believe Mr. Fowler was there with me also.

Mr. GORE. Let's don't go into it in detail then.

TVA requested from you, among other things, advice on how they ought to structure their requests for bids; is that correct?

Mr. GREGG. I seem to recall something like that; yes.

Mr. GORE. Yesterday we got into a contract that TVA signed with Rio Algom. That contract includes a clause specifically exempting any events associated with the removal or nonremoval of the U.S. embargo as a force majeure provision in the contract.

Was that done at the advice of Gulf officials during these preliminary negotiations, or was this separate?

Mr. GREGG. I have no knowledge on that topic.

Mr. GORE. At any rate, TVA was in the market. You wrote a letter which is already in the record [see p. 611] to Mr. Kvaven, the head of purchasing for TVA, saying, "Wayne Fowler"—who was your boss in some respects—"informed me that you would like our thoughts on mechanisms for determining the world market price. While we do not pretend to have had a great deal of experience along this line, nevertheless we have had some."

When you wrote that, you were aware that world market price was being fixed?

Mr. GREGG. The use of the words "world market price" in the context of this letter did not refer to fixed prices or to the prices that the club was setting. Instead, it referred to a—if you will—calculated or negotiated price. It really did not relate directly to the price line that the club would come out with and then would periodically revise.

Mr. GORE. You were aware, as were others, that TVA was in the market to buy a large amount of uranium. At the next meeting of the cartel, which was in Johannesburg, from January 28 until February 1, 1974, you attended that meeting; correct?

Mr. GREGG. I did.

Mr. GORE. At that meeting, TVA's search for uranium supplies was discussed among cartel members; is that correct?

Mr. GREGG. As I best recall, it was discussed.

Mr. GORE. At that meeting, a price schedule was presented by you and one other person. Is that correct?

Mr. GREGG. Yes.

Mr. GORE. This is not in the record, but I would like to refer to it at this point.

This is a deposition that you gave in the utilities lawsuit confirming at an earlier time when your memory was even fresher that TVA was discussed and their request to buy uranium was discussed at that time by the cartel members. Now, the price schedule set a price of $12.50 for uranium purchased that year for delivery in 1978.

We heard testimony yesterday that, although the price had subsequently gone beyond that, it was higher than it would otherwise have been in the free market. In deed, it was double what the price was just 18 months prior to that.

This price schedule was presented by you and Dr. Runnals to the cartel members. TVA subsequently, as a result of that search for uranium, which was discussed at the cartel meeting, signed a contract with the German company in a joint venture with Gulf at the precise price fixed by the cartel at that meeting.

Is any of that at variance with your knowledge of these facts?

Mr. GREGG. Yes.

The price schedule that Dr. Runnals and I presented to the Johannesburg Operating Committee meeting, to the best of my recollection, was not the price schedule that was adopted by that Operating Committee meeting.

Mr. GORE. Did they subsequently adopt higher prices?

Mr. GREGG. The price schedule that we presented and lobbied for was higher than what——

Mr. GORE. But the cartel thought you were moving too fast?

I do not want to put words in your mouth.

Is that the case? Why did the cartel members not accept the price schedule you proposed?

Mr. GREGG. The consensus, as I best recall, of the members at that meeting was that the proposed schedule which Dr. Runnals and I presented and which had been arrived at by consensus among Canadian producers at a meeting of Canadian producers prior to going to Johannesburg was to much of an increase over the price schedule that had most recently or previously been adopted in London back in October and that——

Mr. GORE. In other words, they felt you were moving too fast.

Mr. GREGG. All right.

Mr. MOSS. Let us have the record very clear.

That is a characterization. I want to be certain that you, in acquiescing, have adopted it as your characterization.

Mr. GREGG. Mr. Moss, I do not recall any words to that effect having been said by any of the members at the Johannesburg meeting.

Mr. MOSS. Would you now adopt it as your characterization?

Mr. GREGG. Yes; in retrospect, I believe it is a reasonable characterization, yes.

Mr. GORE. All right, this is a complicated subject. It is difficult to get a grasp of all the facts that are involved here. Let's just review it briefly.

You were employed by Gulf. You became one of two Canadian representatives on the board of the cartel. In the fall of 1973, TVA, the largest utility in this country, came into the market for a large quantity of uranium. At the next cartel meeting, in Johannesburg, South Africa, TVA's request for uranium was discussed by cartel members.

At that same meeting, you and the other representative from governments and the companies in Canada proposed a price schedule for adoption by the cartel. The cartel members, in its collective wisdom, rejected that price schedule as too dramatic a jump from the last cartel meeting. They then adopted a price schedule that was slightly lower than that you proposed.

The figure that they set was subsequently included as the price that TVA paid for uranium from Rabbit Lake, a joint venture by Gulf and the Canadian subsidiary of the German participant in these meetings.

Is that all correct?

Mr. GREGG. Two minor corrections.

I was not on the board of the cartel; I was on the operating committee.

I do not know at what price TVA contracted with the Canadian subsidiary of the German participant.

Mr. GORE. We have held the record open. The cartel price schedule adopted in Johannesburg on January 28, 1974—or, rather, February 1, at the conclusion of the meeting—was $12.50 for uranium to be delivered in 1978. The record will show that TVA's contract with the Canadian subsidiary called for a price of $12.50 for delivery in 1978.

Mr. SANTINI. Mr. Chairman, might I pursue that Johannesburg meeting as to who was there and who they represented and what they concluded? That still is not clear in my mind at all.

Mr. MOSS. The time of the gentleman from Tennessee has just about expired.

Mr. SANTINI. I would move for a 1-minute extension by unanimous consent.

Mr. MOSS. Is there objection?

Hearing none, the gentleman is recognized for an additional minute.

Mr. GORE. I yield.

Mr. SANTINI. I thank the gentleman.

What other representatives from the United States were present at this Johannesburg meeting?

Mr. GREGG. There were no representatives from the United States.

Mr. SANTINI. What other representatives from Gulf with U.S. citizenship were present at the Johannesburg meeting on January 28, 1974?

Mr. GREGG. Only me.

Mr. SANTINI. You were the only person representing——

Mr. GREGG. The only American citizen representing Gulf.

Mr. GORE. Reclaiming my time.

Was a Mr. Albino there?

Mr. GREGG. Yes, but he does not represent Gulf.

Mr. GORE. He represents Rio Algom, which also contracted with TVA. He is an American citizen; is that correct?

Mr. GREGG. It is my understanding that Mr. Albino is or was an American citizen.

Mr. SANTINI. Mr. Chairman, I would like to find out who was there and what their affiliation was in terms of American persons that were there.

Mr. MOSS. Could the gentleman pursue that line on this own time?

Mr. SANTINI. I accept the Chair's suggestion.

Mr. MOSS. The gentlemen from Ohio yesterday waited with great patience for an opportunity to address some questions. The Chair now recognizes Mr. Carney.

Mr. CARNEY. Thank you, Mr. Chairman.

Mr. Gregg, according to the record I have, you were not at this Johannesburg meeting; were you?

Mr. GREGG. I was at the Johannesburg meeting in January 1974.

Mr. CARNEY. You were not there in June 1972, when the original meeting was held; were you?

Mr. GREGG. No, sir.

Mr. CARNEY. In line with that, you took over and went to Canada. You have two addenda here. You were evidently advised after some talk on July 7, 1972; is that right? That was your first knowledge?

That was the finalization that you were going to go to Canada?

Mr. GREGG. Yes; Mr. Hunter and I had discussed this topic prior to the issuance of this memo.

Mr. CARNEY. That was subsequent, of course, to the first meeting in Johannesburg?

Mr. GREGG. Yes.

Mr. CARNEY. And then a notice went out on August 15 advising everybody that, effective August 21, you would transfer to Gulf Minerals Canada; is that right?

Mr. GREGG. Yes, sir.

Mr. CARNEY. It says in these instructions:

> As we have agreed, the operating instructions relating to interplays of marketing with production will be provided by Mr. Ediger and yourself, to Mr. Gregg.

What did they tell you when you got your instructions? What were you supposed to do? And, what were the rules in Canada?

Mr. GREGG. Mr. Ediger told me that my principal job was to sell uranium from the Rabbit Lake project—sell the Gulf share of uranium.

Mr. CARNEY. How? Under what rules?

Did they tell you about the agreement that would have been made in Johannesburg on June 1972 prior to this?

Mr. GREGG. Mr. Ediger gave me a full briefing. We had extensive discussion about the Johannesburg agreement.

Mr. CARNEY. What did he tell you?

Mr. GREGG. Sir, he told me everything that he knew about what went on and about the rules as they existed in the document.

Mr. CARNEY. What did he tell you about who had to belong to this cartel, or club, or whatever you call it, to fix prices?

Mr. GREGG. Mr. Ediger said that Gulf Minerals Canada was a Canadian company that had to operate in accordance with Canadian laws and regulations and policies and that we would have to conduct our activities in accordance with those laws, regulations, and policies issued by the Canadian Government.

Mr. CARNEY. What were those laws, rules, and regulations by the Canadian Government pertaining to price fixing?

Mr. GREGG. One of the regulations was that each uranium sales contract would be reviewed by the Atomic Energy Control Board prior to issuance of export permit. If the conditions of that contract regarding price and some other things did not meet guidelines that had been established by the Minister, then an export permit would not be granted on that sales contract.

Mr. CARNEY. In other words, you are saying, unless you agreed to price fixing as established by the Canadian Government, cartel price, worldwide price, you would be prohibited from selling it?

Mr. GREGG. We would not be prohibited from selling it; we would be prohibited from delivering.

Mr. CARNEY. How could you sell it and not deliver it?

Mr. GREGG. You can make a sales contract for delivery 5 years after the contract is signed.

Mr. CARNEY. Well, would they stop you from delivering it?

Mr. GREGG. They would not grant an export permit at the time you were ready to make the delivery.

Mr. CARNEY. That means you could not sell it, then; does it not—in layman's language?

Mr. GREGG. In effect.

Mr. CARNEY. All right.

Now, at this meeting in Johannesburg, it said,

Mr. Austin went on to say that there was a second tenet; namely, that the government had had its policy stance from the beginning that it would not force Canadian producers into an arrangement. This attitude has been clearly expressed in the message to be sent to the producers by the Minister of Energy, Mines, and Resources.

Were you specifically instructed that, if you did not follow the rules and regulations of the cartel, you would not be able to operate?

Who gave you those instructions?

Mr. GREGG. Mr. Ediger.

Mr. CARNEY. He told you that?

Mr. GREGG. Not in the words which you use, sir.

Mr. CARNEY. Well, how did he tell you?

Mr. GREGG. The way that I have previously indicated.

Mr. CARNEY. Express it again, will you, sir. I did not understand.

Mr. GREGG. Mr. Ediger expressed to me, and we discussed at great length between us, the fact that Gulf Minerals Canada was a Canadian company operating in Canada, required to do business—required to obey the laws, regulations, and policies of the Government of Canada, one of which policy was this marketing arrangement.

Mr. CARNEY. Now, I just read to you that at the Johannesburg meeting it said they would not force Canadian producers into an arrangement.

Did they, in fact, force them; or did they not?

Mr. GREGG. Mr. Ediger made it very clear to me, on a number of occasions, that his interpretation was that Gulf Minerals Canada was required to participate in this and to abide by the regulations and the policy that the department had adopted.

It was not a question of force. At least, the subject of force did not enter into the discussion which Mr. Ediger and I had on this.

Mr. CARNEY. If it were not force, what was it?

Mr. GREGG. If we had not followed those rules, we would not have been able to get export permits for the sales contracts that we would have gone out and obtained.

Mr. CARNEY. Did you advise any U.S. governmental official of this situation—you or your company?

Mr. GREGG. I did not, sir.

Mr. CARNEY. Did any official, to your knowledge, in your company advise any U.S. official of this Canadian situation?

Mr. GREGG. Not to my knowledge.

Mr. CARNEY. Did this seem to be a normal way of doing business to you in your previous experience in the United States?

Mr. GREGG. I had not had any previous experience in doing business anywhere other than in the United States.

Mr. CARNEY. Did this jibe with your personal moral code?

Mr. GREGG. Sir, I would respectfully say that my personal moral code is not relevant to——

Mr. CARNEY. Well, you went along with the cartel fixing. You must have agreed with it.

Mr. GREGG. Sir, I was doing a job I was instructed to do.

Mr. CARNEY. You were instructed by Mr. Ediger?

Mr. GREGG. I was.

Mr. GORE. Will the gentleman yield?

Mr. CARNEY. Yes.

Mr. GORE. In this light, a document in the record shows that Mr. Gregg responded to a question in another form by saying,

> I made a request of the operating committee that whatever was discussed that we be very careful what we say, particulaly since I was a U.S. citizen and I wanted to return to the United States someday. I felt a particular exposure on that.

That is the way you felt then?

Mr. GREGG. That is, in essence, a statement that I made at the operating committee, Johannesburg, January 1974, when the subject of discussion turned to the U.S. market.

Mr. GORE. I thank the gentleman for yielding.

Mr. CARNEY. Mr. Chairman, I have no further questions.

Mr. Moss. The Chair recognizes the gentleman from Connecticut, Mr. Moffett.

Mr. MOFFETT. Thank you, Mr. Chairman.

Mr. Gregg, I would like to go back briefly over a little bit of ground that has been covered. I am not sure we have covered it enough.

Just recapping something that was referred to by counsel earlier, you were in San Diego and then transferred; isn't that correct?

Mr. GREGG. That is correct.

Mr. MOFFETT. Was it in the summer of 1972?

Mr. GREGG. Yes; I actually, physically arrived in Toronto in very early September 1972.

Mr. MOFFETT. How and where did you learn of the fact that you were going to be reassigned?

Mr. GREGG. The circumstances of my learning it as to exactly where I was going to be reassigned?

Mr. MOFFETT. Yes.

Mr. GREGG. I learned this via a copy of a memo, which is exhibit A to my prepared statement, which I was given by an associate at the Mayflower Hotel here in Washington.

Mr. MOFFETT. Who was the associate?

Mr. GREGG. Mr. Don Kowal.

Mr. MOFFETT. He handed you a memo. The memo said essentially that you were being transferred?

Mr. GREGG. The memo was exhibit A to my prepared statement.

Mr. MOFFETT. I understand that.

Mr. GREGG. Mr. Hunter and I had previously discussed several possible locations, of which Toronto was one.

Mr. MOFFETT. Was this a development that you had expected?

Mr. GREGG. I had expected for about a month or so prior to that that I would be relocated somewhere.

Mr. MOFFETT. But weren't you planning on finding a place to live in London and not Toronto?

Mr. GREGG. We had talked about London—Mr. Hunter and I—at one time. I had gone so far as to look up the possibility of living accommodations in London; yes.

Mr. MOFFETT. Is it not true that this rather sudden reassignment to Toronto stemmed from a desire on Gulf's part to create the appearance of Gulf as a Canadian producer?

Wasn't there a July memo from Hunter to Zagnoli that suggested that the Toronto office was important in this respect?

Mr. GREGG. Are you referring to exhibit A to my statement?

Mr. MOFFETT. Your attachment—I think the identical attachment says that; doesn't it?

Mr. GREGG. The essence of the first paragraph of this memo is that it is important for Gulf Minerals Canada.

Mr. MOFFETT. It goes on to say,

> These considerations are further strengthened by the posture which we must maintain as a Canadian producer.

So, this was at least in part a posturing ploy, by Gulf's own admission?

Mr. GREGG. I do not know whether that was a posturing ploy or not.

Mr. MOFFETT. I think it is safe to conclude that it was; but, since I am limited in time, we will not debate that.

Isn't it fair to say that the real reason for this sudden shift of you to Toronto was that—at least a good part of the reason—Gulf was fearful of creating a trans-American flow of paper dealing with an illegal cartel and that that would run a high risk of exposure?

Mr. GREGG. I do not know the answer to that.

Mr. MOFFETT. You do not think that there was any fear on Gulf's part that the people of the United States and the U.S. Government might learn of the cartel if we had this paper flow back and forth?

Mr. GREGG. I do not recall discussions with anyone on that specific topic the way you phrase it.

Mr. MOFFETT. Would you rule out that motivation on Gulf's part?

Mr. GREGG. In retrospect?

Mr. MOFFETT. Obviously in retrospect.

Mr. GREGG. I would not rule it out; no.

Mr. MOFFETT. What did Roger Allen do with his materials on the subject?

Mr. GREGG. At one time during the period I was in Toronto, I recall Mr. Allen sending me some documents that he felt were better kept in Toronto.

Mr. MOFFETT. Better kept because of the need for secrecy; isn't that correct? There is no other reason he would have sent those materials to you; is there?

Mr. GREGG. None that I can think of.

Mr. MOFFETT. Were you and your colleagues in Toronto given any special orders about who you could talk to about your Canadian activities? Did your superiors issue any memos or directives bearing on this issue?

Mr. GREGG. I do not recall any such memo.

Mr. MOFFETT. Let me turn, for a moment, to the February 18, 1972, memo from Hunter to Rolander [see p. 461]. I am not concerned so much with the contents of the memo as with the fact that a memo that you had written on February 17 was attached to it. Are you familiar wih that?

Mr. GREGG. I am familiar with the February 17 memo that I wrote.

Mr. MOFFETT. That memo concerns a summary of developments in international uranium meetings; isn't that correct?

Mr. GREGG. It does.

Mr. MOFFETT. Your memo is labeled "Confidential Draft." I emphasize here "draft."

Was it a draft?

Mr. GREGG. It was prepared as a draft; yes.

Mr. MOFFETT. It was prepared as a draft. But wasn't it also a finished copy at this time?

Mr. GREGG. As I best recall, Mr. Moffett, I did not have this memo redone or edited and reissued as a final memo.

Mr. MOFFETT. Are you saying that the word "draft" then was not put on there so that, if it was discovered by the Justice Department, for example, Gulf could say that it was unimportant, that it was only a draft?

Mr. GREGG. I have no knowledge of anything of that nature.

Mr. MOFFETT. That was never done with any materials that you worked with?

Mr. GREGG. I have no knowledge of that ever having been done with any materials I was associated with.

Mr. MOFFETT. And you never did it yourself?

Mr. GREGG. For that purpose?

Mr. MOFFETT. For that purpose.

Mr. GREGG. No.

Mr. MOFFETT. Or partly for that purpose?

Mr. GREGG. No.

Mr. MOFFETT. You were never told to label something a draft, were you? Were you given verbal instructions, or was there ever any memo or directive for you to label things as a draft?

Mr. GREGG. As I best recall, I was told to label this as a draft and to stamp "confidential" on it.

Mr. MOFFETT. I can understand, given what appears to be Gulf's motivations, your being asked to label it "confidential." Why would you have to be told to label it a draft? You would be in the best position to know if it were a draft; wouldn't you?

It is not as though you are a low-level official. You are at a very high level. When you compose something, you know if it is a draft or not.

Mr. GREGG. Well, I do not believe I would characterize myself as having been at very high level at that time.

Mr. MOFFETT. No one wants to be at a high level now; it is very obvious.

We will return to that question, I hope, later this afternoon with Mr. Hunter.

I want to ask about the Jackson memo, which I am sure you are familiar with that dealt with antitrust.

Is it fair to say that the Jackson memo was regarded as a foundation for your antitrust defense? I do not mean defense in a formal sense. But, in your own minds—and you can only speak about your ow mind—wasn't it more or less the foundation on which you would rely?

Mr. GREGG. In my mind, yes; Mr. Ediger and I discussed it at great length. We relied upon it.

Mr. MOFFETT. You relied upon it?

Mr. GREGG. Yes.

Mr. MOFFETT. Is it fair to say that Mr. Zagnoli and Mr. Allen were uneasy about the Jackson memo?

This was prepared after the May 1972 meeting, as I recall, at which the deal was cut. It seems to me, here is Allen sending some materials back to you in order not to risk having this thing come out in the open—and what was Mr. Zagnoli's reaction to the Jackson memo?

Mr. GREGG. I do not recall any specific reaction of either Mr. Zagnoli or Mr. Allen to the Jackson memo itself.

Mr. MOFFETT. Well, that is fair. But what about a general—your impression? How would you characterize their feelings about it?

Mr. GREGG. From time to time they had uneasy feelings about it—about the whole subject.

Mr. MOFFETT. So, here is Mr. Allen, the attorney, and Mr. Zagnoli, at a high level. They are uneasy, although you are not referring to specific instances; I understand that. But your impression is that they are uneasy about this memo and what Jackson is maintaining can be the basis for Gulf's side of the antitrust argument. Yet, they do not go to the Justice Department.

Isn't that a little strange?

Mr. GREGG. Mr. Moffett, I was never involved in any discussions with anyone about Gulf going to the Justice Department.

Mr. MOFFETT. I understand that. But in retrospect does it not appear strange to you that they did not go?

Mr. GREGG. In retrospect I think the course that Gulf chose was probably not the most prudent course.

Mr. MOFFETT. So, you do not agree with what Mr. McAfee said yesterday: if he had it to do all over again, as the chairman of Gulf, he would do it exactly the same way he did it in 1972 and beyond. I think that is a fair characterization of what he said.

Mr. GREGG. Sir, of course, he did not do it; because he was not involved in this.

Mr. MOFFETT. I understand that.

Mr. GREGG. I would not do it that way if I were in charge in those circumstances—in retrospect.

Mr. SANTINI. Will the gentleman yield?

Mr. MOFFETT. Yes.

Mr. SANTINI. Were aware of any other memorandum of any kind with regard to the antitrust issue that was serving as a basis for the decision that they were not in violation of antitrust laws in this pursuit?

Mr. GREGG. No, sir; I do not recall any other memoranda or legal opinion on that topic.

Mr. SANTINI. So that, the so-called Jackson letter is—to your knowledge at least—the sole basis on which the decision was made that this did not constitute an antitrust violation?

Mr. GREGG. That is the only legal opinion or memorandum that I ever saw relative to that question. I do not know whether other ones were generated upon which the Gulf decision was made.

Mr. MOFFETT. May I reclaim my time?

Mr. SANTINI. Certainly.

Mr. MOFFETT. I think there is a very pertinent question here.

Was Mr. Allen in the position, was Mr. Allen at the level to make the decision not to go to the Justice Department? Or would that have had to be made at a much higher level?

Mr. GREGG. My opinion is that Mr. Allen was not in a position to make that decision for Gulf Oil Corp.

Mr. MOFFETT. I think it is rather obvious that, in his position and at his level, he was not.

Mr. SANTINI. Was Mr. Jackson in that position of authority to make a decision to go to Justice or not go to Justice?

Mr. GREGG. Mr. Jackson was a legal adviser.

Mr. MOFFETT. Who was in a position to say that you move to Canada—to make that decision?

Mr. GREGG. My superiors at the time in San Diego, which were Mr. Hunter and Mr. Hoffman and then the affected parties in Canada, Mr. Ediger, and then his superior, Mr. Zagnoli.

Mr. MOFFETT. That is fair enough. We can ask Mr. Hunter that later.

Thank you.

Mr. Moss. The gentleman's time has expired.

The Chair recognizes the gentleman from Pennsylvania, Mr. Walgren.

Mr. WALGREN. Thank you, Mr. Chairman.

Mr. Gregg, you were a participant at the September 5 Canadian uranium producers conference in Ottawa; is that right?

Mr. GREGG. Yes.

Mr. WALGREN. Were the other nations represented at that meeting, or was it just Canadian producers per se?

Mr. GREGG. Just Canadian producers.

Mr. WALGREN. Out of that meeting came the minutes which indicated that, after the discussion of Westinghouse, the club, as such, should evaluate the competition and the nature of its strength as a prelude to eliminating it once and for all; is that right?

Mr. GREGG. That is correct.

Mr. WALGREN. Did you see those minutes at that time?

Mr. GREGG. I saw those minutes when they were published around September 25. A copy was sent over from Dr. Runnals to us.

Mr. WALGREN. And do those words, "as a prelude to eliminating the competition once and for"—those are very noteworthy words. Looking at it from your shoes, as someone who is sensitive to the antitrust implications of this, those were the operative words, were they not?

Mr. GREGG. Mr. Walgren, I do not recall those words ever having been spoken at that meeting. I had been in Toronto then about 2 or 3 days. I had not met any of the participants at that meeting except Mr. Ediger and Mr. Zagnoli. I was thrown into a new situation. I guess I was trying to get my bearings on it.

I do not recall specifically what was said by anyone at that meeting.

Mr. WALGREN. When you read those minutes, do you recall noting those words with some import?

Mr. GREGG. I do not recall noting them with any particular special import; no.

Mr. WALGREN. Do you recall those words ever being under discussion among officials in Gulf Oil?

Mr. GREGG. Gulf Oil or Gulf Minerals?

Mr. WALGREN. Either one.

Mr. GREGG. I do not recall those words being discussed with officials of Gulf Oil. Mr. Ediger and I made it a practice of always reviewing Dr. Runnals' minutes and being sure that what he had written down was in accord with our recollections and remembrances and notes.

Mr. WALGREN. Did Mr. Ediger ever discuss those words with you?

Mr. GREGG. Sir, he may have; but I do not recall specifically or in what context he may have.

Mr. WALGREN. Did he ever discuss with you that those words were missing from letters to him on Gulf Oil Corp. stationery—that they had been expunged?

Mr. GREGG. No, sir, I do not recall anything on that.

Mr. WALGREN. I would just like to call your attention to a letter from Mr. O'Hara to Mr. Ediger on Gulf Oil Corp. stationery on November 20 [see appendix A], in which he is obviously reproducing the minutes of the meeting for purposes of communication to Mr. Ediger.

The quote is repeated word for word all the way down until the final words "as a prelude to eliminating the competition once and for all" are omitted.

Do you recall ever having any discussion with Mr. Ediger about why those words might have been omitted?

Mr. GREGG. Are you on the top of page 3 of that letter, sir?

Mr. WALGREN. I am on the top of page 3; yes.

Mr. GREGG. I do not recall ever having seen or discussed this letter with Mr. Ediger.

Mr. WALGREN. I would like to explore a little bit the impact of this foreign cartel on the price of uranium in the U.S. market.

Is it not true that Gulf's whole approach to the pricing of uranium was to treat the U.S. market and the foreign market as an integrated whole?

Mr. GREGG. I can only speak for the sales and marketing approach which Mr. Ediger and I developed for Gulf Minerals Canada. The approach we took at Gulf Minerals Canada was to treat the U.S. market separately from our activities outside the United States.

Mr. WALGREN. During this time, however, you were administered by Dr. Hunter; is that not right?

Mr. GREGG. No; once I moved to Toronto, I reported, both operationally and administratively, to Mr. Ediger.

Mr. WALGREN. That is in conflict with the memorandum set out when you transferred to Toronto; is that not true?

Mr. GREGG. That is true—that is in conflict. But, in fact, I did not continue to report administratively to Mr. Hunter.

Mr. WALGREN. Did you continue to have conversation and correspondence with Mr. Hunter?

Mr. GREGG. From time to time, I had conversation with him and with people working for him.

Mr. WALGREN. Did those conversations cover marketing strategy of Gulf production both in the United States and in Canada?

Mr. GREGG. On occasion; yes. But, in nearly every instance, marketing strategy for the Canadian production at Rabbit Lake, as to how it might be sold to U.S. customers——

Mr. SANTINI. Will the gentleman yield on this line of inquiry?

Mr. WALGREN. Yes.

Mr. SANTINI. I have in my hand a document that has not been made part of the record but with which I believe you are familiar. It is dated July 3, 1973. It was apparently prepared by you and a Dr. Fowler. It was to be sent to Mr. Ediger. It was prepared in San Diego to be sent to Mr. Ediger in Toronto.

I would move, Mr. Chairman, that it be included in the record.

Mr. Moss. Under the agreement of yesterday—the unanimous-consent agreement—all documents referred to are placed in the record at that point without further reservation.

Mr. SANTINI. Thank you, Mr. Chairman [see appendix A].

Who was Mr. Fowler?

Mr. GREGG. Mr. Fowler, at that time, as I best recall, his title was manager of Domestic Uranium Supply for General Atomic in San Diego.

Mr. SANTINI. To Mr. Walgren's line of inquiry, then, you were working directly, at least in this instance, with a Mr. Fowler, who was concerned with domestic production as opposed to international market?

Mr. GREGG. I had stopped off in San Diego on my way to the Far East. I spent 1 or 2 days there. One of the things I did while there was to discuss our potential bid to Westinghouse with Mr. Fowler and to prepare this memorandum, which went back to Mr. Ediger with our recommendations.

Mr. SANTINI. Is this the only contact you had with Mr. Fowler?

Mr. GREGG. No.

Mr. SANTINI. In connection, during this period of time, did you meet Mr. Fowler at Oak Brook or converse with him at Oak Brook?

Mr. GREGG. I met him and conversed with him in Oak Brook in about March of 1973. Then there were other occasions.

Mr. SANTINI. During the year 1973, how many such occasions would you estimate there were direct communications with Mr. Fowler?

Mr. GREGG. By "direct communications," do you mean meetings or telephone?

Mr. SANTINI. Either one.

Mr. GREGG. I can think of at least three meetings plus perhaps a number of telephone calls; I have no idea how many.

Mr. SANTINI. I thank the gentleman for yielding.

Mr. WALGREN. Isn't it true that, if Gulf in the United States were to withhold its production of uranium domestically, that the price of uranium in the United States would tend to rise?

Mr. GREGG. Gulf had not and has not today any uranium production in the United States. They had no production.

Mr. WALGREN. Did Gulf ever make any policy decisions not to produce uranium presently in the United States on the basis of their foreign uranium involvements?

Mr. GREGG. I do not know of any such decision.

Mr. WALGREN. Did you work for Mr. Hunter in June of 1972? Was Mr. Hunter your superior at that time?

Mr. GREGG. He was.

Mr. WALGREN. Are you aware of the memorandum from Mr. Hunter to a Mr. Hoffman regarding uranium marketing strategy in which Mr. Hunter sets out the importance of the integration of domestic and international uranium production and states, as a conclusion, that,

based on input provided by Gulf Minerals—and I assume that is Gulf Minerals Canada—"we conclude that corporation profit is greater if New Mexico production begins in 1978 rather than 1976"?

Continuing to quote from the memorandum, "thus, foreign and domestic marketing activities are inseparable and indeed should be treated integrally if we are to optimize the position of the company"?

Mr. GREGG. May we have a copy of that please?

Mr. WALGREN. It is dated June 6, 1972.

Mr. GREGG. It is June 8, 1972.

Mr. WALGREN. I'm sorry; June 8, 1972 [see appendix A].

Did you play no role in the development of that strategy?

Mr. GREGG. First of all, Mr. Walgren, I do not specifically recall having seen this memo before. I may have seen it. I do not specifically recall having seen it.

Mr. WALGREN. Do you recall conversations with Mr. Hunter in which you discuss the time in which the New Mexico production should be brought on with an eye to coordinating it with other uranium production of Gulf internationally?

Mr. GREGG. No, I do not recall any specific discussions with Mr. Hunter on that topic. I may have had them in this period; I just do not recall them.

Mr. WALGREN. I see.

I would like to go back to one other statement and maybe give you a chance to finish it, where you said that your personal moral code is not relevant. You seemed to stop at that point.

Isn't it true that other producers that were involved in the cartel did act on their moral personal code and, in fact, push their governments to treat customers which they had outside the rules of the cartel? So, someone acted on their moral ——

Mr. GREGG. I have no knowledge of what you are referring to.

Mr. WALGREN. Do you recall, in the minutes—I guess I cannot point to the exact document; I am sorry.

But, do you recall the Australian producers pushing the Australian Government to deal with the Japanese with preclub prices on the basis of their moral commitments; and they felt that it would be immoral of them to impose those prices on the Japanese consumers?

Mr. GREGG. I recall something very vaguely along that line or to that effect.

Mr. WALGREN. Can I just ask the general question of, where does someone who is involved in a multinational corporation—where does his moral commitment to his own value system and his society prevail?

Mr. GREGG. You are asking for my opinion?

Mr. WALGREN. Yes.

Mr. GREGG. That is a very difficult question about which I have done a lot of thinking.

I believe that, if I were asked to do something that I judged illegal or immoral by my superior, and if a condition of not doing it were that I were to be terminated, then I would have to resign.

That is about the only answer I can give you, Mr. Walgren.

Mr. WALGREN. Thank you.

Mr. Moss. The gentleman's time has expired.

The Chair recognizes the gentleman from Nevada, Mr. Santini.

Mr. SANTINI. Thank you, Mr. Chairman.

The cartel was an international club that was designed to beat the world uranium market into price submission.

Would that be an accurate generalization with regard to the function, service, and purpose of the club?

Mr. GREGG. Not in my opinion.

Mr. SANTINI. The purpose of the club was to "inflate and control the world market price of uranium." Was it not?

Mr. GREGG. I would not characterize it as inflating, in the sense that I understand the term "inflation."

Mr. SANTINI. "Increase"?

Mr. GREGG. "Increase" is better.

Mr. SANTINI. How would you characterize the purpose of the club, describing its purpose and objectives?

Mr. GREGG. To bring a degree of order and stability and price improvement into the market that was available to the non-U.S. producers for a period of time until nuclear power was at such a stage of development that requirements or demand were up to the level of production and projected future production.

There was a great projected oversupply of uranium and a limited market available to the non-U.S. producers.

Mr. SANTINI. Would a short-handle description be to fix the price of uranium on the world market?

Mr. GREGG. In the vernacular, that was one of the objectives; yes.

Mr. SANTINI. And Gulf Minerals was to play a vital and active role in the objective of price fixing, in the vernacular?

Mr. GREGG. I would not say that Gulf Minerals was to play a vital role, nor necessarily an especially active role.

Mr. SANTINI. Well, drawing your attention, Mr. Gregg, to the famous or infamous—as time passes on—Jackson memorandum, certain conclusions contained in that memorandum suggest a vital and active role. For example, in subparagraph a, "from a business standpoint, it is advantageous"—and I am quoting now—"for Gulf to know firsthand what is going on and to have the opportunity to constructively shape the functioning of the cartel board."

Would that suggest to you a vital or active role?

Mr. GREGG. What Mr. Jackson wrote there is one thing. Yes, if those words were taken literally, it certainly would suggest a vital and active role. Gulf Minerals' actual participation in the club through 1973, in my opinion, was neither vital nor very active.

Mr. SANTINI. But this was, was it not, Mr. Gregg, the foundation document on which the door was open for participation by Gulf Minerals in the cartel activity?

Mr. GREGG. It was a legal opinion upon which Mr. Ediger and I relied.

Mr. GORE. Will the gentleman yield briefly?

Mr. SANTINI. Yes.

Mr. GORE. I just want to get at that characterization.

If you are one of the persons presenting a price schedule for approval by the cartel members, that seems to me to be a vital role. Your salary was being paid by Gulf at that time.

Mr. GREGG. I said through 1973, Mr. Gore.

Mr. GORE. I'm sorry: their role became more vital after 1973.

Mr. GREGG. I do not agree with the use of the word "vital."

Mr. GORE. OK. Thank you.

Mr. SANTINI. Under subparagraph (d) of the same Jackson memorandum, "it is at least as important for Gulf to become sophisticated"—which Gulf has always been—"and substantial participant in worldwide uranium matters as it is for us to undertake similar efforts with respect to oil and gas 30 or 40 years ago."

Now, "substantial participant," would seem to indicate something more than a passive partner.

Mr. GREGG. I am not saying that Gulf Minerals Canada was a passive partner. I have no control over what Mr. Jackson wrote or his opinions on the subject.

Mr. SANTINI. No; but this was the document on which the decision was based—Gulf Minerals—to move into their active or quasi-active or semi-active role with regard to the cartel activity.

Mr. GREGG. Sir, let me be sure I understand exactly what you are quoting from. Are you quoting from a letter from Mr. Jackson dated October 11, 1972?

Mr. SANTINI. No.

This is the document previously referred to in yesterday's testimony, Mr. Gregg, signed by Mr. Roy D. Jackson, dated June 2, 1972, entitled "Worldwide Uranium Marketing Organization" [see p. 541].

Mr. GREGG. I am sure that I read those words in Mr. Jackson's memo, as I read every other word in the memo. I did not attach any special importance to those words.

Mr. SANTINI. Mr. Gregg, did you participate in the drafting of the letter that eventually was signed by a representative of the Canadian Government inviting "Gulf to participate in the cartel arrangement"?

Mr. GREGG. No.

Mr. SANTINI. Did you draft any letter that invited you to participate in the policy committee?

Mr. GREGG. I believe you mean the Operating Committee.

Mr. SANTINI. Operating Committee.

Mr. GREGG. I did.

Mr. SANTINI. Does the drafting of a letter of invitation of that sort suggest to you something more than a passive role?

Mr. GREGG. I did not mean to imply that Gulf Minerals Canada was taking a passive role at this time. Mr. McNabb had asked me to be on the Operating Committee.

Mr. SANTINI. So, at this time, they were going to pursue an active role?

Mr. GREGG. Mr. Ediger and I determined that it would be in the best interests of Canada and of Gulf Minerals Canada if I did accept this invitation to be on the Operating Committee.

Mr. SANTINI. Would you describe that as an active function?

Mr. GREGG. I would.

Mr. GORE. Would the gentleman yield again briefly?

Mr. SANTINI. Yes.

Mr. GORE. I think that this point that you are making very well is also extremely relevant to the argument over the nature of the compulsion by the Canadian Government. Here we have the Canadian Government asking a representative, an employee of Gulf to participate as a member of the Operating Committee of the cartel. Yet, even though the letter was on the stationery and the letterhead of the Canadian official, it was drafted by an employee of Gulf.

Again, the implication is that Gulf was extremely anxious to make it look as if the Canadian Government was taking more of a leadership role in this regard than, in fact, they were.

I invite your response.

Mr. GREGG. No, Mr. Gore, we were not extremely anxious to do anything of that nature.

I might point out that when Mr. Debastiani from Denison and Mr. Lowell from Rio Algom joined the Operating Committee as the first Canadian representatives they were also, to the best of my recollection, asked by the Canadian Government to perform that function.

I do not know whether the request by the Government was in writing or verbal.

Mr. GORE. Let me pursue this now. Some of this may be outside of your particular perspective.

Was it suggested by Mr. Ediger or any of your superiors that a letter be sent from the Canadian officials asking you to participate?

Mr. GREGG. As I best recall, in London in October 1973, when Mr. McNabb asked Mr. Ediger and me for me to come on the Operating Committee, Mr. Ediger said, "Well, we will think about it; but we will want a letter from you."

Mr. GORE. That is the point I am getting at. Here is this very cozy relationship. Mr. Ediger insists on having a letter. The obvious reason for insisting on a letter was to make it clear that the Canadian Government was instigating this. It falls in the same category as the quotation yesterday about, let's make the appearance of objecting to this, but as a pratcical matter, the objection will not have any effect.

It was for appearances sake. He requested a letter to come from the Canadian official. You, in fact, drafted the letter which then came on the Canadian stationery.

I thank the gentleman for yielding.

Mr. SANTINI. Mr. Gregg, I do appreciate your candor and responsiveness in an obviously sensitive and delicate arena in which you probably will be able to participate for many years in the future.

Where were you drawing your pay during the 1972 to 1974 period of time?

Mr. GREGG. Well, the first 8 months of 1972, I was being paid by General Atomic in San Diego. Then, when I moved to Toronto, I went on the payroll of Gulf Minerals Canada; I stayed on that until the end of July or first of August 1974, when I rejoined General Atomic in Atlanta.

Mr. SANTINI. Were you ever on the payroll of Gulf Oil during this period of time?

Mr. GREGG. For administrative purposes, the pay checks, as I best recall, were issued by Gulf Oil Canada Ltd., not by Gulf Minerals Canada Ltd.; because Gulf Minerals Canada, being that small an organization, it was not deemed economic to set up a separate payroll- and check-printing function. So, this function was taken over by Gulf Oil Canada.

Mr. SANTINI. From what date to what date were you receiving a pay check with the name of Gulf Oil or its equivalent on it?

Mr. GREGG. From early September 1972 through, say, July 1974. I also was in several—at least one—employee benefit programs of Gulf Oil Canada Ltd., because Gulf Minerals did not have the administrative infrastructure to ave their own employee program.

Mr. SANTINI. Is this the same Gulf Oil that was presided over at the time by Mr. McAfee?

Mr. GREGG. Mr. McAfee was president of Gulf Oil Canada during that time; yes.

Mr. SANTINI. There is one final area of concern to me regarding impact on our domestic uranium-related activities.

Was there any design plan or discussion about running Westinghouse out of the market that you participated in?

Mr. GREGG. I heard from time to time over this period expressions by various members of the club about the Westinghouse actions and that something had to be done. I do not recall ever having participated in or hearing of any concerted scheme or effort to drive Westinghouse out of the market or prevent it from being able to buy uranium from club members.

Mr. SANTINI. What, then, did you understand was the "something that had to be done" in terms of the Westinghouse problem?

Mr. GREGG. I never understood exactly what had to be done because no concrete proposals, to my recollection, were ever presented.

Mr. SANTINI. Which members discussed the fact that something had to be done?

Mr. GREGG. One that comes immediately to mind is Mr. Houdaille from Uranex.

Mr. SANTINI. Did any other members?

Mr. GREGG. They may have, Mr. Santini. I do not recall specific instances of specific individuals.

Mr. SANTINI. What approximate time?

Mr. GREGG. I believe it was at the meeting of the club in Toronto in late October or November 1972.

There were other instances. I just do not recall them.

Mr. Moss. The gentleman's time has expired.

The Chair recognizes the minority counsel, Mr. Wunder.

Mr. WUNDER. Thank you, Mr. Chairman.

Mr. Gregg, I would like to clear up one thing for the record.

I direct your attention to the June 2, 1972, file memorandum of Mr. Jackson, Mr. Roy D. Jackson, Jr. Do you have that?

Mr. GREGG. Yes, I do.

Mr. WUNDER. This is the document that you and Mr. Santini were discussing which contains, in paragraph (d), the quote that starts, "It is at least as important for Gulf to become a sophisticated and substantial participant." Do you find that language?

Mr. GREGG. Yes.

Mr. WUNDER. This is not a legal memorandum upon which you based your decision or Gulf Minerals Canada, Ltd., based their decision to participate in the cartel; is it?

Mr. GREGG. No, it is not.

I have never seen this document before today, as I best recall.

Mr. WUNDER. So, there was another document?

Mr. GREGG. There was another document, a very thick document; perhaps an inch or two inches thick, which was what we called "the Jackson memo" or "the Jackson opinion."

Mr. WUNDER. But this is not what you characterize as "the Jackson opinion?"

Mr. GREGG. No.

Mr. SANTINI. May I pursue that further?

Mr. WUNDER. Yes, sir.

Mr. SANTINI. What is the date of the memorandum, as you characterize it?

Mr. GREGG. What I am calling "the Jackson memo?"

Mr. SANTINI. Yes.

Mr. GREGG. The thick document.

I do not know, Mr. Santini. I first saw it either immediately that I got to Toronto or sometime shortly afterward. I got there early September of 1972.

Mr. SANTINI. Was the language contained in the June 2, 1972, letter contained in the Jackson memorandum?

Mr. GREGG. I do not recall specifically whether or not this language here in the June 2 memo was in the more lengthy legal opinion. Certainly, the point about impact on the trade or commerce of the United States and the point about Canadian Government direction were in the later opinion. But I do not recall the rest of this being in there.

Mr. SANTINI. I thank the gentleman for yielding.

Mr. Moss. I would like to have a clarification for the record of the exact memorandum you just discussed. What is its date?

Mr. GREGG. Sir, I do not remember its date. I could only speculate that it may have been prepared sometime in September.

Mr. Moss. Did you have a copy of this memorandum, Mr. Wunder?

Mr. WUNDER. No; I was just relying on his testimony.

Mr. Moss. We seem to have a memorandum that has suddenly surfaced in discussion that is not represented among the documents supplied in response to the subpena.

Mr. GREGG. Sir, that well may be.

Mr. Moss. After following your line of questioning, Mr. Wunder, I will ask counsel to review more fully.

Please continue.

Mr. WUNDER. The reason I noted the difference is because this document really did not deal with antitrust.

Mr. SANTINI. Would the gentleman yield for a further point of clarification on that?

This document was alluded to yesterday as being the so-called fountainhead of defense on the antitrust issue. It states in paragraph——

Mr. Moss. Mr. Santini, I believe that is the point of confusion. The Chair would ask we permit counsel to clear up after Mr. Wunder has completed his examination of this witness.

Mr. SANTINI. Do we have in the record, Mr. Chairman, a memorandum of a later date?

Mr. Moss. We will determine that later, Mr. Santini.

Mr. WUNDER. Thank you, Mr. Chairman.

I would like to ask you now about the so-called Johannesburg rules and the clean draft. It is the document dated March 4, 1974 [see appendix A].

Do you have a copy of that document?

Mr. GREGG. I do.

Mr. WUNDER. Do you see the initials AP/OJCR/HBM/LTG at the top of that document?

Mr. GREGG. I do.

Mr. WUNDER. Who is AP?

Mr. GREGG. That is Andre Petit.

Mr. WUNDER. Who might he be?

Mr. GREGG. He was the secretary of the club.

Mr. WUNDER. Was he a Government official or a person from one of the producing companies? Could you identify him further?

Mr. GREGG. He was an employee of SERU.

Mr. WUNDER. That is—could you identify that for the record?

Mr. GREGG. SERU is a wholly owned subsidiary organization of the French Atomic Energy Commission. Mr. Petit was seconded to the position of secretary of the club and was approved by all the members at the very start.

Mr. WUNDER. Who is OJCR?

Mr. GREGG. That is Dr. John Runnalls.

Mr. WUNDER. He is an official of the Canadian Government?

Mr. GREGG. That is right.

Mr. WUNDER. HBM?

Mr. GREGG. That is Mr. H. B. Merlin.

Mr. WUNDER. Could you identify him for the record?

Mr. GREGG. He is an official of the Government. He is Dr. Runnalls' assistant.

Mr. WUNDER. An official of the Canadian Government?

Mr. GREGG. Yes.

Mr. WUNDER. LTG would be you?

Mr. GREGG. It is.

Mr. WUNDER. This clean draft—recalling your testimony of earlier this morning—is what you did here when you prepared this clean draft is pull together all of the previous agreements that had been made?

Mr. GREGG. That is exactly correct. We did not write new rules in this document. There was nothing new in this document. This was a compilation of rules that had evolved over 18 or 24 months and existed in a stack of documents that high, and it became so cumbersome to try to find out what the current rule was on a specific topic that it was decided, let's get all the amendments and changes and so forth that had transpired all into one document that everybody can refer to.

Mr. WUNDER. So, what you performed, in effect, was a clerical function?

Mr. GREGG. That was, in effect, a clerical editing function. Some of it had been written in what was not good English.

Mr. WUNDER. Editing—you mean you cleaned up the grammar?

Mr. GREGG. The grammar, the format, a whole bunch of things of that nature; yes.

Mr. WUNDER. Did you modify the rules in any way?

Mr. GREGG. Not substantively.

Mr. WUNDER. What does that mean?

Mr. GREGG. Well, we could not have modified the rules on our own without getting an approval from the operating committee, which would have, in turn, had to have gotten approval from the policy committee; because that is the way the club worked.

Mr. WUNDER. So, the rules that you pulled together and did this so-called clean draft, by who were they adopted?

Mr. GREGG. Adopted? I do not know, Mr. Wunder. This draft was prepared on the 4th of March, 1974. It was presented at the next op-

erating committee meeting in April in France. I do not know the disposition of it after that.

I do not know whether it was ever adopted as an official document or not.

Mr. WUNDER. I have a question about this document that you call the Jackson opinion.

Did that document deal only with whether or not participation in the cartel was lawful under U.S. law, or did it also advise you or any other Gulf employee as to what you should do and what you should not do?

Mr. GREGG. The document did not deal only with the question of whether Gulf Minerals Canada's participation was lawful. It addressed that as a principal topic—the primary topic. It had as appendixes—there was a large number of appendixes, one of which was some type of an economic study of the Rabbit Lake project.

It did not, as I best recall, give specific recommendations or instructions as to how individuals were to act or what they were to say in regard to all these matters.

Mr. WUNDER. With respect to acting, it did not say, "You can do this and you won't run afoul of the law; but if you do this, then maybe you might"?

Mr. GREGG. I do not believe, as I best recollect, it was phrased or formated in that manner; no.

It was a lengthy thing which was filled with citations of cases and so forth. It was easy to get lost in it—at least for me.

Mr. WUNDER. Was there any subsequent memorandum that would have advised you as to how you should proceed—what things you could do relative to your participation and what things you could not do?

Mr. GREGG. Subsequent memorandum from whom?

Mr. WUNDER. Subsequent from the Jackson memorandum. You are saying the Jackson memorandum did not detail those types of things. Was there any other memorandum, either preceding of subsequent, saying, "These are actions you can take, and you will be within the law; but these are actions that you cannot take because you will run afoul of the law?"

Mr. GREGG. I do not recall ever seeing either any previous or subsequent memorandum, Mr. Wunder, to the effect.

Mr. WUNDER. Thank you, Mr. Chairman.

Mr. MOSS. The Chair recognizes Mr. Atkisson for the purpose of clarifying a question that has been raised.

Mr. ATKISSON. Our interest in this, of course, stems from the fact that we are at a loss up here because we do not think we have seen this remarkable document.

You characterized it a moment ago as an inch thick.

Mr. GREGG. Approximately.

Mr. ATKISSON. That is with the attachments, apparently.

Mr. GREGG. The whole thing was bound up in one binding. It was an inch, perhaps, two.

Mr. ATKISSON. The memo itself—what length was that in pages or any other way you can describe it?

Mr. GREGG. At least half of the thickness of the document was the legal opinion or the memo It included all this citation and discussion

of previous antitrust cases, extraterritoriality, and all that business.

Mr. ATKISSON. Do you recall if it included some sort of economic impact statement prepared by a Mr. Ramsey?

Mr. GREGG. There was, as an appendix, an economic study of some type. I believe Mr. Ramsey's name appeared on it.

Mr. ATKISSON. Do you recall specifically how long that particular document was?

Mr. GREGG That was—I think it was no more than two, three, maybe four pages.

Mr. ATKISSON. Other than that, the attachments, again, were what: tables, figures, graphs?

Mr. GREGG. In the appendixes, much of it consisted of copies of the various Telex and letter correspondence that had gone back and forth between Mr. Ediger and the Canadian Government on participation at these meetings and so on.

Mr. ATKISSON. Was there an opinion? Do you recall an opinion of outside counsel either appended to or in some way included in the document?

Mr. GREGG. I do not recall if there was any such—of course, Mr. Jackson, I believe, was outside counsel at that time.

Mr. ATKISSON. At that time?

Mr. GREGG. Yes.

The final typed published document, I believe, came up to Toronto——

Mr. ATKISSON. From Hamilton, Bermuda?

Mr. GREGG. No; from Pittsburgh under Mr. O'Hara's signature.

Mr. ATKISSON. Well, that would square with the documents we already have. As the members know, Mr. Jackson wrote a memo but it is only of some four pages length, and it is before you. The very next day, the exact same language in the Jackson memorandum appears over Mr. O'Hara's signature on letterhead from the law department.

Those facts square with what you are saying. It is the inch thick that troubles me.

Mr. GREGG. What I am saying is the letter transmitting the Jackson memo to Mr. Ediger—a very short transmittal letter—was signed by Mr. O'Hara

Mr. ATKISSON. I see.

Thank you, Mr. Chairman.

Mr. Moss. The Chair recognizes the counsel for the New York State Assembly committee, Mr. Haddad.

Mr. HADDAD. Thank you.

I am going to refer to one document which is in the file: 32874. I am not ready to address myself to that at the moment. I just have a few lines of questioning which did not come over before.

Mr. Gregg, you are a rare bird. This is one of the few times in history that a company participant in a world cartel has told how it works. Mr. Gore and others said yesterday that we hear stories about it. Suddenly, it becomes very real. You have made it very real for us today.

The first line of questioning I would like to pursue is who knew what when. If you bear with me, I would like to walk you up this chart quickly.

You are the low man on the totem pole.

I think you have a copy of that chart.

Mr. GREGG. Yes, sir.

Mr. HADDAD. What did Mr. Ediger know? Did he know everything that went on with the cartel?

Mr. GREGG. Absolutely.

Mr. HADDAD. What did Mr. Zagnoli know? Did he know everything that went on with the cartel?

Mr. GREGG. No, sir. He did not know everything.

Mr. HADDAD. Let's separate policy and operations. Let's just discuss policy.

Was Mr. Zagnoli in a position to direct policy for Gulf Minerals in terms of the cartel?

Mr. GREGG. Yes.

Mr. HADDAD. Was he excluded from any policy decisions made by Mr. Ediger and yourself?

Mr. GREGG. I do not recall any, sir.

Mr. HADDAD. In the 1974 document, was he advised of what went into it prior to what went into it, even though it was a compilation—but your role in putting together that document?

Mr. GREGG. No; that is not the type of thing we would have routinely advised Mr. Zagnoli of.

Mr. HADDAD. Now, we are leaving Canada and we are going across the U.S. border. We are coming into Denver. You see the same Mr. Zagnoli.

He knew everything with that other hat as well; right?

Mr. GREGG. Yes, sir.

Mr. HADDDAD. To your knowledge, your memo, your recollection, who was the controlling agent in Gulf Oil for Mr. Zagnoli?

Mr. GREGG. Who did he report to?

Mr. HADDAD. Yes.

Mr. GREGG. Well, initially, I believe he reported to Mr. E. B. Walker.

Mr. HADDAD. That is consistent with our information.

Mr. GREGG. Mr. Walker was president of Gulf Mineral Resources Co. Mr. Zagnoli, I think, was something like executive vice president. Now, at some time later, Mr. R. W. Baldwin became Mr. Zagnoli's superior, at least as far as Gulf Minerals Canada was concerned.

Mr. HADDAD. Tell me who Mr. Walker was when he was up here on the chart.

Mr. GREGG. Mr. Walker was Mr. Zagnoli's superior in Denver before Mr. Walker went to Pittsburgh.

Mr. HADDAD. In Pittsburgh, Mr. Walker was an executive vice president of the corporation?

Mr. GREGG. Yes.

Mr. HADDAD. Mr. Baldwin replaced him as an executive vice president?

Mr. GREGG. No, sir, I do not believe that is correct.

I am not at all clear what was going on organizationally up at those top levels.

Mr. HADDAD. Did Mr. Henry figure in that at any time, to your knowledge?

Mr. GREGG. Not into Gulf Minerals Canada, to my knowledge.

Mr. HADDAD. I do not want to take any time with this, but there came a moment when you briefed Mr. Baldwin about the operations of the cartel.

Mr. GREGG. There did.

Mr. HADDAD. And you told him everything you knew?

Mr. GREGG. Well, everything that we could tell him in summary form in about, say, 45 minutes to an hour.

Mr. HADDAD. So, we have now taken it up to the executive committee of Gulf Oil Co.

Mr. GREGG. Well, at that time, Mr. Haddad, I do not know where Mr. Baldwin was relative to, let's say, the executive committee, and these top levels of Gulf Oil.

Mr. HADDAD. You are vague in this area; we will have to ask somebody else.

Mr. GREGG. I am vague.

Mr. HADDAD. What were your dealings with Mr. Hunter, Mr. Rolander, Mr. Hoffman, or anybody else outside Canada?

Mr. GREGG. Most of my—first of all, I had dealings with Mr. Allen at Gulf Mineral Resources in Denver principally on contractual matters relating to——

Mr. HADDAD. I am talking about cartel matters.

Let me limit it to matters relating to the club.

I know Mr. Allen is in the chain of command.

Mr. GREGG. Right.

Mr. HADDAD. We have seen a deposition by him.

Did any of these people have authority over you: Hunter, Hoffman, Rolander, in terms of the cartel? Or did you just share information with these men?

Mr. GREGG. I did not share information with them. None of them had any authority over me once I moved to Toronto.

Mr. HADDAD. So, in terms of your knowledge, they were excluded from information about the cartel? I am talking about you personally.

Mr. GREGG. By me personally, I did not send them information about the activities of the club; no.

Mr. HADDAD. And Mr. Fowler?

Mr. GREGG. Mr. Fowler and I would, from time to time, discuss Gulf Minerals Canada's marketing strategy and sales approach with potential U.S. customers.

Mr. HADDAD. Is there anybody else in this chart that rings a bell? Did you talk to Mr. Dorsey?

Mr. GREGG. I never met Mr. Dorsey.

Mr. HADDAD. Anybody else? How about Mr. Z. Q. Johnson?

Mr. GREGG. No; I never met Mr. Johnson.

Mr. HADDAD. Mr. T. Johnston?

Mr. GREGG. Yes: Mr. T. Johnston was vice president of marketing at General Atomic. But I never discussed the club matters with him.

Mr. HADDAD. So, in other words, links between the United States and Canada were Mr. Zagnoli, who reported to Mr. Walker, at least as Gulf Minerals, in the United States; and Mr. Walker was one of the top executives at a later date at Gulf Oil. We have to establish that chain of command.

Mr. GREGG. I am not qualified to tell you about that up at the top levels; no.

Mr. HADDAD. Let me ask you one more question.

I have the impression that Mr. McAfee was not particularly well informed about the cartel at this point.

What is your impression?

Mr. GREGG. That is exactly my impression.

Mr. HADDAD. Did his relationship with Mr. Ediger—do you believe—enhance any of that knowledge? He indicates that he is a close friend of Mr. Ediger.

Mr. GREGG. That is my understanding that they are close friends.

Mr. HADDAD. But it is your feeling that he was basically not knowledgeable about the operations of the cartel as far as you were concerned?

Mr. GREGG. As far as I was concerned, he was not knowledgeabel. There was no need to inform him.

Mr. HADDAD. And your weekly memos did not go to him?

Mr. GREGG. The weekly highlights memo was a device that we instituted sometime in 1973. Mr. Ediger determined to whom copies were to be sent on each and every one. If a particular topic were being discussed or addressed that was of interest to a specific individual, then that individual would get a copy that week.

Mr. HADDAD. Did you have the opinion at one point in this chronology that Mr. Hunter was briefing the executive of Gulf Oil U.S.A. about the operations of the cartel?

Mr. GREGG. Mr. Haddad, I have heard an allegation to that effect. I do not have any hard, fast information one way or the other.

Mr. HADDAD. Well, we will have Mr. Hunter in a moment.

Yesterday, the executives of Gulf Oil attempted to create the impression that this cartel was an open secret.

Did you share this information openly with people outside of Gulf Oil Co.?

Mr. GREGG. You mean both outside Gulf and the Club itself?

Mr. HADDAD. Yes.

Mr. GREGG. No; I did not.

Mr. HADDAD. Did you share it freely with people within Gulf?

Mr. GREGG. No; I did not.

Mr. HADDAD. Did you at times have special arrangements about concealing information?

"Concealing" may be a strong word—but not sharing information; similar to the utility situation where you stonewalled it?

Mr. GREGG. Well, I certainly did not stonewall it with anyone in Denver because those were people to whom I——

Mr. HADDAD. I just have one simple question.

It was not an open secret. It was a secret cartel. People did not know about it. It functioned secretly. Its success was based on its secret functioning.

Is that your feeling?

Mr. GREGG. There were, from time to time, reports in the trade press going back as far as early 1972—very early 1972. But there was not general knowledge within the industry of where it met, how often it met, how it functioned, who was in it; that type of——

Mr. HADDAD. Prices? Markets?

Mr. GREGG. Not at—no, not——

Mr. HADDAD. Let me help you. I have read those articles. They refer to "secret meetings." They were articles that were not followed up the next day by denial or anything. It was not an open secret; was it?

Mr. GREGG. Sir, I would say in retrospect there was an open secret in the industry that something existed.

Mr. HADDAD. Nobody knew what.

Mr. GREGG. Nobody really—except the members—knew what.

Mr. HADDAD. And you were a member representing Canada and Gulf Minerals which reported to Gulf U.S.A.?

Mr. GREGG. That is correct.

Mr. HADDAD. I want to ask you just two more areas of questions.

I am very interested in the effectiveness of that document you helped create or Gulf helped create in 1972, and you reassembled in 1974. Tell me a little bit about the Yugoslavian problem. I am interested in a quick synopsis of it as it relates to the bidding system of the phony bids that were put in.

As I understood, France had Yugoslavia as the lead bidder. Gulf Minerals, through Canada, was the second bidder or the phony bidder.

Do you remember enough about it to discuss it?

Mr. GREGG. That is my recollection; yes.

Mr. HADDAD. You had the phony bid and France had the lead bid?

Mr. GREGG. Well, sir, I would not exactly characterize it as a phony bid: but, all right——

Mr. HADDAD. How would you characterize the bid? What if they had accepted it? What if they took your bid over the lead bidder?

Mr. GREGG. Then there would have had to be a discussion and some type of a settlement or accommodation between us and the French.

Mr. HADDAD. You, in effect, would have had to supply—you would have had to make up the dollar difference?

Mr. GREGG. Well, that is one way. The other way would have been to buy the material from the French and——

Mr. HADDAD. But it was not really a legitimate bid.

Mr. GREGG. No, it was not legitimate.

Mr. HADDAD. It came to pass that the French could not get along with the Yugoslavian bureaucracy and you were then up to bat?

Mr. GREGG. Well, let me say that, as it was expressed to me, the French lost patience before we did, with the Yugoslavs.

Mr. HADDAD. And what happened eventually in Yugoslavia; do you know?

Mr. GREGG. We stayed in there with the Yugoslavs for another several months. We, then, eventually lost our patience and dropped out. They ended up buying the reactor, the nuclear reactor, from Westinghouse.

I do not know where the uranium eventually came from.

Mr. HADDAD. I was just interested in how the cartel functioned. It was a good document.

Tell me a little bit about how the members of the cartel felt about each other. Did they trust each other?

Candidly. You can characterize it.

Were they friends? Were they suspicious of each other?

Mr. GREGG. Some trusted one another more than others. Some were friends; others were not.

It varied all over the map, Mr. Haddad.

Mr. HADDAD. But there was not a great sense of mutual camaraderie; was there? Everybody was protecting their own interests?

Mr. GREGG. That is my feeling; yes.

Mr. HADDAD. One of the members of what you once called the inner club was Rio Tinto Zinc, which, as a company, sat as an equal with nations.

Did there come a time when they broke—the second time that they broke the cartel rules regarding Spain. Would you tell us a little bit about that situation and what happened?

Mr. GREGG. Yes. This was the second known or reported infraction by Rio Tinto Zinc.

Basically, in summary, what happened was that they used what we regarded—what the other members regarded—as a subterfuge to get a sale in Spain without telling the secretariat or any of the other club members what they were doing, without informing the secretariat before they went in and made the sale.

Mr. HADDAD. Mr. Mazel of RTZ lied to the members in Johannesburg, or was evasive?

Mr. GREGG. He was evasive.

Mr. HADDAD. Did it come to a point where the tensions were so high that people nearly got into a physical battle?

Mr. GREGG. It did.

Mr. HADDAD. When you could not succeed with Mr. Mazel, what did you do? What did the cartel do?

Mr. GREGG. The operating committee, through someone—and I forget who it was—went to Mr. Roy Wright, who was Mr. Mazel's boss, in some manner or another, and asked Mr. Wright to censure Mr. Mazel for having done what he had done and, further, for Mr. Wright to give assurance that Mr. Mazel's behavior and activities would be better controlled in the future.

Mr. HADDAD. And Mr. Mazel ended up in Brazil.

Mr. GREGG. Well, I heard that he did go to Brazil, but I understand that he is now back in the United Kingdom.

Mr. HADDAD. I was quite interested in, not the humor of it, but the fact that it is a very effective club that you organized. People pay penalties in tonnages, in dollars, and quotas if they did not go along.

Mr. GREGG. By and large, the few penalties that were imposed for infractions were enforced successfully; yes.

Mr. HADDAD. I want to take you back in time to 1974 and TVA.

This is an area where the New York State Assembly is continuing to gather information and where you can continue to be helpful to us.

There came a point in time when TVA sent out 50-odd bids around the world. None of the cartel members responded.

I am pausing because you seem to doubt what I am saying. If you can correct me, please do.

Mr. GREGG. There were 3 bids submitted in response to 53 bid requests.

Mr. HADDAD. Who were the three?

Mr. GREGG. One was Kerr-McGee of this country. One was Western Nuclear of the United States. And the third was by a German group—not the German group that was our partner at Rabbit Lake, but another German group.

Mr. HADDAD. Sort of a partial partner—sort of a secondary partner in the cartel?

Mr. GREGG. A secondary or associate member; yes.

Mr. HADDAD. Who was also chastised for not participating properly.

Mr. GREGG. From time to time, yes.

Mr. GORE. Will the gentleman yield?

Mr. HADDAD. Yes.

Mr. GORE. Gulf was one of those requested to bid; correct?

Mr. GREGG. Yes.

Mr. GORE. Why did Gulf turn in a no bid?

Mr. GREGG. Principally we felt that some of the conditions in the purchase specification and terms and conditions of purchase were ones which we did not want to accept from a business standpoint.

Mr. GORE. All right, now, TVA put out a request for bids. Gulf responded with a no bid because it found some of the terms and conditions in the request unacceptable.

Mr. GREGG. Yes.

Mr. GORE. What was the principal term and condition which was unacceptable?

Mr. GREGG. I do not recall that there was any one that was more unacceptable than any others.

Mr. GORE. Was one of the conditions that was unacceptable a requirement that Gulf affirm they had not talked about the price they were bidding with any of its competitors?

Mr. GREGG. That was the essence of one which we felt we could not—we could not sign that document for reasons that, I believe, came out in yesterday's testimony.

Mr. GORE. They required you to say that you had not fixed the price or discussed the price with competitors, and you felt that you would subject yourself to some liability if you swore that you had not discussed the price with your competitors?

Mr. GREGG. That is correct; even though, in all our U.S. dealings—in the case of TVA—we did not discuss what we were doing in the United States with anyone in the club. We felt, by association, we might.

Mr. GORE. Thank you.

Mr. MOSS. The committee is going to break because of an important vote on the floor. We will recess until 1:30.

[Brief recess.]

Mr. MOSS. The committee will be in order.

Mr. Haddad, you may continue.

Mr. HADDAD. Thank you, Mr. Chairman.

I would like to pick up on that last questioning, if you do not mind. We were talking about the TVA sending out bids. You said there were three responses: two of them from American companies, Kerr-McGee and, I believe, Western Nuclear.

I am interested now in your reaction and the cartel's reaction to those bids. What was the cartel's reaction to those bids? What do you know about those two bids?

Mr. GREGG. The reaction was basically one of surprise, as far as the price levels that were quoted by both Kerr-McGee and Western Nuclear. These price levels were higher than anything we had been considering in that time period.

Mr. HADDAD. How much higher?

They were high enough for TVA to reject them, I believe.

Mr. GREGG. Yes.

Mr. HADDAD. And it is fair to say that the cartel was surprised at the huge jump from previously recorded bids that had taken place by these—in other words, it was strange and unusual.

How would you characterize it?

Mr. GREGG. I would not say it was strange or unusual necessarily. I just say that we were surprised.

Mr. HADDAD. Because the bids were a lot higher than the market would have justified at that time for that future delivery?

Mr. GREGG. A lot higher than we had expected anybody would have bid to TVA.

Mr. HADDAD. And both those bids came in at that unusually high price, I understand?

Mr. GREGG. Yes, they were not, of course, identical; but they were both up considerably above club prices.

Mr. HADDAD. And any of the club members did not respond with the exception of the German associate?

Mr. GREGG. Did any of the club——

Mr. HADDAD. Club members respond to TVA except that one German club associate?

Mr. GREGG. I do not know if any club members responded to the formal bid request from TVA, which came out in October of 1973; and I believe the bids were published in the trade press. It was a public bid opening. The word of these things appeared in the trade press in late November of 1973.

I know that there were two sales by club members consummated at a later date with TVA.

Mr. HADDAD. Confirming what Congressman Gore said yesterday, that sales of foreign uranium were made to TVA—let me rephrase that, if you don't mind.

I want you to consider what Congressman Gore said yesterday. He said that TVA and others purchased uranium from cartel members. Is that accurate?

Mr. GREGG. Based on what I have read about those sales and have heard about them, yes; that is accurate.

Mr. HADDAD. And you do not recall the price at the moment?

Was the price consistent with cartel prices? Let me rephrase that to make it easier for you.

If it had not been consistent with world cartel prices, there would have been a penalty invoked and there would have been some discipline handed out.

To your knowledge, no discipline was handed out?

Mr. GREGG. There would not have been a penalty invoked or any discipline handed out.

Mr. HADDAD. Why? Because it was a U.S. market?

Mr. GREGG. Because it was a U.S. market and there was no obligation on any club member to inform anyone within the club of any of his activities in the U.S. market. As a matter of course, Gulf Minerals Canada, we did not inform any club member or the Canadian Government about any of our U.S. activities.

Mr. HADDAD. So, there were sales of foreign uranium to U.S. companies from the cartel?

Mr. GREGG. By members.

Mr. HADDAD. What was the reaction of the cartel members?

What intrigues me obviously is that, suddenly out of the blue, two bids come from American companies which are uniquely inconsistent with previous bids. They are higher than the world market prices.

The cartel reacts. How did the cartel react?

Mr. GREGG. There was no particular reaction other than surprise and, I suppose, general feeling that perhaps at least these two U.S. producers were realizing the same thing that the club members had been realizing and saying for some time. That is, if prices did not increase, there was going to be very severe or catastrophic impact on the industry.

Mr. HADDAD. So, in effect, you had two more informal members of the cartel that happened to be U.S. companies. Although there was no communication, to your knowledge, between the cartel and them, in effect, they had adopted your rules for their own purposes?

Mr. GREGG. No. Mr. Haddad, I could not go along with any of what you just said.

First of all, Kerr-McGee and Western Nuclear were not informal members. To my knowledge, they had no affiliation or association with the club in any way, shape, or form.

Mr. HADDAD. But their prices were, in effect, similar to your viewpoints.

Mr. GREGG. No.

Mr. HADDAD. Well, how would you describe it—these two bids out of the blue?

Mr. GREGG. The two bids that were submitted were higher than what we expected would be submitted based on what the price for uranium was at the time.

Mr. HADDAD. And those bids are close together. And you were delighted, elated, felt that the cartel had finally achieved its goal in the American market. And the American producers finally understood the situation.

Mr. GREGG. No, sir. I do not agree with ——

Mr. HADDAD. Let me go on to the last part of the question.

When you started the cartel, as I recall, it was felt that a $6 price would cover production—I am talking about Gulf Minerals Canada—profit, taxes; everything plus a nice nestegg for high-risk development, and that the original proposals ranged around the $6 price with a 3-percent compounded yearly escalation.

Is that roughly accurate to your recollection?

Mr. GREGG. In some respects.

However, as was stated yesterday, Gulf Minerals Canada had a guaranteed market for at least its share of the first 3 years of production through our agreement with our German partner at prices stipulated in the operating agreement that were above $6. Had we chosen not to sell in the world market, we could have sold to the German partner: and, in fact, we did so.

Mr. HADDAD. I am interested in why the prices in the cartel began to move upward and what basis did they move upward.

The proposal of Canada at the first meeting in 1974, for an example—what was the basis of these changes and escalation? Was it that everybody was in line getting along well?

Mr. GREGG. First of all, there was never any reason to move prices downward.

Secondly, the background to the Canadian proposal that was presented at Johannesburg in January 1974; this grew out of a meeting of Canadian producers in Ottawa in early January, just prior to going to Johannesburg, at which several of the senior people there—Mr. Gilcrist from El Dorado and some others—stated that, in their opinion, what would probably result from the upcoming Johannesburg meeting, as far as a new price line, would not be sufficient. These people felt that the new price line should be even higher than what was anticipated or guessed would be derived at Johannesburg.

After a great deal of discussion and debate about that, Dr. Runnals and I were instructed to take to the operating committee meeting the proposed Canadian price line which, as I earlier stated, was higher than the line that was adopted.

Mr. GORE. Would the gentleman yield briefly for a comment?

Mr. HADDAD. Yes.

Mr. GORE. The $12.50 price, which was subsequently fixed by the cartel for uranium delivered in 1978, was then paid by TVA. Mr. McAfee testified here yesterday that he felt that might have been a real bargain for TVA. Perhaps the fact that Gulf had, along with the Canadians, proposed a higher price was the reason he felt that was a bargain.

Mr. GREGG. I do not know, of course, what Mr. McAfee had in mind when he made that statement. But I would surmise that he made it in the context of $12.50 versus what uranium was selling for today.

Mr. GORE. I would surmise that also.

Looked at from the point of view of the consumer, this just really burns you up, for him to say that is a bargain at the time that the price was fixed. They subsequently admitted that the price it was fixed at was higher than it would otherwise have been.

Yet, Gulf and others wanted the cartel to fix it at a level even higher than that.

Thank you for yielding.

Respond if you wish.

Mr. GREGG. I do not want to be argumentative; but I would only say that to say that it is higher than it otherwise would have been—I think that price of $12.50 would have to be compared to the comparable price of 1978 which was quoted by Kerr-McGee and Western Nuclear to arrive at a determination of whether or not it would have been higher.

Mr. GORE. That may be so. But, if I understand Mr. Haddad's line of questioning, he is trying to get from you some understanding of why those other bids were so dramatically higher and what exactly happened in the U.S. market to cause this dramatic shift at that time.

Mr. GREGG. I have no idea what happened in the U.S. market. I have no idea why Kerr-McGee and Western Nuclear chose to price their product at those levels.

Mr. HADDAD. You are familiar with the Fowler memo of March 28, 1974 [see appendix A].

Mr. GREGG. Yes.

Mr. HADDAD. It was introduced yesterday and it sums up this way:

In the interim, the U.S. buyer becomes increasingly frustrated, offers a higher price in order to get some response and the cycle starts all over again.

Is it my understanding that the logic of Mr. Fowler's memo agrees with the situation or the logic of the situation?

Mr. GREGG. I consider Mr. Fowler's analysis as being a logical one. That is, walking through the events, starting from the paragraph "I view," walking through events a, b, c, as being logical.

Mr. HADDAD. Thank you.

I have just a final comment; it is just a comment.

What disturbs the people in New York, where we have no control, is what you can do with multinational corporations.

You have expressed a dilemma of where does private morality end and public responsibility begin. We do not know how to regulate multinational corporations if people like yourself are trapped by conflicting corporate and governmental rules.

Thank you, Mr. Chairman.

Mr. Moss. The Chair recognizes Mr. Wunder.

Mr. WUNDER. Thank you, Mr. Chairman.

Mr. Gregg, it was at the Paris meeting that the $6.25 floor price was set; is that correct?

Mr. GREGG. I do not know about a specific price at a specific time without referring to the exhibits. I cannot recall whether that price was set at a Paris meeting or not.

Mr. WUNDER. Let me ask you this. Did Gulf GMCL ever attempt to make a sale to a buyer at below the price set by the cartel?

Mr. GREGG. As I best recall, Mr. Wunder, we had discussions with several potential U.S. customers about supply at prices that were, I believe, below the club price.

Mr. WUNDER. Did you advise the Canadian Government of this fact?

Mr. GREGG. We did not.

Mr. WUNDER. So, the sales were never consummated?

Mr. GREGG. Well, our advising the Canadian Government had nothing to do with whether the sales were consummated or not.

The sales were not consummated because we could not come to agreement with any of those three customers on price and on terms and conditions. Furthermore, we were not obligated to advise the Canadian Government; nor would we have advised the Canadian Government about any sales activity in the United States.

Mr. WUNDER. Thank you, Mr. Chairman.

Mr. Moss. Mr. Gregg, we thank you for your appearance and your cooperation.

I regret it has been such a long period. You are now excused with the thanks of the committee.

Mr. GREGG. Thank you, sir.

Mr. Moss. The chair calls Mr. Donald Hunter, Gulf Energy & Environmental System, Inc.

Please stand and be sworn.

Do you solemnly swear the testimony you are about to give this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HUNTER. Yes, sir.

Mr. Moss. Identify yourself to the reporter for the hearing record.

TESTIMONY OF DONALD HUNTER, FORMERLY MANAGER, URANIUM PROJECTS, GULF ENERGY & ENVIRONMENTAL SYSTEMS, INC., ACCOMPANIED BY WALTER B. COMEGYS, COUNSEL

Mr. HUNTER. My name is Donald Hunter. I am represented by counsel, Walter B. Comegys.

Mr. Moss. He is appearing strictly as counsel and not for the purposes of testifying?

Mr. HUNTER. Yes, Mr. Chairman.

Mr. Moss. Do you have a statement?

Mr. HUNTER. No, sir.

Mr. Moss. Mr. Atkisson?

Mr. ATKISSON. Thank you, Mr. Chairman.

You will recall, Mr. Hunter, that I asked Mr. Gregg about who might be paying his attorney fees. In fairness, I would like to ask you the same question.

You are appearing here today under subpoena; are you not?

Mr. HUNTER. Yes, sir.

Mr. ATKISSON. And you have counsel with you.

Are you or is someone else paying your attorney fees?

Mr. HUNTER. Me.

Mr. ATKISSON. We have been talking a lot about a cartel today.

What, in your view, was the primary purpose of that cartel?

Mr. HUNTER. To assure a stable world market.

Mr. ATKISSON. Do you recall that your deposition was taken in May of this year?

Mr. HUNTER. Yes, sir.

Mr. ATKISSON. Do you recall saying something slightly different from what you have just said on that very subject?

Mr. HUNTER. I expanded on that. I believe I said: To assure a stable world market, which included balance of supply and demand and increase the prices commensurate with a solid mining industry.

Mr. ATKISSON. Didn't you also indicate that you felt it was primarily to eliminate competition—in particular, "the middleman?"

Mr. HUNTER. That subject was discussed. I don't believe I said that was the primary reason. It was part of the governing rules of the club or cartel.

Mr. ATKISSON. With respect to one middleman, you have a set of documents in front of you. They are numbered sequentially there by date.

I would call your attention to a memorandum dated March 1, 1973, which purports to be a memo from you to a Mr. T. A. Johnson [see app. A].

I would like to read a portion of it:

> We have learned that Westinghouse has submitted a joint venture with Queens Land Mines for approval of the Australian Government.

Then it goes on to mention certain quantities and prices.

The last sentence says:

> The proposed venture is approximately 3 months away from fruition; and, if it develops, would provide Westinghouse with a potential source for U.S. reactor sales. It would also provide a source for their substantial foreign shortage.

The final line of the memo, over your signature, says: "We will work with GMCL," that is Gulf Minerals Canada Ltd., "to try to put pressure on the Australians to block the proposed arrangement."

Were you the author of that memorandum?

Mr. HUNTER. To the best of my recollection.

Mr. ATKISSON. Were you acting at someone's direction when you wrote this memorandum?

Mr. HUNTER. No, sir.

Mr. ATKISSON. Were you acting at somebody's direction when you were carrying out this policy?

Mr. HUNTER. I wouldn't categorize it as a policy.

Mr. MOSS. Are we looking at the same document? I have a suspicion that you may not be. Are you looking at document No. 16A.

Mr. ATKISSON. I can see that he has the one I am referring to. That is the correct document.

The last line, which is:

> We will work with GMCL to try to put pressure on the Australians to block the proposed arrangement.

I am just trying to get at the source of that directive.

You state with some assurance there that you are going to be working—Who is "we" in "we will be working with GMCL?"

Mr. HUNTER. At the time I wrote this memo, I was not responsible for uranium sales. I was responsible for sales of high-temperature gas-cooled reactors.

Mr. ATKISSON. But who is the "we" in the statement: "We will work with GMCL to try to put pressure on the Australians"?

Mr. HUNTER. To the best of my recollection, I talked to Mr. Fowler and either he or I had talked with Mr. Gregg to learn of the existence of the Queensland Mine venture. Insofar as any specific action that was ever taken with respect to this memo, I know of none.

Mr. ATKISSON. But who would the "we" have been if you were to put pressure on the Australians to block the proposed arrangement?

Mr. HUNTER. It could have only been done through Gulf Minerals Canada Ltd., as the Canadian producer.

Mr. ATKISSON. Isn't the reason that it could only have been done through GMCL because GMCL was operating in the cartel?

Mr. HUNTER. Yes, sir.

Mr. ATKISSON. All right.

So it is clear that you, in your capacity on the domestic side, had to know and, I assume, frequently consult with the GMCL people about the cartel?

Mr. HUNTER. I did not. I did know of the cartel.

Mr. ATKISSON. You knew of it.

Mr. HUNTER. Yes, sir.

Mr. ATKISSON. And you knew enough about this particular Westinghouse problem to have been able to state with assurance that you were going to be working with GMCL to put pressure on the Australians.

Now I assume that you had to have some knowledge about the international market situation controlled by the cartel to be able to make that statement.

Mr. HUNTER. That's correct.

Mr. ATKISSON. All right.

In your own recollection, when did you first hear of the cartel? When were you first advised of the cartel's existence or any details about how it functioned——

Mr. Moss. May I interrupt for a moment?

I would like to have this record reflect this.

Who prepared the memorandum before you?

Mr. HUNTER. I believe I did.

Mr. Moss. You can dispel any doubt by looking at it, can't you?

Mr. HUNTER. It is my signature.

Mr. Moss. Then you did prepare it, didn't you?

Mr. HUNTER. I believe I did. It is 4 or 5 years ago—4 years ago.

Mr. Moss. Do you suspect that anyone forged your signature?

Mr. HUNTER. No, sir.

Mr. Moss. Then by every reasonable rule you prepared the memorandum?

Mr. HUNTER. Yes.

Mr. Moss. It has on it: W. G. Gallaway, H. E. Hoffman, G. W. Landes, and C. A. Rolander, Jr.

Are those persons all—or were they—employees of Gulf within the United States?

Mr. HUNTER. Yes, sir.

Mr. Moss. And what were their functions?

Mr. HUNTER. I believe at that time that they were all officers of General Atomic—Gulf General Atomic—which was a subsidiary of Gulf Oil.

Mr. Moss. Then they were all employees of Gulf at that time. I just wanted to establish clearly who prepared the memorandum.

Mr. ATKISSON. My question before was: When did you first hear of the cartel and by whom were you advised of its existence?

Mr. HUNTER. I believe it was February of 1972. I believe I was advised by Mr. Gregg.

Mr. ATKISSON. Where were you advised by Mr. Gregg?

Mr. HUNTER. I believe in San Diego.

Mr. ATKISSON. At that time, it was the case wasn't it that Mr. Gregg was working for you.

Mr. HUNTER. Yes, sir.

Mr. ATKISSON. How long did that relationship between the two of you—that is, you as his superior—how long did that last?

Mr. HUNTER. Until he was transferred to Toronto in the summer of 1972.

Mr. ATKISSON. Did he report to you administratively after that for a time?

Mr. HUNTER. No; he did not.

Mr. ATKISSON. He did not report to you administratively after June of 1972?

Mr. HUNTER. I'm not sure it was June of 1972. It was the summer of 1972 when he was transferred to Toronto, and he did not——

Mr. ATKISSON. I'm corrected; it is July of 1972.

After his transfer, did he keep you advised of activities with respect to Gulf's involvement with the cartel?

Mr. HUNTER. No.

Mr. ATKISSON. Did anyone else keep you advised of activities in the cartel?

Mr. HUNTER. There were discussions subsequent to that date that I had in June or July—at about the same time that he transferred, I believe. I knew broadly of the functions through about September, as I recall.

Mr. Gregg and I were in discussions periodically during that period, and those tailed off to be negligible toward the fall and winter of 1972.

Mr. ATKISSON. By late summer of 1972, is it fair to say that you were pretty well abreast of what was going on, what the cartel was doing, and what Gulf's involvement was?

Mr. HUNTER. I knew fairly well certainly until the time Mr. Gregg was transferred.

Mr. ATKISSON. And it was largely because of Mr. Gregg's presence in your area of the country and your talks with him that you knew what was going on; is that correct?

Mr. HUNTER. I participated personally in part of the discussions.

Mr. ATKISSON. In part of the discussions?

Mr. HUNTER. The cartel discussions.

Mr. ATKISSON. That would have been in Canadian producers meetings in Canada; is that correct?

Mr. HUNTER. No; that is not the case.

Mr. ATKISSON. What was the first meeting you personally attended?

Mr. HUNTER. I attended the May and June 1972 Johannesburg meeting of the producers.

Mr. ATKISSON. Are there any other meetings that you attended personally?

Mr. HUNTER. Of the——

Mr. ATKISSON. Of the cartel.

Mr. HUNTER. No, sir.

Mr. ATKISSON. Were you at one of the Paris meetings?

Mr. HUNTER. No, sir.

Mr. ATKISSON. All right. So the Johannesburg meeting you were present for?

Mr. HUNTER. Yes, sir.

Mr. ATKISSON. All right.

Mr. HUNTER. Excuse me. I was present for part of the meetings.

Mr. ATKISSON. Were you ever called upon to brief or advise officials senior to you about the activities of the cartel? Within Gulf, I mean.

Mr. HUNTER. Yes.

Mr. ATKISSON. Can you tell us about that occasion?

Mr. HUNTER. I briefed superiors of mine subsequent to the Johannesburg meeting in 1972. These were people within the subsidiary in San Diego.

Mr. ATKISSON. The people you briefed were all within the subsidiary in San Diego?

Mr. HUNTER. Yes.

Mr. ATKISSON. Would that be Mr. Rolander and Mr. Gallaway, and others?

Mr. HUNTER. Yes, sir.

Mr. ATKISSON. Who is the highest single official in the Gulf organization that you briefed on the activities of the cartel?

Mr. HUNTER. Mr. Rolander.

Mr. ATKISSON. Have you had discussions about the cartel with anyone higher than Mr. Rolander at any time?

Mr. HUNTER. No; I would have considered Mr. Zagnoli on an equal basis to Mr. Rolander, and I had discussions with him with respect to mechanisms of transfer of Mr. Gregg.

Mr. ATKISSON. Are you familiar with the term "the executive?"

Mr. HUNTER. Generally, yes.

Mr. ATKISSON. What does that mean?

Mr. HUNTER. At the time that I worked for Gulf, it meant that body of corporate officials who acted as a committee to make the important decisions of Gulf Oil Corp. And it is generally with people——

Well, Mr. Dorsey, Mr. Walker, Mr. Henry, Mr. Johnson—I think Grady Davis was a member of the executive, and probably several others.

Mr. ATKISSON. Very high corporate officials—members of the board, chief executive officer, and so on.

Mr. HUNTER. Yes.

Mr. ATKISSON. Was it common parlance at Gulf to refer to those people as "the executive"?

Mr. HUNTER. It was at the time.

Mr. ATKISSON. It is a collective noun. It means several people.

Mr. HUNTER. Yes, sir.

Mr. ATKISSON. Do you recall that in August 1972 you went to New York to have a meeting with the executive?

Mr. HUNTER. I do not recall that meeting.

Mr. ATKISSON. I invite your attention to the document immediately preceding—there are a couple of documents there—the first of which is a travel request for a trip by you from San Diego to New York on August 10, 1972. The purpose of the trip indicated on that request is a meeting with executive.

Did you discuss the cartel with the executive in that meeting in New York? [See appendix A.]

Mr. HUNTER. No, sir.

Mr. ATKISSON. Do you recall the meeting?

Mr. HUNTER. I have never discussed the cartel with the executive, and I do not recall this particular meeting.

Mr. GORE. Will counsel yield briefly on that point?

Mr. ATKISSON. Sure.

Mr. GORE. Do you remember the trip to New York?

Mr. HUNTER. I don't recall this trip at all.

Mr. GORE. Do you recall—this was during August 1972—your travel voucher says that you traveled to New York to meet with executive.

Perhaps this will jog your memory. Do you remember a trip from San Diego to Seattle and then from Seattle back to San Diego and then, the following day, a trip to New York?

Mr. HUNTER. I definitely remember the trip to Seattle.

Mr. GORE. What was the purpose of that trip to Seattle?

Mr. HUNTER. It was to negotiate a supply of U.S. source uranium from Jersey Nuclear.

Mr. GORE. Do you have that travel voucher in front of you?

Mr. HUNTER. Yes, sir.

Mr. GORE. Do you read the line where it says: Purpose of trip?

Mr. HUNTER. Yes, sir.

Mr. GORE. What it does it say?

Mr. HUNTER. Uranium discussions with Standard Oil.

Mr. GORE. So this was not in any way related to the discussions of marketing procedures?

Mr. HUNTER. No, sir.

Mr. GORE. This was for Gulf to purchase a supply of uranium from Standard Oil?

Mr. HUNTER. Yes, sir. From one of their subsidiaries.

Mr. GORE. And the following day you made a trip to New York to meet with the executive, and you don't recall that.

Mr. HUNTER. I do not.

Mr. GORE. Let's go over this again.

You flew to Seattle, and you talked with—you had uranium discussions with—Standard Oil. Then the following day you flew to New York to have a meeting with the executive, and you're saying that you don't recall either the trip to New York or the meeting with the executive?

Mr. HUNTER. I don't recall meeting with the executive, no. I do not remember that trip.

Mr. GORE. How many times have you met with the executive?

Mr. HUNTER. I have had occasion to meet with a major portion of the executive probably three or four times.

Mr. GORE. So one of those three or four meetings you don't recall?

Mr. HUNTER. No, sir. I don't believe I met with the executive on this case, even though that voucher says it. But I cannot remember that New York trip.

Mr. ATKISSON. A meeting with the executive is a pretty rare thing for you, isn't it?

Mr. HUNTER. You don't forget.

Mr. ATKISSON. It's not the sort of thing you would forget.

Mr. HUNTER. That's correct.

Mr. ATKISSON. I'm curious to know—you seem to remember the Seattle trip all right. There is just 1 day's difference. But you don't remember the trip to New York.

Mr. HUNTER. No.

Mr. ATKISSON. All right.

Mr. GORE. If counsel would yield further, what were the names of the people in Standard Oil with whom you met in Seattle do discuss uranium?

Mr. HUNTER. Ray Dickman and Tom Upchurch.

Mr. ATKISSON. At some time in the summer of 1972, you have already alluded to the fact that Mr. Gregg was transferred to Canada. That is correct isn't it?

Mr. HUNTER. That's correct.

Mr. ATKISSON. Did you have the discretionary power to transfer him?

Mr. HUNTER. No, sir.

Mr. ATKISSON. And you didn't transfer him? It wasn't on your order that he was transferred?

Mr. HUNTER. I didn't have that authority.

Mr. ATKISSON. Who did have the authority to order such a transfer?

Mr. HUNTER. I was part of the discussions of the transfer. I discussed those with the officers of General Atomic, Hoffman, Gallaway, and Rolander. I also had a discussion with Mr. Zagnoli.

I don't know for sure where the final decision was made with respect to Mr. Gregg's transfer.

Mr. ATKISSON. You are pretty familiar with the Gulf structure. You have been with the company long enough, I'm sure, to be familiar with how such decisions are made.

Let's take Mr. Zagnoli. Could Mr. Zagnoli have singlehandedly made such a decision?

Mr. HUNTER. He would have gotten staff input, and I don't know if he would have gone to Pittsburgh or not to get additional confirmation.

Mr. ATKISSON. You don't know then, of your own personal knowledge, whether or not Mr. Zagnoli would have had to go to Pittsburgh—I believe you just said—to be able to make that decision?

Mr. HUNTER. I don't know.

Mr. ATKISSON. You have a copy of the Gulf chart. In the chain of command, on your side of things, would Mr. Rolander, president of Gulf Energy and Environmental Systems at that time, have been in a position to make such a decision?

Mr. HUNTER. To make that decision?

Mr. ATKISSON. Yes.

Mr. HUNTER. No.

Mr. ATKISSON. Perhaps I should say: A decision of similar stature.

Mr. HUNTER. The reason I'm stumbling with the question is that he is making the decision to transfer an employee in Gulf Energy and Environmental Systems into another operating unit of the company.

Mr. ATKISSON. I appreciate that.

Mr. HUNTER. So he would have to go, some way, to the line organization on the right—Mr. Zagnoli or perhaps up to Mr. Henry or Mr. Walker.

Mr. ATKISSON. Your end of things—on the left side of that chart—you were basically in uranium marketing. Is that correct?

Mr. HUNTER. During 1972, yes, sir.

Mr. ATKISSON. Let's consider a purchase or sale of uranium. Would you, in your position of manager of uranium projects, have been able to make a decision when you were with Gulf to effect a sale of uranium?

Mr. HUNTER. No.

Mr. ATKISSON. Let's go up the ladder here.

Would Mr. Gallaway, executive vice president, have been in a position to singlehandedly effect a sale of uranium?

Mr. HUNTER. No.

Mr. ATKISSON. Would Mr. Rolander have been in a position to singlehandedly effect a sale of uranium?

Mr. HUNTER. Within the practical context. The kind of uranium sales we are talking about are several million pounds, so they are multimillion dollars.

Mr. ATKISSON. In fact, decisions of that magnitude were made at the most senior corporate level; isn't that correct?

Mr. HUNTER. Recommendations would have been made, in our case, by Mr. Rolander to his superior. The approval would have been received from Pittsburgh.

Mr. ATKISSON. A decision to move the international marketing man, who was previously working for you, to physically move that office or that function up to Canada pretty likely would have been made on the same level; don't you think?

Mr. HUNTER. I really——

Mr. ATKISSON. You don't know. I appreciate that.

Just one more question, Mr. Chairman.

Mr. Fowler, who will be testifying in a few minutes, worked for you; is that correct?

Mr. HUNTER. Yes, sir. During 1972.

Mr. ATKISSON. And during 1972, until Mr. Gregg left, Mr. Gregg also worked for you right alongside of Mr. Fowler; is that correct?

Mr. HUNTER. Yes, sir.

Mr. ATKISSON. And Mr. Fowler was in charge, basically, of domestic uranium marketing; and Mr. Gregg was in the international phase of that; is that correct?

Mr. HUNTER. That is generally correct. Our function in the United States was more as a buyer of uranium. Our function overseas was as a seller of uranium.

Mr. ATKISSON. As such, was Mr. Fowler charged with the responsibility of knowing as much as possible about market forces in the United States?

Mr. HUNTER. Yes, sir.

Mr. ATKISSON. Do you consider Mr. Fowler competent?

Mr. HUNTER. Yes, sir.

Mr. ATKISSON. Thank you.

Mr. Moss. The Chair recognizes the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman.

Mr. Hunter, I would like to return briefly to your discussions with Standard Oil. I find them very intriguing.

Did you discuss with Tom Upchurch and Ray Dickman—first of all, was anybody else present at that meeting?

Mr. HUNTER. From our side?

Mr. GORE. From either side.

Mr. HUNTER. I don't believe so. There could have been.

Mr. GORE. Did you discuss the question of the embargo with those two men?

Mr. HUNTER. No.

Mr. GORE. Have you ever discussed the embargo with employees of another U.S. company in the uranium business?

Mr. HUNTER. Only within the context of general industry discussions at meetings such as the Atomic Industrial Forum. Open discussions.

Mr. GORE. Could you have been asked to come to New York the following day to meet with the executive to report on the substance of your discussions with Standard Oil?

Mr. HUNTER. I can give you my conjecture on that series of events.

Mr. GORE. Since we can't get your memory, I'll take your conjecture.

Mr. HUNTER. Sir, I really don't remember. I've been through this same thing in several depositions. I don't remember that visit, and I am reasonably certain I did not meet the the executive, because I would have remembered it.

I subsequently met with the executive. We had to get executive approval to purchase uranium from Exxon and a parallel purchase

that we were making from Sohio. The purpose of that visit could very well have been to discuss where we were in those negotiations, vis a vis a purchase of uranium from the two domestic suppliers.

Mr. GORE. You wanted uranium to supply who?

Mr. HUNTER. My function within Gulf at that time was to provide a source of uranium to meet the needs of the high temperature gas-cooled reactor that General Atomic was selling and also to provide a source to a fuel fabrication company.

Mr. GORE. General Atomic was the subsidiary of Gulf, which was in the business of selling atomic reactors to utilities; is that correct?

Mr. HUNTER. That's correct.

Mr. GORE. One of your principal competitors in that line of business was Westinghouse; correct?

Mr. HUNTER. Yes, sir.

Mr. GORE. Westinghouse made a big splash in the reactor market by signing contracts which assured delivery of supplies over a long period of time to those who purchased their reactors; correct?

Mr. HUNTER. Yes, sir.

Mr. GORE. General Atomic was suffering from the competition because they were not able to make similar assurances to the customers that they were trying to make sales to; correct?

Mr. HUNTER. Every offer of an HTGR, that I'm familiar with, had a uranium offer with it.

Mr. GORE. But Westinghouse was making attractive uranium supply offers and signing contracts based on those supply assurance. And it was largely for that reason that Westinghouse outstripped General Atomic during this period; is that a fair assertion?

Mr. HUNTER. I don't believe that's true at all.

Mr. GORE. Could you correct it please?

Mr. HUNTER. Every offer of a high temperature gas-cooled reactor had a uranium supply offer with it. Those offers were made at attractive market prices.

The reason, I believe, General Atomic was unsuccessful vis-a-vis Westinghouse was the general lack of experience with their reactor system.

I don't know of any case where a high temperature gas-cooled reactor sale was not made or where it was lost because of lack of uranium supply.

Mr. HADDAD. May I ask a question?

Mr. GORE. I yield.

Mr. HADDAD. In this period of time—early 1972—isn't it a fact that you were brought in to make up a shortage of 10 or 12 million pounds in uranium that somehow Gulf had developed because of its sale of reactors?

Mr. HUNTER. Yes, sir.

Mr. GORE. Then that fits right in with what I was saying: Westinghouse was assuring a supply to its reactor customers; Gulf was attempting to do the same but you came up with a shortage of 12 to 14 million pounds, and that was the reason for this attempted purchase; right?

Mr. HUNTER. The gentleman was referring to January 1972, I believe, when I was first given the job shown on this chart. I was given

that job to purchase a significant quantity of uranium in order to make up the shortages.

We bought, at that time, material from Ranchers and from Union Carbide and had about a 10-million-pound supply. We subsequently bought the material from Sohio and Jersey to make up additional supplies needed for HTGR and fuel fabrication needs.

Mr. GORE. The reason I bring this up is because I think it puts a slightly different light on the struggle between Gulf and Westinghouse here that was not just in the arena of uranium supply. It was in the much more lucrative market of selling nuclear reactors to utilities, as utilities in this country began to make a major commitment to nuclear power as the future source of electricity.

Westinghouse was getting the upper hand on General Atomic. The activities of Gulf can be interpreted in several ways.

One of the ways in which it can be interpreted is as an effort to stymie Westinghouse in the reactor arena to give General Atomic a better advantage in competing with them.

I want to pursue another memorandum with you, and I think this is in your stack.

It is dated February 23, 1973. This also refers to conversations between American oil companies about uranium questions. It is a memo addressed to you, the subject of which is "Exxon Nuclear."

Mr. HUNTER. Yes; I do.

Mr. GORE. It says: "Tom Upchurch," and this is the person that you met with in Seattle, "advised me," me referring to Mr. Fowler—

* * * that he had come down to Los Angeles on Monday to attend the Atomic Industrial Forum meeting to discuss the embargo question, where other producers were present. Exxon has very conservative guidelines on such participation. And when Tom discovered that the AIF representation was not acceptable (lack of a lawyer and/or Mr. Gordon)—

And Gordon was president of the Atomic Industrial Forum at that time; correct?

Mr. HUNTER. He was advisor of the Mine Committee or something.

Mr. GORE. "He elected not to participate and returned to Seattle. This may have some peripheral impact on your call to Ray and thought you should be aware." Is that Ray Dickman?

Mr. HUNTER. Yes, sir.

Mr. GORE. What was your call to Ray going to be about?

Mr. HUNTER. As I recall this situation, we had in August or September signed a letter of intent, and we were negotiating a contract with Exxon. There were some issues——

Mr. GORE. A uranium supply contract with Exxon?

Mr. HUNTER. Yes, sir.

Mr. GORE. Why would there be reluctance to discuss the embargo without a lawyer present have anything to do with that?

Mr. HUNTER. As I remember and can interpret this, there was a meeting scheduled to review some of the open items between Mr. Fowler, who worked for me, and Mr. Upchurch.

Mr. GORE. Did you attend a meeting in Oakbrook, Ill., a few months after this?

Mr. HUNTER. No, sir.

Mr. GORE. Shortly after this evidence of communication between several American oil companies about the uranium market, there was a

meeting in Illinois. Had you heard about that meeting, or do you know anything about it?

Mr. HUNTER. I've heard about it.

Mr. GORE. What did you hear went on at that meeting?

Mr. HUNTER. Sir, the only thing I know of that meeting is what I've read in the trade press. That relates to the general posture that was taken by producers regarding the need for higher prices to support a viable mining industry.

At the time of that meeting, I believe I had a new job.

Mr. GORE. So the need for higher prices was discussed, nad soon after that was when TVA put out its request for bids to 58 producers and received only 3 responses—Gulf being one of those who refused to respond.

You are the author of this June 8 memorandum to Mr. Hoffman in which you recommend deferring production of Gulf's uranium reserves from 1976 to 1978. You make your recommendation within the context of an overall statement about the need to treat foreign and domestic markets in an integral manner, recognizing that they are interrelated [see appendix A].

Could you elaborate on why you felt that Gulf should withhold the New Mexico reserves from the market for 2 additional years?

Mr. HUNTER. Sir, is that the comment in the paragraph at the bottom of page 1?

Mr. GORE. Correct.

The general context I refer to is in the paragraph immediately above it.

Mr. HUNTER. We had, as you indicated earlier, sold uranium to some U.S. utilities. We were searching for supplies of uranium to cover those commitments. We evaluated, in order to do that, a combination of purchases from U.S. sources, a contingent removal of the embargo and the possibility that that would form a source, and we also worked with Gulf Minerals in Denver to see what their potential production might be from Mount Taylor or Maryanna Lake.

Within that context of that evaluation, I believe Gulf Minerals in Denver had performed a study which indicated that their economics were more favorable and certainly the risks were more acceptable if production were delayed for 2 years. We then evaluated that delay in production for 2 years versus that being a possible source of supply for sales that we might make or purchases that we might make from Gulf Minerals in Denver.

Mr. GORE. Would you agree that the longer those reserves are held off the market, the more that that affects the relationship between supply and demand?

Mr. HUNTER. Would you repeat that?

Mr. GORE. If those reserves are held off the market, presumably—it is a simple economic proposition. Presumably, the relationship between supply and demand is affected, and the price is also affected.

It would seem also that a company would feel more comfortable in making a decision of this kind, since they had assurances from all of their competitors—at least in the foreign arena—that they would not face somebody undercutting them on supply projections.

Mr. HUNTER. My role was one of trying to find a source of supply.

I wanted the New Mexico property to be brought into production.

Mr. SANTINI. Would the gentleman yield?

Mr. GORE. Yes.

Mr. SANTINI. You have, in the document previously referenced—the June 8, 1972, document—stated: "Based on input provided by Gulf Minerals." What was the input provided by Gulf Minerals?

Mr. HUNTER. As I recall, there was a study done by Gulf Minerals in Denver regarding the relative economics of producing Mount Taylor, which was the big resource in New Mexico, on several different time schedules with several different production schedules.

It was that information that I'm referring to herein.

Mr. SANTINI. Was any of that input provided by the meeting in Johannesburg the week previous? Approximately a week earlier.

Mr. HUNTER. No.

Mr. SANTINI. So none of the input your reference here was a product of your meeting a week earlier in Johannesburg?

Mr. HUNTER. No.

Mr. SANTINI. What is the interrelationship between foreign and domestic?

Mr. Gore has touched upon this. Are we talking about price interrelationships in part, as referred to in your first paragraph of that same document?

Mr. HUNTER. I was referring to supply relationships.

As I tried to indicate, we were buyers. One source that we hoped to use was foreign supply, contingent upon the removal of the embargo.

We felt at this time that the embargo would be removed before 1980.

It was our contention that since the embargo was probably going to be removed, it should be considered as a potential source.

Mr. SANTINI. And it had no factual relationship to the potential for an international and domestic market relationship at that time?

Mr. Hunter. Could you repeat that?

Mr. Santini. It was purely prospective. You were not then referring to a relationship between the domestic and international market at that time?

Mr. HUNTER. That's correct. There was embargo at the time, and there was all the future projections.

Mr. SANTINI. Certainly; but notwithstanding the embargo, uranium was being bought off the world market and brought into this country—as I think the gentleman from Tennessee has aptly demonstrated.

Mr. HUNTER. Not at this time. A year after.

Mr. SANTINI. Yes. But it was factually feasible to have gone into the world market and to have purchased in the world market, notwithstanding the embargo.

Mr. HUNTER. You could purchase; you just couldn't use it.

Mr. GORE. You could stockpile it.

Mr. HUNTER. Yes, sir. Based on some contingent removal, which you had no assurance against.

Mr. GORE. And whatever you bought, you wouldn't have to buy from somebody else later.

Mr. HUNTER. At the risk of not having the embargo renewed; yes, sir.

Mr. Gore. And if your contract said that you would have to pay for it whether it was removed or not, then that was irrelevant; right?

Mr. HUNTER. Excuse me.

Mr. GORE. TVA's contracts had a clause saying it didn't matter whether the embargo was removed or not; they had to pay for it.

Mr. HUNTER. Yes, sir. I understand.

Mr. GORE. Do you know who from Gulf attended the meeting in Oakbrook, Ill.?

Mr. HUNTER. I don't know for sure. I believe Mr. Fowler and possibly Mr. Reif and others from other Gulf companies that I wouldn't know about.

Mr. GORE. I just have two more questions for you, Mr. Hunter.

I want to refer you to the memorandum of February 18, 1972—not for a lengthy series of questions on the contents of it, but I want to ask you about the method of preparation.

It is from you to Mr. Rolander. Do you remember preparing this?

Mr. HUNTER. Yes, sir.

Mr. GORE. It's on the proceedings of the cartel; right?

Mr. HUNTER. Yes, sir. The early meetings of the producers.

Mr. GORE. How many copies did you prepare of that memo?

Mr. HUNTER. One.

Mr. GORE. Were you directed to prepare only one copy?

Mr. HUNTER. I believe so.

Mr. GORE. Who directed you to prepare only one copy?

Mr. HUNTER. I don't recall the specific individual. I know at this time there were broad discussions between myself and my superiors—Mr. Hoffman, Rolander, and Gallaway. But I don't recall which one of them specifically said it.

Mr. GORE. What is your opinion—either in retrospect or at that time what was your opinion—of the reason you were given the direction to prepare only one copy?

Mr. HUNTER. This memo was transmitting a document from Mr. Gregg, summarizing a meeting of international producers. It was the first that we had known about it.

We were gravely concerned about the antitrust implications.

Mr. GORE. So it was to keep it secret and to reduce the chances that it would ever be known?

Mr. HUNTER. Yes, sir.

Mr. GORE. Thank you, Mr. Chairman.

Mr. SANTINI [presiding]. Mr. Wunder?

Mr. WUNDER. Thank you, Mr. Chairman.

Did Gulf at one time consider the marketing of New Mexico uranium through GMCL?

Mr. HUNTER. I don't know of any consideration, but they may have.

Mr. WUNDER. To your knowledge there wasn't?

Mr. HUNTER. To my knowledge there was none. There were discussions of possible joint ventures to produce the Mount Taylor New Mexico reserve which would have included some of the non-U.S. suppliers.

Mr. WUNDER. Did you, in the month of February 1972, seek information about the Paris discussions—the cartel discussions—from the Canadian Embassy?

Mr. HUNTER. The first I knew of any discussions was in February—this memo reflecting it. I had some discussions, as I recall, with the scientific attaché of the Australian Embassy. I cannot recall any attempts at the Canadian Embassy, although we may have.

Mr. WUNDER. With respect to the Australian Embassy, you spoke with a scientific attaché you said?

Mr. HUNTER. Yes.

Mr. WUNDER. What was the purpose of your call? Was this on the telephone or in person?

Mr. HUNTER. I don't recall if I met him or talked with him, or someone else talked to him. I knew him and had seen him various places.

Mr. WUNDER. Where would this have been?

Mr. HUNTER. In Washington.

Either Washington, or it could have been in San Diego because he at times stopped in San Diego on his way back to Australia.

Mr. WUNDER. Did you seek out information? Did you ask him what was going on in Paris?

Mr. HUNTER. No; we were curious as to what was going on in total—not in the particular Paris meeting.

Mr. WUNDER. I direct your attention to a memo of July 7, 1972, to Mr. Zagnoli. It is the one we referred to previously.

In the first paragraph it says: "The interrelationship which exists between the UEB"—What is the UEB agreement?

Mr. HUNTER. That was the German parent company of the German Canadian subsidiary who is a partner in Rabbit Lake.

Mr. WUNDER [reading]:

> What you are currently renegotiating and our marketing activities make it highly desirable for following the marketing operations to be physically located with the production function at Gulf Minerals Canada.

Am I to take it that the desirability of this physical change was the fact that you had this joint venture with this German concern?

Mr. HUNTER. That sentence—and the desirability—relates to communication flow that is improved by having the production department and the marketing department selling a uranium commodity being in the same place.

Mr. GORE. Will counsel yield?

Mr. WUNDER. Certainly.

Mr. GORE. Further on in that memo—this is not on the main line of questioning, but I think it will clarify the record—there were discussions earlier about the reasons for Mr. Gregg's transfer—and this memorandum indicates that in light of the discussion you pursued "it is appropriate for us to transfer Mr. L. T. Gregg to Toronto at a very early date."

This was the company that you developed Rabbit Lake with in a joint venture.

Mr. HUNTER. Yes, sir.

Mr. GORE. And the source of one of the TVA supply contracts.

Thank you.

Mr. WUNDER. Going back to the travel request for travel from San Diego to New York, [see p. 570] in the top right-hand corner there is "Lucy." Does your copy show that?

Mr. HUNTER. Yes.

Mr. WUNDER. Is that a person?

Mr. HUNTER. Yes.

Mr. WUNDER. Who might that person be?

Mr. HUNTER. I don't know what that refers to. It wasn't my secretary. I guess it's someone in the travel agency or someone who wrote out the travel request.

It is an internal clerical person within General Atomic.

Mr. WUNDER. I note that the first travel request from San Diego to Seattle and Seattle to San Diego has no such notation, unless it has been obliterated.

Mr. HUNTER. I have no idea.

Mr. WUNDER. You don't know what that has reference to then?

Mr. HUNTER. No.

I will recall one thing that I have been shown in other depositions. If I went from San Diego to New York, I spent $21 on a hotel room in New York which is a little bit hard to believe.

Mr. WUNDER. Is it common to have meetings with the executive in New York as opposed to Pittsburgh?

Mr. HUNTER. No, sir.

Mr. WUNDER. Did you ever have a meeting with the executive in New York?

Mr. HUNTER. That I remember?

Mr. WUNDER. Is there anyone in New York that comprises this executive which has offices in New York?

Mr. HUNTER. No.

Mr. GORE. Would counsel yield?

Mr. WUNDER. Sure.

Mr. GORE. Did Gulf transfer its headquarters during this period?

Mr. HUNTER. No; not to my knowledge.

Mr. GORE. What exact——

Mr. HUNTER. All the people were in Pittsburgh.

Mr. GORE. I thought there were some operations that at some point were conducted out of New York.

Mr. HUNTER. I believe it's true that there were still offices in New York.

Mr. GORE. Executive offices in New York.

Mr. HUNTER. Not within the context of "the executive."

Mr. WUNDER. What type of offices were these in New York? What function did they perform?

Mr. HUNTER. I'm not totally familiar. I was in them. I imagine they are distribution functions.

Mr. GORE. I think it's clear that whatever you discussed with them it is difficult to remember.

Mr. HUNTER. I don't.

Mr. SANTINI. The time of the gentleman has expired.

Mr. WUNDER. I have just one further question.

Calling your attention to your March 1, 1973, memorandum, this is to Mr. T. A. Johnston. This is the memo which talks about Westinghouse?

Mr. HUNTER. Yes.

Mr. WUNDER. I want to direct your attention to the last sentence in that memorandum. It says:

> We will work with GMCL to try to put pressure on the Australians to block the proposed arrangements.

The first question I have for you is: "Did you work at all with GMCL to put any pressure on the Australians to block this proposed arrangement?"

Mr. HUNTER. To the best I can recall, I had discussions with either Mr. Fowler and/or Mr. Gregg about the joint venture in Australia.

Mr. WUNDER. During the course of these discussions, did you say: Is there anything we can do to put pressure on the Australians to block this proposed sale?

Mr. HUNTER. I don't recall the discussions, but I presume that I did.

Mr. WUNDER. Thank you, Mr. Chairman.

Mr. SANTINI. Mr. Haddad?

Mr. HADDAD. I have two very quick questions.

You were in Johannesburg in 1972, May, for that meeting. Is that correct?

Mr. HUNTER. That's correct.

Mr. HADDAD. You are also not a GMCL official; is that right?

Mr. HUNTER. That's correct.

Mr. HADDAD. So Gulf U.S.A. was represented at that meeting by perhaps three of the four representatives; is that correct?

Mr. HUNTER. The meetings were of 4 days' duration.

I attended two working session meetings as an advisor.

Mr. HADDAD. But you were Gulf Oil U.S.A.?

Mr. HUNTER. Yes, sir.

Mr. HADDAD. Let me just read you something which is of importance to us. It is dated June 2, 1972. It is from Mr. Jackson, and it goes to the heart of one of the mysteries of this inquiry.

In view of the recent developments at the Johannesburg meetings, it seems preferable to delay preparation of a white paper until the fact situation is stabilized and we have in hand Ramsey's impact statement addressed to the latest developments.

What happened in Johannesburg to eliminate the need for the white paper at that time?

Mr. HUNTER. First, I have never seen the memo that you're reading from.

Mr. HADDAD. It's in front of you if you would like to see it. It's June 2, 1972. It is a file memorandum by Mr. Jackson [see appendix A].

I am basically asking about that one paragraph.

It is Worldwide Uranium Marketing Organization, Roy D. Jackson, Jr., with copies to Mr. Minks, Mr. Coleman, Mr. Allen, and Mr. Ramsey.

Mr. HUNTER. Yes, sir.

Mr. HADDAD. The question was: "What happened at Johannesburg to cause Gulf to embark on this radical departure from its previously well-set plan?"

Mr. HUNTER. I don't know what Mr. Jackson——

Mr. HADDAD. Were U.S. antitrust laws discussed at Johannesburg in that first meeting to your knowledge?

Mr. HUNTER. The first 2 days of meetings discussed the broad operations that I was not involved in. I was involved in their working level meetings.

Mr. HADDAD. Did antitrust discussions take place?

Mr. HUNTER. Not in those meetings.

Mr. HADDAD. You talked to the other men there; you went to the park and a few other things, and you were with the other people for dinner?

Mr. HUNTER. Yes.

Mr. HADDAD. Did you discuss it at all? Did they tell you antitrust came up?

Mr. HUNTER. We talked about antitrust before I went to Johannesburg, on the way to Johannesburg, and in several private meetings. But I don't recall the specific discussions in the formal members' meetings.

Mr. HADDAD. But nothing took place to justify this in your mind? Did you come back with a recommendation, or did somebody come back with a recommendation, that something happened to justify the departure?

Mr. HUNTER. It is conjecture on my part.

Mr. HADDAD. Yes.

Mr. HUNTER. The meetings in Johannesburg in May/June 1972 solidified the participation of the Australian Government—or the Australian producers—in the cartel, and made—perhaps in Mr. Jackson's mind—the success of the cartel more probable.

Mr. HADDAD. I share that with you. I believe that is what happened—that the success of the cartel was assured and, as was expressed in other memos, it made it profitable for Gulf to take that risk.

I have a final question: In your depositions, you were asked the question: "were you aware of any other cartels during your employment by Gulf, within Gulf or elsewhere?" And counsel objected, and you never answered that question.

Would you answer that question for us? Were you aware of any cartels in Gulf's business, or anybody else's business that Gulf was related to, or any cartels?

Mr. HUNTER. I have read at some point or another about the Zinc Institute, but I've never participated.

Mr. HADDAD. In your own knowledge, you are not familiar with any cartels at all?

Mr. HUNTER. No.

Mr. HADDAD. Thank you.

Mr. SANTINI. I recognize the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you. I will be brief, Mr. Chairman.

I refer your attention to the memorandum of September 28, 1972. This is a Telex message that you sent to Mr. Hudai, who is the director-general for Uranex, the French member in the cartel.

I will quote to you from this Telex message. You sent it from San Diego to Paris.

Our checks of the Westinghouse situation lead us to believe that the material—

I take it that is uranium—

they are quoting overseas is of foreign origin. We have not yet been able to pinpoint the source but will continue to work on the problem. Concerning our discussions on the New Mexico properties, I would like to hold off on these for awhile since I understand Mr. Terringer is providing point of contact to Mr. Hoffman. I will keep you apprised of this situation as it develops.

Mr. Terringer is with CEA; right? The French organization.

Mr. HUNTER. Yes.

Mr. GORE. Why would you discuss your production plans for uranium within the boundaries of the United States—a natural resource here in this country—with the foreign cartel?

Mr. HUNTER. The Telex you are reading from is two separate considerations. The one referring to the New Mexico properties referred to a discussion that I had had with Mr. Hudai in Paris about their possible interest in being a joint venture partner for production in New Mexico.

The early paragraph refers to a discussion that I had with Mr. Hudai in Johannesburg and in Paris concerning Westinghouse's source of overseas uranium.

Mr. GORE. Was Gulf designated as the member of the cartel responsible for developing information on Westinghouse in its activities in uranium marketing?

Mr. HUNTER. Not formally. It was discussed at Johannesburg. Part of the information that I had, and that we had evaluated, included an analysis of Westinghouse.

Mr. GORE. I yield to counsel.

Mr. ATKISSON. Do I understand you to be saying that in September of 1972, Gulf was contemplating a joint venture with a cartel member in New Mexico?

Mr. HUNTER. That I had discussions with Mr. Hudai—Let me back up just a minute.

I was very interested, from a source standpoint, in helping to find partners to develop the Mount Taylor project. Uranex was a potential partner.

I suggested to Hudai that we consider it.

I was out of that discussion very quickly, and if there were subsequent ones, they were of no——

Mr. ATKISSON. Did any of the fellows up in Pittsburgh know that you were talking to Uranex about that particular joint venture?

Mr. HUNTER. Sir, I don't know. I'm sure that it would not have gone past the preliminary stages without having had a discussion with the people in Denver.

Mr. ATKISSON. I'm also reminded of the fact that Mr. Terringer is carboncopied, and the Uranex and the French CEA and the secretary to the cartel are all under one roof.

Thank you. I have no further questions.

Mr. GORE. The further discussions were between Mr. Hoffman of Gulf and Mr. Terringer of Uranex or CEA?

Mr. HUNTER. To the best of my knowledge, there was no development of any interest on Gulf's side.

Mr. GORE. Thank you, Mr. Chairman.

Mr. SANTINI. One additional point of clarification or emphasis for the record:

Referring to the so-called confidential report on the meeting of Canadian producers that was held in Johannesburg on May 28, 1972, I quote now from page 6 of that memorandum:

> Mr. Austin went on to say that 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. This attitude had been clearly expressed in a message sent to each producer by the Minister of Energy, Mines, and Resources on April 14.

Is that a correct synopsis of Mr. Austin's representation to the meeting at that time?

Mr. HUNTER. I was not in those meetings.

Mr. SANTINI. You were listed as a participant in that meeting.

Mr. HUNTER. I understand that. I wasn't in that meeting. This is a meeting of the producers at Canada. I don't recall that meeting.

Mr. SANTINI. You did attend the conference in Johannesburg?

Mr. HUNTER. There were 4 days of meetings. The first 2 days we were not involved; the second 2 days we were involved in the working sessions. That meeting was probably on Sunday night or Monday night—of the producers. I don't believe I was there. I was in Johannesburg.

Mr. SANTINI. You referenced, in response to a question, that you were gravely concerned about antitrust implications?

Mr. HUNTER. Yes.

Mr. SANTINI. In reference to the one document that was pressed. What was the source of that antitrust grave concern?

Mr. HUNTER. I knew of the early developments of the cartel between February and the time that we were going to Johannesburg, and I was concerned that it was not an antitrust violation. We were assured in San Diego that it had been reviewed; and since Gulf was being compelled to participate as a Canadian producer, there would be no problem.

Mr. SANTINI. On an individual judgment basis, as a result of those assurances, all of your grave concerns were dissipated or satisfied?

Mr. HUNTER. Yes. You may question my judgment, but that is the case.

Mr. SANTINI. I thank you very much, Mr. Hunter, for sharing your testimony and your participation with the committee.

Mr. MOSS. I will call next Mr. M. W. Ramsey to speak in panel with Mr. Wayne Fowler.

Do you solemnly swear the testimony you are about to give this subcommittee shall be the truth, the whole truth, and nothing but the truth so help you God?

Mr. RAMSEY. I do.

Mr. FOWLER. I do.

Mr. MOSS. Will you identify yourselves to the reporter.

TESTIMONY OF M. W. RAMSEY, DIRECTOR, CORPORATE PLANNING, PLANNING AND ECONOMICS DEPARTMENT, GULF OIL CORP., PITTSBURGH, PA., AND WAYNE FOWLER, FORMERLY MANAGER, DOMESTIC URANIUM SALES, GULF GENERAL ATOMIC

Mr. RAMSEY. I am M. W. Ramsey.

Mr. FOWLER. I am Wayne Fowler. I was an employee of Gulf Oil Corp. during the period of time that you have been discussing today—certainly through 1972 and 1973.

Mr. MOSS. Both of you are here in response to subpenas issued by the committee?

Mr. FOWLER. That's not correct.

Mr. MOSS. Do either of you have a statement?

Mr. RAMSEY. I have no statement.

Mr. FOWLER. Neither do I.

Mr. MOSS. Mr. Atkisson?

Mr. ATKISSON. Thank you.

To clear up the subpena matter, Mr. Ramsey, you are appearing under subpena?

Mr. RAMSEY. Yes.

Mr. ATKISSON. And you are presently employed by the Gulf Oil Corp.; is that correct?

Mr. RAMSEY. Yes.

Mr. ATKISSON. Mr. Ramsey, were you present for the hearings yesterday?

Mr. RAMSEY. Yes, sir.

Mr. ATKISSON. So you are familiar with the fact that we have talked very extensively here about a so-called white paper.

Mr. RAMSEY. Yes, sir.

Mr. ATKISSON. I would call your attention, in general, to the several memoranda which were alluded to yesterday and today over the signature of Mr. Roy Jackson. You are basically familiar with those documents; are you not?

Mr. RAMSEY. I have seen the paper alluded to as the white paper which was prepared by Mr. Jackson.

Mr. ATKISSON. The memoranda that we have been using in these hearings, in some cases, were carbon copied to you; isn't that true?

Mr. RAMSEY. I have seen the white paper referred to, and I have received some correspondence relating thereto.

Mr. ATKISSON. As an example, a short letter dated April 28, 1972 [see appendix A], which is in your document package there, from Mr. Jackson to Mr. I. W. Coleman of Gulf states as follows:

> A very rough draft of the white paper on the uranium cartel is attached.

An enclosure is indicated, and it says "cc: Mr. M. W. Ramsey," with enclosure.

So you were carboncopied on that piece of correspondence.

You did, in fact, prepare, pursuant to Mr. Jackson's legal advice on the issue of the cartel, an economic impact statement; did you not?

Mr. RAMSEY. Yes, sir. Mr. Jackson requested me to examine the economic effects of the cartel on U.S. commerce.

Mr. ATKISSON. When did you first receive that request?

Mr. RAMSEY. I can't pinpoint it exactly, but it was in the late winter of 1971 or early spring of 1972.

Mr. ATKISSON. The late winter of 1971?

Mr. RAMSEY. I would say it was sometime in the year of 1972, but I can't pinpoint it exactly.

Mr. ATKISSON. We do have testimony that Gulf's very first inkling of a producer's arrangement was sometime in February of 1972.

You weren't contacted about a cartel before that were you?

Mr. RAMSEY. No, sir.

Mr. ATKISSON. How did that request come to you? Was it by phone; by written directive; or just how?

Mr. RAMSEY. As a matter of background in the job that I had the responsibility for as director of planning, we had been doing quite a bit of work with GMRC on Rabbit Lake and working out the partnership arrangement with the German partners.

Information then came to our knowledge through GMRC, as to the developments that took place in Canada with respect to the proposal that a foreign marketing arrangement be worked out.

Mr. ATKISSON. Did they request you to prepare an economic impact statement? It came to you exactly how?

As you said, it was from Mr. Jackson; was it not?

Mr. RAMSEY. Yes; it was at his request.

Mr. ATKISSON, And Mr. Jackson at that time was in Pittsburgh; is that correct?

Mr. RAMSEY. Yes, sir.

Mr. ATKISSON. Were you at that time in Pittsburgh?

Mr. RAMSEY. Yes, sir.

Mr. ATKISSON. You weren't in Denver?

Mr. RAMSEY. No, sir.

Mr. ATKISSON. I'm asking how that specific request was transmitted to you. Was it by a document of some sort or an oral request.

Mr. RAMSEY. It was oral.

Mr. ATKISSON. Was it indicated to you, in any fashion, in that oral request what the result of your economic impact study should be?

Mr. RAMSEY. No, sir. He explained to me and my associates as to what the law was. We were to examine the effect of the proposed arrangement on U.S. commerce and prepare a report to reflect our findings.

Mr. ATKISSON. You proceeded to do so, I presume.

At what time did you—did you prepare a draft?

Mr. RAMSEY. Yes; we worked at this over a period of time.

Mr. ATKISSON. Who is "we?" You had people on your staff who helped you with it?

Mr. RAMSEY. Yes, sir.

Mr. ATKISSON. Are either you or the people on your staff economists?

Mr. RAMSEY. Yes; we have economists on our staff. Economists were drawn on in the company.

Mr. ATKISSON. You are not an economist?

Mr. RAMSEY. I have an economic, financial, accounting, planning background. I don't hold myself out as being an economist per se.

Mr. ATKISSON. When was your first draft completed?

Mr. RAMSEY. I would say it was in March or April of 1972.

Mr. ATKISSON. And you transmitted that to Mr. Jackson?

Mr. RAMSEY. Yes, sir.

Mr. ATKISSON. Do you recall what your conclusion was with respect to the cartel's possible impact on the American market?

Mr. RAMSEY. We concluded it had no impact.

Mr. ATKISSON. Were there subsequent drafts prepared?

Mr. RAMSEY. Yes, sir.

Mr. ATKISSON. What was the occasion for preparing subsequent drafts?

Mr. RAMSEY. We were trying to update our information and be as precise and as comprehensive as we could.

Mr. ATKISSON. How many subsequent drafts were there?

Mr. RAMSEY. I only recall one subsequent draft, although we had work papers that we were working on over a period of months.

Mr. ATKISSON. What was the date of the one subsequent draft that you can remember?

Mr. RAMSEY. I think the final draft we submitted to Mr. Jackson or Mr. O'Hara, who was his successor, was in September.

Mr. ATKISSON. It was in September of 1972.

As you said, you attended yesterday's hearing. You will recall that Mr. Jackson, by a memorandum in June of 1972, indicated that the plan to submit a white paper to the Justice Department had been abandoned.

Why would there have been a subsequent draft as late as September of 1972?

Mr. RAMSEY. I don't recall that the plan to submit the white paper was abandoned.

Could you refresh my memory on that?

Mr. ATKISSON. Do you happen to know if your impact statement, in any form, was indeed ever submitted to the Justice Department, or any other governmental authority?

Mr. RAMSEY. No, sir.

Mr. ATKISSON. You don't know, or it was not?

Mr. RAMSEY. I do not know.

Mr. ATKISSON. Is your knowledge of the cartel such that you would know whether or not the cartel—and Gulf's participation in it—was in full swing by September of 1972?

Mr. RAMSEY. No, sir.

Mr. ATKISSON. Have you ever seen a memorandum on Canadian Government letterhead from a Mr. Runnals, summarizing a meeting of May 28, 1972, of Canadian uranium producers in Johannesburg?

Mr. RAMSEY. I don't recall it.

Mr. ATKISSON. You never saw it.

You never saw the language perhaps quoted in a subsequent memorandum:

> However, so far as Gulf is concerned, the hazards with U.S. antitrust legislation would increase as the end of the decade was approached. Mr. Allen said that the best advice Gulf had been able to obtain from outside counsel was that they should not even file a white paper with the Department of Justice.

You have never seen that language before?

Mr. RAMSEY. I don't recall that statement, although we were trying to keep the role of monitoring the investment and working out the partnership to keep abreast of what developments were taking place in this regard, because it had an impact on the project.

Mr. ATKISSON. Did either Mr. O'Hara or Mr. Jackson subsequent to the end of May 1972, discuss with you, or indicate in any way to you, how your impact statement would be used—or if it would be used?

Mr. RAMSEY. Yes, sir. I was told that it would be used as an attachment to the paper that Jackson was then preparing as a result of his investigation of the implications of the marketing arrangement with respect to the antitrust laws.

Mr. ATKISSON. What was the date of transmittal of that Jackson document, to which your statement was going to be attached?

Mr. RAMSEY. To whom?

Mr. ATKISSON. I don't know. I think that's the elusive Jackson brief that we have been talking about this morning.

Mr. RAMSEY. I don't know.

Mr. ATKISSON. You never saw the final product?

Mr. RAMSEY. I did see the final product.

Mr. ATKISSON. When did you see the final product?

Mr. RAMSEY. I can't recall the exact date.

Mr. ATKISSON. We know it was subsequent——

Was it subsequent to September 8, 1972—the date of your last draft of the impact statement?

Mr. RAMSEY. I saw the draft, and I can't pinpoint the date of that. And I saw the final product, and I can't pinpoint the date of that.

Mr. ATKISSON. Was it, indeed, your final draft that was included in the Jackson final product that you saw?

Mr. RAMSEY. That's my recollection.

Mr. ATKISSON. Then it would have to be after September 8, 1972.

Let me point out for the record that by then the cartel, and Gulf's participation in it, had been of long standing.

Mr. RAMSEY. I would like to make an observation.

From the original draft to the final report, the conclusions reached in the impact statement had not changed.

Mr. ATKISSON. Thank you.

I invite your attention now to your impact statement which you will find in front of you and to the last page of the text. The date is September 8, 1972.

Mr. ATKISSON. It seems to be missing.

Mr. RAMSEY. I have it now.

Mr. ATKISSON. OK, thank you.

On the last page in the second full paragraph, let me quote:

> 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.

Is it fair to say that that is really the nub of the report or the principal element by which you conclude that the cartel would not have an effect on American commerce?

Mr. RAMSEY. No, sir.

Mr. ATKISSON. What is?

Mr. RAMSEY. Well, it is the effect on the imports.

Mr. ATKISSON. Let's go back to that export statement in the section I just read. I am not an economist either, but it would seem to me that the statement is correct——

Mr. RAMSEY. It is a correct statement.

Mr. ATKISSON [continuing]. If there is no world market allocation and rigged bidding system. I am astonished that an impact statement which purports to study the effect of a cartel would not discuss the rules and procedures by which that cartel operated, among which, we have had testimony this morning from Mr. Gregg, were a market allocation system and a rigged bidding system in which there was a leader and a runner-up.

The statement that you make here totally omits any consideration of that kind of procedure. I invite your comment on that.

Mr. RAMSEY. Well, the terms of the proposed cartel arrangement were made available to us and these were taken into consideration in the development of our impact statement. We did not feel that there was any point in repeating that in the impact statement.

Mr. ATKISSON. Were any of your other drafts longer than this? This is a three-page text. Attached to it are three tables. Is there any-

thing that you have prepared in connection with this impact statement that was more detailed, which alluded to the specifics of the cartel arrangement or which alluded to the specifics of market allocation and floor prices and rigged bidding?

Mr. RAMSEY. No, sir.

Mr. ATKISSON. It was on the strength, then, of a three-page impact statement that Mr. Jackson was able to conclude that the antitrust problems for Gulf were minimal.

Mr. RAMSEY. Well, Mr. Atkisson, this so-called impact statement is a synthesis of an awful lot of work that went on to produce this document.

Mr. ATKISSON. It seems to me to be a statement of your conclusions, but it does not go into how you got to those conclusions. I only point out that our interest is obviously the fact that if a document was prepared—or a legal opinion was prepared—justifying entry into a cartel I would, myself, think that it should contain the analysis itself and not just the conclusions which flow from the analysis.

Mr. Fowler, it has already been stated that you were working in California in early 1972; were you not?

Mr. FOWLER. Yes; that is correct.

Mr. ATKISSON. And that was with which division of Gulf?

Mr. FOWLER. General Atomic.

Mr. ATKISSON. General Atomic.

You were a manager, were you not, of Domestic Uranium Marketing?

Mr. FOWLER. That is correct.

Mr. ATKISSON. In that capacity did you make it your business to get all the facts you could concerning the domestic uranium market?

Mr. FOWLER. Certainly.

Mr. ATKISSON. I refer you to the memorandum that you prepared which is at the very back of your document package. It is dated March 28, 1974 [see appendix A]. It is apparently a memo to a Mr. Colby.

Do you recognize that as your signature at the bottom of it?

Mr. FOWLER. I have nothing chronologically that goes that late, Mr. Atkisson.

Would you repeat the question?

Mr. ATKISSON. Do you recognize the document now as one that you prepared?

Mr. FOWLER. Yes, I do.

Mr. ATKISSON. Did you prepare it in the normal course of your work at Gulf General Atomic?

Mr. FOWLER. Yes, I did.

Mr. ATKISSON. Was it in response to a request or was it self-initiated?

Mr. FOWLER. That is impossible to say at this point. I rather would expect that I initiated the memo. It is impossible to say with certainty whether it was requested or whether I initiated it. I would rather expect that I initiated it.

Mr. ATKISSON. Have you had a chance since we called and requesed your testimony to look over this memo and refresh your memory concerning it?

Mr. FOWLER. Yes, I have.

Mr. ATKISSON. Is it fair to characterize the memo as one which con-

cludes that the cartel had a rather significant effect upon the price of uranium in the United States of America?

Mr. FOWLER. No, sir, I do not think that is a fair conclusion.

Mr. ATKISSON. You do not think that that is a fair characterization?

Mr. FOWLER. No; I do not, Mr. Atkisson.

Mr. ATKISSON. Let me just read here for a second. You say in the third paragraph—"I view the $12.50 as yielding a 1984 price of $16 to $17. What appears to be happening is that the international producers are, in effect, setting world price via", and then you have three factors: "(*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; and (*c*), thus, in essence, the internatioal producers can stop any transactions by constantly nudging the floor upward."

You go on to say, "In the interim the U.S. buyer becomes increasingly frustrated, offers a higher price in order to get some response, and the cycle starts all over again."

That seems to describe to me a kind of constantly escalating bidding situation in which the foreign cartel price is constantly nudging the domestic American price upward. Is that not what you say here?

Mr. FOWLER. I am going to have to back off and fill you in a little bit on background. I cannot answer your specific question, yet I think we can get it clear.

Mr. ATKISSON. Wait a minute, Mr. Fowler. You did prepare the memorandum?

Mr. FOWLER. Yes, sir, I did.

Mr. ATKISSON. All right. Does the memorandum say what I just said?

Mr. FOWLER. The memorandum says precisely what you said.

Mr. ATKISSON. Well then, let's ask you whether or not you stand by the memorandum today.

Mr. FOWLER. As a possibility; that it appears that that is happening. Yes, sir, I do.

Mr. ATKISSON. And it appears to the eyes of the man who made it his business to know everything he could about the domestic uranium market—that was your job, was it not?

Mr. FOWLER. It appeared to me that way. I was willing to conduct my operations, to the best that I could that I could control them, as though that is what was happening. That what I describe here was happening, that I do not know for sure.

Mr. ATKISSON. I see. So it was your analysis based on facts that you could see in the marketplace?

Mr. FOWLER. More observations than facts. They were not as hard as facts.

Mr. ATKISSON. They were not as hard as facts?

Mr. FOWLER. No, sir.

Mr. ATKISSON. You did know about the cartel, did you not?

Mr. FOWLER. I did.

Mr. ATKISSON. You had been advised of that by several individuals, right?

Mr. FOWLER. Yes, sir.

Mr. ATKISSON. And you knew of Gulf's participation in it?

Mr. FOWLER. Yes, sir.

Mr. ATKISSON. All right. Is the information you received from the individuals who talked to you about the cartel plowed into your analysis of the market situation?

Mr. FOWLER. Sure.

Mr. ATKISSON. All right.

We have heard from your boss. He said that he thought you were quite competent. Your former colleague, Mr. Gregg, also thought you were quite competent.

I have no further questions. Thank you, Mr. Chairman.

Mr. MOSS. The Chair recognizes the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman.

Let me summarize this phase of the hearings to get it clear in my own mind.

Gulf's defense to the antitrust violation charge consisted of two elements: One, the alleged compulsion by the Canadian Government; and two, the contention that there was no impact on the U.S. market.

After yesterday's hearing I think the second element of that defense is thoroughly gone. Nothing remains of that.

This document which we are referring to which was prepared by you, Mr. Ramsey, was intended to assist Gulf executives in determining at the outset of the cartel whether or not there was an impact on the U.S. market; right?

Mr. RAMSEY. Yes.

Mr. GORE. OK. Now, the reason that both of you are here is that you prepared the document at the request of your superiors in Gulf to show whether or not there was an impact on the U.S. market.

You, Mr. Fowler, who were head of domestic sales wrote this memorandum which counsel has referred to. It violently disagreed with the conclusions reached by Mr. Ramsey in his documents. Is that correct? That is essentially correct, is it not?

Mr. FOWLER. Essentially, yes.

Mr. GORE. All right.

Now, Mr. Ramsey, you are still with Gulf, are you not?

Mr. RAMSEY. Yes, sir.

Mr. GORE. Have you been with Gulf continuously from the time of the cartel until now?

Mr. RAMSEY. Yes, sir.

Mr. GORE. Gulf said that—I will ask unanimous consent to insert this at the appropriate point in the record, Mr. Chairman, either now or in the appendix. This is a document from the Pittsburgh litigation from the Department of Justice in which——

Wait a minute, Mr. Chairman. That is my fault. I will withdraw that line of questioning. I apologize to you, Mr. Ramsey. You are not any kin to Brian Ramsey, are you?

Mr. RAMSEY. No, sir.

Mr. GORE. OK; I am sorry.

Your conclusion was that there was no impact on the U.S. market, right?

Mr. RAMSEY. Yes, sir.

Mr. GORE. You did not take into consideration the fact that U.S.

utilities were buying uranium for stockpiling purposes in later use, did you?

Mr. RAMSEY. Well, under the circumstances, where there was an embargo at that time—up through 1978—the likelihood of that happening is pretty remote.

Mr. GORE. Were you surprised when it subsequently did happen?

Mr. RAMSEY. I have not tracked what has been happening.

Mr. GORE. Gulf just assumed and you just assumed that there would be no purchases by U.S. utilities from foreign producers during the period in question, right?

Mr. RAMSEY. Well, under the fact situation there was no reason for it.

Mr. GORE. What fact situation, the embargo?

The whole thing is that Gulf just made a mistake on what the embargo was all about.

Mr. RAMSEY. Well, there was an embargo so far as the AEC was concerned. So far as the cartel was concerned, the United States was excluded.

Mr. GORE. But the U.S. companies went on purchasing uranium at fixed prices.

Mr. RAMSEY. It does not necessarily follow that the cartel affected those prices.

Mr. GORE. Well, the other executives admitted that yesterday.

Mr. RAMSEY. I disagreed with it.

Mr. GORE. It is difficult to disagree without submitting anything. It is a statement of opinion. The contracts are there and the prices are in the contracts. The prices correspond exactly with the prices fixed by the cartel in their secret meetings.

Mr. RAMSEY. Well, that does not necessarily mean that that was the cartel price.

Mr. GORE. It might be just a coincidence, in other words. Is that what you are saying?

Mr. RAMSEY. Well, it could be. We do not know the circumstances, Mr. Gore, as to what the sellers' motivations were in making these sales and these quotations. It may be that their quotas were full. It may be that they were stockpiling. Maybe they needed money. There is no way for us to speculate as to how that came about.

Mr. GORE. I do not want to beat a dead horse and I do not want to put you in a position of defending a dead horse.

Mr. RAMSEY. I am not defending a dead horse. I am telling you my position at the time of the impact statement. I am telling you that I think it is still true.

Mr. GORE. OK.

In this memorandum which has been referred to here there is the mention that as this statement that you are responsible for preparing is being prepared we are thinking in terms of reviewing the matter. This is the memo from Mr. Jackson.

He says:

We are thinking in terms of reviewing the matter not only with outside antitrust counsel, but also with Claude Wilde to arrive at an agreed course of action both as to whom we contacted and how we made the contacts. I noted the likelihood that personal contacts would be made at a high level in each of the con-

cerned departments of the Government with a copy of the white paper being left for further study and comment.

Now, you said earlier that you were not aware of any change in the plan by Gulf to submit a white paper to the Government. Are you aware of any contacts which were made by Mr. Claude Wilde to anyone within these departments of Government?

Mr. RAMSEY. No, sir.

Mr. GORE. All right.

Let me ask you this: How extensive is your economic training in this area?

Mr. RAMSEY. In the uranium area?

Mr. GORE. Yes.

Mr. RAMSEY. I have done work in uranium since 1966.

Mr. GORE. How much of an increase in electric rates per kilowatt-hour can be expected with each dollar increase per pound of yellowcake?

Mr. RAMSEY. I cannot answer that question.

Mr. GORE. Could you give us a ballpark estimate? I was putting pencil to paper last night and it comes out to very significant figures. Do you have any ballpark way, as an economist who has worked in this area? I am just asking for information.

Mr. RAMSEY. I could not do it without some study.

Mr. GORE. OK.

You were saying that you had one draft of your study and then you had another draft of your study. Is that right?

Mr. RAMSEY. That is correct.

Mr. GORE. Was your second draft any different from your first draft?

Mr. RAMSEY. Yes, sir.

Mr. GORE. In what ways was it different?

Mr. RAMSEY. Well, there were three basic changes in it. One was that we omitted the reference to the impact on Gulf. Second, instead of having some single point price forecasts we utilized ranges.

Mr. GORE. Yes. All right, I have a document——

Did you complete your answer?

Mr. RAMSEY. Yes, except for one item. We also showed that the contemplated life span of the cartel was through 1980 at the time this was drafted.

Mr. GORE. Would you repeat that last point?

Mr. RAMSEY. The contemplated life span of the cartel was through 1980.

Mr. GORE. In the second draft?

Mr. RAMSEY. Yes, sir.

Mr. GORE. Earlier you said that the second draft was more precise, but you have just told us that the——

Mr. RAMSEY. No sir, I did not say that.

Mr. GORE. Would you say that the second draft was less precise?

Mr. RAMSEY. I would not use those words.

Mr. GORE. Well, if you took out specific figures and inserted a range of figures it is less precise.

Mr. RAMSEY. I would say it would be more realistic.

Mr. GORE. More realistic?

Mr. RAMSEY. We were trying, over the period of time that we were working on this paper, to make it as current and as accurate and as comprehensive as we could.

Mr. GORE. Mr. Chairman, I have a document here that is not already incorporated into the record. It has only today been retrieved from the mass of information that the staff has been working overtime to make sense out of. I would ask unanimous consent to insert it in the record.

Mr. Moss. Without objection, the document will be included in the record at this point [see appendix A].

Mr. GORE. Thank you. We will make copies of it and get them to you, but let me just read from it for the purpose of asking the question.

It is a specially confidential memorandum dated July 20, 1972. It is to Mr. Minks, who was and is general counsel for Gulf Oil Corp. It is from Roy D. Jackson, who was attorney for Gulf Oil Corp.

Copies of this memorandum were sent to Mr. Allen, Mr. Coleman, Mr. Estey, Mr. Ediger, Mr. O'Hara, Mr. Ramsey, and Mr. Zagnoli. You received a copy of this, Mr. Ramsey.

Mr. RAMSEY. May I ask the date of that again, please?

Mr. GORE. July 20, 1972.

Mr. RAMSEY. Do I have that document?

Mr. GORE. No you do not. I apologize for your not having a copy of it. The reason you do not is that we just located it. I am going to read to you the first four paragraphs.

It says: "Frank O'Hara and I met yesterday in Toronto with Messrs. Allen, Ediger, Estey, Gregg, Ramsey, and Zagnoli." That is the conclusion of the first paragraph. Do you remember that meeting in Toronto?

Mr. RAMSEY. Barely.

Mr. GORE. The second paragraph says: "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."

Mr. Moss. I think the Chair is going to suspend for just a few minutes and ask that the document be copied quickly so that—I do not like to have interrogation on a document not before us.

Mr. GORE. Fine, Mr. Chairman. I agree with you.

While we are waiting on that, let me ask a question of Mr. Fowler.

Mr. Fowler, did you attend the meeting in Oak Grove, Ill.?

Mr. FOWLER. Yes, sir, I did.

Mr. GORE. How many——

Mr. FOWLER. It was Oak Brook.

Mr. GORE. Oak Brook, Ill.?

Mr. FOWLER. Yes.

Mr. GORE. How many companies were represented at that meeting?

Mr. FOWLER. I have no idea, sir.

Mr. GORE. Several?

Mr. FOWLER. It was a large convention?

Mr. GORE. It was a large convention?

Mr. FOWLER. Yes, sir.

Mr. GORE. The subject of the domestic price was discussed, was it not?

Mr. FOWLER. Qualitatively, yes.

Mr. GORE. This was a public meeting?

Mr. FOWLER. Yes, sir.

Mr. GORE. Was it covered by the press?

Mr. FOWLER. I would not swear to that, but I believe so.

Mr. GORE. Did you participate in any private meetings at Oak Brook during the period of the convention?

Mr. FOWLER. I did.

Mr. GORE. Did you participate in any meetings with representatives of other producers where the subject of the embargo was discussed?

Mr. FOWLER. Not that I recall.

Mr. GORE. Did you participate in any such meetings where the subject of domestic prices was discussed?

Mr. FOWLER. Yes, there was a panel meeting as part of the formal program, where domestic pricing was discussed in qualitative terms, yes. It was a panel of producers and utilities.

Mr. GORE. Were there any suggestions on what might be done to raise the prices?

Mr. FOWLER. Can you be more specific?

The U.S. producers were basically putting forward the point of view that at the then prevailing price of uranium there was not a sufficient profit margin—in uranium operations—to allow them a sufficient amount of profit and reinvestment in the industry to do the exploration that was going to be necessary to provide the industry—that needed to be in place to support what was generally then accepted as the growth of nuclear power.

They had tried, I think, individually to make this point to the consuming portion of the industry. The message had not gotten across. As I viewed that meeting, this was an attempt on the part of the Atomic Industrial Forum to commence a dialog between the producers and the using segment of the industry and try to get off of this hand-to-mouth existence that most of the producers were claiming they were in.

Mr. GORE. Did any one of the representatives there make a statement such as maybe, "If we don't sell to them awhile they will get the message."?

Mr. FOWLER. I did not hear any such statement or anything along that general line, no.

Mr. GORE. Nothing that evidenced that kind of attitude?

Mr. FOWLER. No. It was, as I say, on a substantially higher plane than that, such as "We the producers have a problem and you are going to have a problem someday if we do not collectively do something."

The meeting itself was on, I would say, a much higher plane than what you had anticipated.

Mr. GORE. OK, I will accept that characterization.

Let me tell you the reason that I ask this series of questions. Right after that meeting TVA put out this request for bids and no one responded except for two people: Kerr McGee and Western Nuclear.

Mr. FOWLER. Well, let me say also that out of the panel meeting was a request by the producers that the utilities please get off this buying mechanism that they were. They were asked to give the producers some long-term contracts, or at least to get together and negotiate

some long-term contracts so that they would know where they were in the producing segment of the industry.

Mr. GORE. Yes.

Mr. FOWLER. That was in terms of making the capital investments that were necessary, and so on and so forth.

What you are saying—I do not remember the specific instance of TVA coming out immediately following it, probably with the response of at least one utility to say, "OK, if this is the problem, here is our attempt to meet you part way in requesting long-term uranium supplies."

Mr. GORE. A concerted refusal to deal is one of the areas in antitrust law where many violations are found. Soon after this meeting in Oak Brook, Ill., where all of these producers were present, TVA put out a request for bids to 58 producers. Only two of them evidenced any willingness to deal with TVA, after all of these discussions about how the future of the uranium market looked bleak.

The two who did respond—Western Nuclear and Kerr McGee—responded with a price level that was way above and beyond anything that the industry had ever seen up until that time.

I guess what I am trying to get from you is any indication that this course of action was discussed formally or informally in private meetings or in public forums.

Mr. FOWLER. To the best of my knowledge, no, sir.

Mr. GORE. Is it as much a mystery to you as it is to me why none of them responded?

Mr. FOWLER. I do not know how large a mystery it is to you, but let me say that the manner in which the TVA was required to do its business—at least at that point in time—was not necessarily consistent with the way many uranium producers wanted to sell their uranium.

It was a fairly difficult set of rigid terms and conditions which really were not available for appreciable negotiation. In the response of, perhaps, only two bidders who may have elected to respond at what by then current standards were high prices, I would judge to be an indication of the way TVA requested bids.

Mr. GORE. The way TVA requested bids was discussed just before the lunch break with Mr. Gregg. He stated that one of the principal reasons why Gulf refused to respond to TVA's request to bid was that one of the conditions on the form required Gulf to affirm that it had not discussed its prices with any of the so-called "competitors" before bidding those prices to TVA. Is this one of the unacceptable conditions as you understand it?

Mr. FOWLER. Well, in the normal course of events that would not be a problem.

Mr. GORE. If you are a member of a cartel it becomes a problem.

Mr. FOWLER. Obviously. It becomes a terrible problem.

Mr. GORE. As I say, the impact on U.S. commerce is established beyond dispute, but that in itself would be an impact on U.S. commerce if membership in the cartel precluded the ability to bid.

Mr. FOWLER. Mr. Gregg really was not referring to that particular clause, though that is certainly representative. There are a number of other clauses that similarly were not acceptable to U.S. producers, generally speaking.

Mr. GORE. Now I want to return to Mr. Ramsey.

Have you had an opportunity to look over this memorandum?

Mr. RAMSEY. Yes, sir.

Mr. GORE. All right. Reading now from the third paragraph down:

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 remain 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)

And it continues from there. That is the portion that I am particularly interested in.

This memorandum indicates to me that after looking at the first draft of your economic impact study a preliminary conclusion was reached about whether or not Gulf would proceed. However, before finalizing that decision they wanted you to rework your economic impact study and make it less precise.

Is that a fair conclusion?

Mr. RAMSEY. I do not know what Mr. Jackson means by "less precise." I submit that if you look at my original draft and the final draft there are not that many changes. It is not less precise.

Mr. MOSS. Does the original draft exist?

Mr. RAMSEY. Yes, sir.

Mr. MOSS. Have you got it available?

Mr. RAMSEY. It was just handed to me.

Mr. MOSS. You have the original draft?

Mr. RAMSEY. Yes, sir.

Mr. MOSS. And the subsequent draft also?

Mr. RAMSEY. Yes, sir.

Mr. MOSS. All right, we will compare them.

Mr. GORE. Well, at any rate it was his conclusion that they wanted the second draft to be less precise before they finalized their conclusion. Their conclusion was, and I quote from the end of this paragraph, "The degree of antitrust risk involved is acceptable."

Just as an aside, I wondered when reading that the first time whether that referred purely to the risk of a violation, or whether when calculating such a risk one factors in the risk of getting caught.

You participated in those meetings, but I guess that is not a fair question to ask you. You can respond if you wish, though.

Mr. Ramsey. Well, Mr. Gore, the decision with respect to what action would be taken was considered very seriously both in-house and with outside counsel.

Mr. GORE. And subsequently several decisions were made. One of them was that the white paper, including your economic impact statement, would not, after all, be submitted to the Justice Department for an advisory opinion.

Mr. RAMSEY. So I am advised.

Mr. GORE. Well, that leads me to believe that the risk of getting caught was factored in in that determination of the degree of antitrust risk which was acceptable.

Now I would like to go back to Mr. Fowler for a moment.

You are the author of a rather pungent memorandum here that says, "There is no question that the international producers have jumped on board the OPEC bandwagon." This is dated February 22, 1974 [see appendix A]. It is in your folder there.

You were the author of the memorandum to Mr. Hunter, which related to the discussions with Exxon. This, in your file, is dated February 28, 1973 [see p. 393]. You write to Mr. Hunter that Tom Upchurch, who is with Standard Oil and is a Standard Oil employee, "advised me that he had come down to Los Angeles on Monday to attend the Atomic Industrial Forum meeting to discuss the embargo question where other producers were present. Exxon has very conservative guidelines on such participation. When Tom discovered that the AIF representation was not acceptable (lack of a lawyer)" and/or M. Gordon, who was the executive director of the AIF and presumably in that role would supply some legitimacy to the discussions between all of these supposed competitors, "he elected not to participate and returned to Seattle. This may have some peripheral impact on your call to Ray"—Ray Dickman of Standard Oil—"and thought you should be aware."

Why was Exxon so concerned about attending this meeting between producers that they returned to Seattle and left when they discovered that a lawyer was not present.

Mr. FOWLER. Mr. Gore, I cannot answer that question. I do not know. I do not know any more than is really on the memo.

Mr. GORE. What was the discussion of the embargo question? Do you know that?

Mr. FOWLER. No, I did not attend the meeting.

Mr. GORE. Why would an employee of Standard Oil be communicating with you and advising you about a discussion between American uranium producers about the embargo question? It was a discussion that was of a nature that scared off one producer?

Mr. FOWLER. I believe the timing is right here for this series of events. At that point in time—and I think Mr. Hunter alluded to this—we were in the process of negotiating a purchase contract with what started out as Jersey Nuclear and then evolved to Exxon, or Exxon Nuclear.

We were in the process of negotiating a purchase contract with Exxon Nuclear. We were down toward the tail end of the negotiations. We were working on legal language and that sort of thing. It had dragged out over a very extended period of time. It was well in excess of 6 months.

I believe that Mr. Hunter was to call Ray Dickman at my request and see if we could not get the loose ends all wrapped up and get the contract executed.

In the process of many telephone conversations between Tom Upchurch and myself, this was just a comment that he had made in one of the telephone conversations where, I feel quite sure, we were discussing something—the principal purpose of the telephone call was to discuss something about the contract we were negotiating.

The purpose of sending the memo to Mr. Hunter was just to fill him in that I had had this intercourse with Mr. Upchurch.

Mr. GORE. At the time, you thought it was significant enough to type out a memo and send it to him.

Mr. FOWLER. Yes.

Mr. GORE. It is very disturbing to have discussions between American producers about the uranium embargo. Shortly after that, again,

the largest utility in this country sent out bid requests to 58 producers and received a response from only 2. All of the others refused to deal with TVA.

You have been asked about this March 28, 1974, memorandum in which you describe your reasons for disagreeing with Mr. Ramsey's conclusions that the cartel does not have an impact on the U.S. market.

I will not go into this in detail. I merely want to observe that I think that your understanding of the marketplace is sophisticated. I would like to observe that this dynamic which you described is exactly what happened to TVA. Domestic producers wanted to come in above the floor established by the cartel in the foreign market. When the foreign market price was constantly nudged upward this had the same effect on the U.S. market. The differential became the same. It was almost like when you match up magnets with different poles. It constantly pushes one away from the other.

When the foreign price went up the domestic price did also at a rate that maintained that differential. Would you say that that is an accurate assessment of what happened?

Mr. FOWLER. No; I think the problem is much more complex than the manner in which you characterize it, Mr. Gore.

If there was only one thing that had changed in the market, and that was the existence or nonexistence of the cartel, then clearly I would have to go along with you. However, many things were happening. To put all of the credit or blame, as you see fit, on the cartel for a particular event in the market—namely, prices going up—is invalid. I see it as a much more complex subject than that.

Mr. GORE. I understand that. There were many other factors which affected the price of uranium. No one is disputing that. The Arab oil boycott drove up the price of all fuels. Decisions by the Energy Research and Development Agency on tailings and on requirements for long-term supply contracts also affected the demand for uranium, and thus affected the price. Other factors were present also.

However, this, in my opinion, was the trigger. This was a very significant reason why the price of uranium began to shoot up. It happened not only around the world, but also in this country.

Would you disagree with that?

Mr. FOWLER. I would disagree with the flavor of what you are saying. I would disagree that it was a very significant factor. It was a factor, certainly.

Mr. GORE. Well, there is a leverage element here. There is economic leverage here. If all of these companies have assurances about the supply projections of their competitors, if they know that they face no real competitive danger in the marketplace, then that assurance has a leverage effect on all of the other elements that are at work in the marketplace. Do you understand what I am saying?

The supply-demand relationships which might otherwise have a dramatic mitigating effect on those elements which are forcing the price up were eliminated by the secret meetings which provided assurances to all the producers that they would not have to worry about any of those things. That is the way I see it.

Mr. RAMSEY. Mr. Gore, may I make a comment?

Mr. GORE. Yes, Mr. Ramsey.

Mr. RAMSEY. You cited Mr. Fowler's memo as reaching contrary conclusions to my economic impact paper.

Mr. GORE. Yes.

Mr. RAMSEY. I would like to refer you to an excerpt contained in Gulf's press package from Nuexco, who happens to be Mr. Fowler's employer presently. In the excerpt, Nuexco refutes the argument. They say that foreign utilities were buying uranium in the United States in the period of time that we are talking about.

Mr. GORE. Well, that is of no comfort to TVA and other utilities and customers of those utilities who have paid higher prices as a result.

Mr. RAMSEY. It does raise some question about the theory he has expounded.

Mr. GORE. Well, I thank you for your contribution.

I thank you for the time, Mr. Chairman.

Mr. MOSS. Mr. Wunder?

Mr. WUNDER. Thank you, Mr. Chairman.

Mr. Fowler, what are these onerous TVA terms and conditions that you were talking about that producers did not like and therefore refrained from accepting?

Mr. FOWLER. Mr. Wunder, it has been some time since I looked over the standard format that TVA was using at that point in time. They have changed their method of obtaining uranium.

Mr. WUNDER. Have they changed these terms and conditions that you referred to?

Mr. FOWLER. Yes, they have.

Mr. WUNDER. Have they made them more to the producers' liking, then?

Mr. FOWLER. They have been changed in the sense that rather than going to the market with a prepared document which the producer fills in the number on, namely, how many pounds he is going to sell in a particular year and what the price is—and signs it—the method of operation has changed now to where more likely they would negotiate a contract or reach some general business parameters and then negotiate a contract from there without a lot of what is called in the industry "boilerplate."

One of those things was that the producer was, as I recall, required to put up a performance bond or something like that when he was biding to TVA. Well, it is an additional expense and it is something that is not required in the normal course of commerce.

When a producer would typically bid or quote to TVA, the cost of those ancillary things were therefore included in the price. The TVA received, as a result, higher prices than they had expected.

Mr. WUNDER. Is it implicit in what you are saying that when TVA went out with the bids to the 53 producers that if there had not been these terms and conditions, they may have gotten more? Is that your judgment? Or would they have gotten the same? Can you answer that as a person who has studied the U.S. domestic uranium industry?

Mr. FOWLER. I would say they would have gotten more.

Mr. WUNDER. In other words, what you think is that they would have gotten more. On what do you base that?

Mr. FOWLER. Well, I base that on just what happened. They got two responses and they were high priced—because they went out with the standard bid package.

Since then, TVA has elected to change their motive of obtaining uranium—both of which lead me to believe that somebody recognized that there was a better way to obtain uranium than what they had been doing.

Mr. WUNDER. You are employed by Nuexco now?

Mr. FOWLER. Yes, sir.

Mr. WUNDER. Do you know Mr. George White?

Mr. FOWLER. Yes, sir.

Mr. WUNDER. By whom is he employed?

Mr. FOWLER. George White senior or junior?

Mr. WUNDER. He gave his name as George White when he testified before this subcommittee.

Mr. FOWLER. If it was this subcommittee, then it was George White, senior.

Mr. WUNDER. OK; he did not say one way or the other.

I was wondering if, by chance, you say the testimony that he gave to this subcommittee in November 1976?

Mr. FOWLER. Yes, sir.

Mr. WUNDER. Did you participate in the drafting of that testimony?

Mr. FOWLER. No, sir.

Mr. WUNDER. You did see the testimony?

Mr. FOWLER. Yes, sir.

Mr. WUNDER. Do you agree or disagree with his testimony?

Mr. FOWLER. As I recall, I agree with the main points of that testimony.

Mr. WUNDER. Is there any element of disagreement?

Mr. FOWLER. I think only in degree of manner of stating some of his responses.

Mr. WUNDER. Degree or manner?

Mr. FOWLER. There is no disagreement in basic principle. He may have stated some things more strongly than I would have or less strongly than I would have.

Mr. WUNDER. Well, as I read his testimony, it appears to me that he is saying that the cartel had no impact on domestic prices. Would you say that that was one of the salient points in his testimony?

Mr. FOWLER. The point I was trying to make with Mr. Gore is that, in my mind, the effect of the cartel was really quite small. There were other things that were more important than the effect of the cartel.

Mr. WUNDER. Thank you, Mr. Chairman.

Mr. MOSS. Mr. Haddad?

Mr. HADDAD. Mr. Ramsey, you are going to have to help me. I am a little bit confused. When is the earliest date that you could have prepared your impact statement?

Mr. RAMSEY. The earliest date? I could not have prepared it before it was known about the proposed marketing arrangement that affected Rabbit Lake in Canada.

Mr. HADDAD. The first quarter of 1972, perhaps?

Mr. RAMSEY. Yes, sir. I think the first draft that I recall seeing passed on to the law department was in April.

Mr. HADDAD. In April of 1972?

Mr. RAMSEY. Yes, sir.

Mr. HADDAD. Where did you get your information first about the cartel and second about supply and demand?

Mr. RAMSEY. Well, I got the information about the cartel first from GMRC personnel.

Mr. HADDAD. Who?

Mr. RAMSEY. Well, I do not know that I can name all of the people involved, but it was starting with Zagnoli and some of his staff.

Mr. HADDAD. And they told you what the prices were going to be?

Mr. RAMSEY. Well, first it was a concept and then as information evolved, it was——

Mr. HADDAD. Mr. Ramsey, can you be very precise with me? Did he give you the figures that the cartel was setting for world prices? That is a very precise and a very narrow question.

Mr. RAMSEY. He passed on to us the information that was available to him which we incorporated in our memorandum.

Mr. HADDAD. Including the prices?

Mr. RAMSEY. Yes, sir.

Mr. HADDAD. Are you sure about that?

Mr. RAMSEY. Yes, sir.

Mr. HADDAD. OK.

Where did you get the other information about supply and demand for the yellowcake? From your traditional sources of information within the corporation?

Mr. RAMSEY. Well, we used both sources within the corporation and without. We had a group of people who worked as a committee on attempting to study and forecast both domestic and foreign supply, demand, and prices.

Mr. HADDAD. Could your information about supply and demand be any different than the information elsewhere in the corporation?

Mr. RAMSEY. Well, we started off with their information and tried to refine it and update it so that from the time it was prepared it would be as accurate as possible.

Mr. HADDAD. And you also received the supply and demand information of the cartel that they had assembled worldwide from the producers themselves?

Mr. RAMSEY. I do not believe we were a party to that information if it had been compiled at all.

Mr. HADDAD. Well, it had been compiled by the Paris group and transmitted to Mr. Zagnoli. I understand that you had all of the information. I gather that this is a very important paper that you are preparing for the Gulf Oil Co. Its size should not minimize its importance.

Mr. RAMSEY. Well, we had information regarding reserves and also supply and demand. Whether that came from them I cannot say exactly.

Mr. HADDAD. You are very comfortable with those figures, right?

Mr. RAMSEY. Yes, sir.

Mr. HADDAD. You did not find any discrepancies?

Mr. RAMSEY. No, sir.

Mr. HADDAD. That is what troubles me. This is where my confusion comes in. I confess to you that a three-page document, on which people could or could not go to jail, and which represents the composite thinking of the best minds money could buy—for that kind of decision, three pages with a couple of attachments which appear to be incorrect, leaves much to be desired. Let me just show you what I mean.

Mr. RAMSEY. Well I think, Mr. Haddad, I previously explained that this was a synthesis of a lot of staff work that had gone on throughout the corporation. If you are talking about the backup material, you would have to bring it in here with a wheelbarrow.

Mr. HADDAD. Mr. Ramsey, I have been involved in preparation of similar documents. This is a shallow document. It is written for a specific purpose. I think you got the decision before you got the facts. That is my opinion.

Mr. RAMSEY. I wholeheartedly disagree.

Mr. HADDAD. That is your privilege.

You have here, on table 3, uranium prices. The impact, as I understand it, Mr. Ramsey, is based on the discrepancy between world and domestic prices. Am I correct that the U.S. prices will be higher than the world prices and therefore the world prices will have no impact on our market? Would that be a premise? Or would you prefer to state it in your own words?

Mr. RAMSEY. Well, that is one aspect of it; yes.

Mr. HADDAD. Is that an important aspect of it?

Mr. RAMSEY. Yes.

Mr. HADDAD. Then why didn't you include the cartel prices? Where did you pick up these figures—$5.35, $5.50? In 1975 it is $5.35. The cartel had already set prices above and beyond that close to U.S. prices. They did the same thing for 1976, 1977, and 1978. All the prices that you had from Mr. Zagnoli differ incredibly from the prices that you list. If you had the information, why didn't you use it? Would you like me to recite the prices?

Mr. RAMSEY. These international prices were the prices we got from Zagnoli.

Mr. HADDAD. I beg your pardon; they were not.

Mr. RAMSEY. Well sir, I think I know where the prices came from.

Mr. HADDAD. Well, if you got Zagnoli's information from Paris, it is already a part of this record that they set the prices. The prices were not these prices. The prices were considerably in excess of these prices.

In fact, the people in this room know that it was $6 that was the opening price. You have got $5.35 down there for 1975.

Mr. RAMSEY. No, that is Gulf's forecast of the prices. That is not the Foreign Marketing Association——

Mr. HADDAD. Mr. Ramsey, let's go back a second, please. Gulf's forecast of prices differs from the world cartel prices?

Mr. RAMSEY. We made forecasts, Mr. Haddad, long before the cartel ever was conceived of.

Mr. HADDAD. Mr. Ramsey, I hate to do this to a gentleman of your age, but I want to remind you that you are under oath. Let me go back again.

There was a set of figures that was provided to you by Mr. Zagnoli which were to be the world cartel figures.

Mr. RAMSEY. Yes, sir.

Mr. HADDAD. They disagree from the forecast of foreign prices.

Mr. RAMSEY. Right.

Mr. HADDAD. In other words, in preparing this report, you did not factor in the cartel prices. Is that accurate?

Mr. RAMSEY. No, sir.

Mr. HADDAD. Then why is there this discrepancy? These prices are lower. What you are trying to show everybody is that the U.S. prices will be higher than foreign price. Therefore you have taken the highest possible forecast on U.S. prices and the lowest possible forecast on foreign prices when you have in-house, available in your records, and available in other departments, the cartel prices.

Mr. RAMSEY. The cartel prices, Mr. Haddad, are the middle column. It is titled "International Producers Posted Price."

Mr. HADDAD. I have——

Mr. RAMSEY. I do not think we are talking about the same columns.

Mr. HADDAD. Mr. Ramsey, when was this second draft produced?

Mr. RAMSEY. Well, as I mentioned previously, Mr. Haddad, it was developed over a period of time. It was submitted finally, as I recall, in the early part of September 1972.

Mr. HADDAD. Did you keep up prices after that? Did you keep up range of——

Mr. RAMSEY. We were attempting to be as current as possible when we released the papers.

Mr. HADDAD. Did you stop after 1972?

Mr. RAMSEY. Yes, sir.

Mr. HADDAD. You did not keep the prices any more?

Mr. RAMSEY. No, sir.

Mr. HADDAD. What if the column 2 began to exceed column 3? Would that mean that your impact statement would not be valid? Take it as a hypothesis that the figures in your column 2 under "Foreign" would exceed the figures in column 3. Would your hypothesis still be accurate about the impact on U.S. commerce?

Mr. RAMSEY. Yes, sir.

Mr. HADDAD. Why?

Mr. RAMSEY. Well, the foreign prices were lower than the domestic prices.

Mr. HADDAD. What if the foreign prices got to be higher than domestic prices?

Mr. RAMSEY. Well, apparently that happened. As I mentioned to Mr. Gore, there was an article written about the fact that foreign utilities were in the United States buying uranium.

Mr. HADDAD. Would that make your impact statement invalid, Mr. Ramsey, if column 2 exceeded column 3?

At any point that column 2 exceeded column 3 would the finalization of your impact statement be accurate?

Mr. RAMSEY. Yes.

Mr. HADDAD. I do not follow you, Mr. Ramsey. Would you just do it for me one more time?

If U.S. prices are higher than foreign prices, they would have no impact because there would be very little market for U.S.—there would be very little impact on the market.

Would you put in your words for me, what I have just said?

I am trying to understand it, honestly.

Mr. RAMSEY. I am not sure that I——

Mr. HADDAD. If the foreign market prices exceeded the U.S. prices would not Mr. Fowler's thesis begin to take effect, and wouldn't that destroy the whole thesis of your impact statement on which Gulf based one of its two fountainheads of defense?

Mr. RAMSEY. No; I do not think so.

Mr. HADDAD. You mean that the law of supply and demand would not equalize the lower market to a higher market?

Mr. RAMSEY. Of course, we did not have a free market.

Mr. HADDAD. I see.

Mr. RAMSEY. There was an embargo on bringing material into the United States for the major portion of this term.

Mr. GORE. If counsel will yield, I just wanted to correct that point once more. There wasn't an embargo on bringing material into the United States. It was brought in, it was purchased.

Mr. RAMSEY. It could be brought in and it could be stockpiled.

Mr. GORE. And it was. It was brought. It was brought in. It displaced hypothetical supplies which would have had to be bought from someone else.

Mr. RAMSEY. At a future time.

Mr. GORE. Right.

Mr. RAMSEY. I agree—at a price.

Mr. GORE. OK; I just wanted to correct the statement that there was no embargo on bringing uranium into the United States.

Mr. HADDAD. Mr. Fowler, would you answer that same question? I am providing the facts for your thesis, which in effect did occur. You had this triggering effect of escalating prices. That is exactly what happened at TVA. It is continuing to happen today. We are up to $40.

Your theories are, despite what you say about Nuexco, operative.

Mr. FOWLER. I think that this gets back to one of the responses, Mr. Haddad, that I had made to Mr. Gore.

Whether what I had proposed in the memo indeed happened or not, at the time I wrote that memo I was hypothesizing that the pieces were ready. In my mind, the elements were all there for that series of events to take place.

Mr. HADDAD. The trigger was pulled, right?

Mr. FOWLER. Well, the gun was loaded.

Mr. HADDAD. Right.

Mr. FOWLER. Whether indeed that ever took place or not I do not know, but at least my perception was that it was ready to go.

Mr. HADDAD. What would set off the trigger? Would it be higher U.S. prices followed by lower foreign prices followed by higher? What would set off the trigger?

Mr. FOWLER. I think, as I answered Mr. Gore, a number of things set off the trigger. I think this thing was in place. There were a number of other things that were in place at the time.

Mr. HADDAD. Would this pricing set off the trigger?

Mr. FOWLER. Like foreign price——

Mr. HADDAD. The discrepancies between United States and foreign prices—one price being lower and then the other, and stepladdering upwards.

Mr. FOWLER. I am hung up now. Are you saying did that happen?

Mr. HADDAD. No; I am saying would that do it? Would that set your thesis in motion?

Mr. FOWLER. Yes, and then I would presume that it would run at least a cycle.

Mr. HADDAD. Fine. That is exactly what did happen.

Mr. ATKISSON. If counsel would perhaps point out that the last part of Mr. Fowler's excellent analysis of this situation gives you your answer—it seems likely that at some point the mechanism will break down. If it does, there will again be price competition. However, it does not appear likely that the break will come in the immediate future."

The memo is dated March 28, 1974. It was not in the immediate future. It was about 6 months after that. The prices had skyrocketed and the supply-and-demand situation had equalized to the satisfaction of the cartel members, hence it was a sellers' market. The cartel members no longer needed it. It was not really a collapse, it just went out of business for lack of a second.

Mr. HADDAD. I am going to finish up now, because I do not believe I am going to get any further with this witness.

This document at some point in time was inaccurate. The fact that the prices were jockeyed between U.S. and foreign prices with Gulf helping set the foreign prices did, in effect, impact the market.

Your statement says,

> The proposed foreign marketing arrangement would increase or at least prevent a decrease in foreign uranium prices which would narrow the gap between U.S. and foreign prices and would, if anything, encourage greater exports of U.S. uranium.

What did happen was that the U.S. market rose to the level of the foreign market and they seesawed back and forth until uranium is $41. The Gulf Oil Co. helped set up the prices and the prices increased considerably.

That information is contained in internal Gulf documents which are available to you, which should have been available to Gulf counsel to indicate that one of your two fountainheads was inaccurate. It did impact. It very quickly impacted. In fact, I submit that it was designed to impact.

Thank you.

Mr. Moss. Are there further questions?

If not, the witnesses are excused and the committee will stand adjourned.

[Whereupon, at 4:18 p.m., the subcommittee was adjourned.]

INTERNATIONAL URANIUM CARTEL

MONDAY, AUGUST 15, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Nashville, Tenn.

The subcommittee met, pursuant to notice, at 10 a.m., in room 16, Legislative Plaza, Nashville, Tenn., Hon. Albert Gore, Jr., presiding. [Hon. John E. Moss, chairman.]

Mr. GORE. The hearing will be in order.

This subcommittee is here today to continue its investigation of the international uranium cartel, and to inquire into what effect it may have had on American utilities which entered into contracts with cartel members.

We have vigorously atttempted to uncover the truth about the uranium cartel for many months, interviewing hundreds of witnesses and poring over thousands of secret documents obtained through subpena and, in one instance, a court fight.

The evidence we have amassed so far tells a rare and astonishing story of price fixing, bid rigging, and market allocation.

For many years Americans have heard vague and undocumented allegations of price fixing in the energy field. But this subcommittee has painstakingly assembled cold, hard facts which describe in detail the formation and operation of a secret, sophisticated, and powerful international uranium producers' club, as it came to be known, which has raised the price of uranium by secretly rigging bids and fixing prices.

It is unfortunate that the facts also establish beyond a shadow of a doubt that one of the participants in the cartel was one of America's own giant oil companies, Gulf.

Over a 3-year period of time, the price of uranium skyrocketed from $6 per pound to $41 per pound—an increase much more rapid than that experienced in oil prices.

Gulf and others have argued that this 700-percent increase had little to do with any uranium cartel but rather was due to other factors: the Arab oil embargo, ERDA's enrichment policies, and Westinghouse's announcement that it simply did not have some 60 million pounds of uranium it had agreed to supply.

Without question, the uranium market is complex and has been affected by many factors, several of which will be examined here today.

But in hearings before the subcommittee 2 months ago, one high Gulf executive made an astounding, albeit begrudging admission: ". . . to the extent that U.S. utilities bought overseas," he said, "they probably paid a higher price." Then, probably realizing the importance of his admission to Gulf's antitrust defense, he backed off. He called the domestic impact "insignificant."

Not surprisingly, Gulf is still worried about the significance of this admission. Only last night a Gulf spokesman flew to Nashville and issued a statement denying what this testimony clearly admits: that domestic utilities which purchased uranium from cartel members paid higher prices because of price fixing.

That is precisely our purpose in this hearing—to assess any American domestic impact of the cartel.

We now know that uranium was in fact purchased from foreign suppliers by U.S. utilities while the cartel operated, and in significant quantities. Immediately after the Gulf hearings in June, Subcommittee Chairman John Moss directed the staff to survey all American utilities to determine just how much of that uranium was purchased, from whom, and at what price. This was the first time, incidentally, that such a survey had ever been conducted. Patrick McLain, staff counsel to the subcommittee, will present this morning preliminary finding from that survey.

It is not by accident that we are in Tennessee today. For the biggest single consumer of uranium, TVA, is right here. Moreover, TVA bought foreign uranium—20 million pounds worth, during the pertinent period. We will hear about that this morning from TVA Chairman Aubrey Wagner, as well as the TVA officials who actually negotiated those contracts: Jack Gilleland, Allen Mullins, and Erik Kvaven.

Another southeastern utility found its way into the foreign market while the cartel operated. Duke Power Co., of Charlotte, N.C. We will be pleased to welcome a little later this morning Mr. W. T. Robertson, executive vice president of Duke's fuel purchasing subsidiary.

Some of those who would minimize the impact the cartel might have had on American prices put part of the blame on the Federal Government's enrichment policy. Again it is particularly appropriate for the subcommittee to be in Tennessee, where much of the uranium in this country is enriched, using enormous quantities of electrical power from TVA. To explain the process, and to comment on the economic effect of those Government policies, we are pleased to have with us this morning David C. Thomas and John A. Patterson of the Energy Research and Development Administration. I guess we might now call it the Department of Energy.

Finally, no inquiry into energy price fixing would be complete without an assessment of the ultimate cost to the final victims of such powerful economic forces—the American consumers. What, after all, is the meaning of all this to the typical household in Tennessee, Ohio, or my colleague Andy Maguire's home State, New Jersey? To that end, we welcome this morning Hugh B. Millraney, manager of the Caney Fork Electric Cooperative.

On behalf of the subcommittee, I wish to thank Lt. Gov. John Wilder and Speaker Ned Ray McWherter for allowing us to use these facilities in our inquiry.

Certainly no economic forces are more relevant to our daily lives than those concerning energy. What we learn today of how secret decisions made behind closed doors in Paris and Johannesburg may have affected the price TVA and other power producers paid for uranium will have a profound influence on the debate over a national energy policy, and the role of multinational oil companies in that policy.

We will now call the first witness. Mr. Patrick McLain.

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. McLain. I do.

Mr. Gore. Would you identify yourself for the reporter, please?

Mr. McLain. My name is Patrick McLain. I am counsel to the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce.

Mr. Gore. Please proceed with your presentation.

TESTIMONY OF PATRICK M. McLAIN, COUNSEL, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Mr. McLain. Mr. Chairman, as you have pointed out, at this stage of the subcommittee's investigation, there is no doubt that a uranium cartel existed from early 1972 forward—it is not altogether clear just when it disbanded—and that it effectively raised world prices of yellowcake uranium. That much was conceded by Gulf Oil Corp., in hearings before the subcommittee just 2 months ago. Gulf, of course, was an active member of the cartel.

However that may be, Gulf offers a defense, posited chiefly on the notion that the cartel's actions had little or no effect on uranium prices in the United States.

Promoting that view, Gulf's chairman of the board and chief executive officer, Jerry McAfee, repeatedly invoked the Federal Government's uranium embargo, which he implied prevented American utilities from purchasing uranium abroad.

We knew at the time that contrary to Mr. McAfee's apparently misinformed understanding of the embargo, American utilities had in fact made purchases from abroad, not in violation of the embargo at all, but entirely within its terms; for the U.S. embargo never prevented importation of uranium. It never precluded contracting for foreign supplies to be delivered after lifting of the embargo. It only prevented enrichment of foreign uranium for actual use in domestic reactors. Moreover, Mr. Chairman, it was well nigh universally anticipated back in 1972, 1973, and 1974 that the embargo would be lifted, in stages, within a very few years. That theory is being borne out, and it is being lifted today.

What we did not know 2 months ago was just how much foreign uranium had been purchased here, on what terms, and at what price. Just as important, we had no idea what offers of sale had been made by foreign producers to American buyers—offers which could themselves have had an indirect impact on the contracts finally entered into.

In the wake of Gulf's testimony, Mr. Chairman, the staff was directed to survey all U.S. utilities holding a Nuclear Regulatory Commission operating license for one or more nuclear powerplants, some 40 utilities in all. We sought, among other things, all contracts for the purchase of uranium concentrate actually made by foreign suppliers, along with all supply offers made but not accepted, for the entire purchasing history of each utility involved.

The requested information included the supplier's name, date of any offers made, contract date, amount of U_3O_8 equivalent involved, the price, and the dates of delivery.

Not surprisingly, Mr. Chairman, a good many utilities have been at least reluctant, and in some instances downright recalcitrant about supplying this information. It is deemed by these companies, and we think properly so, to be proprietary information, which if disclosed in too much detail could put individual utilities at a serious competitive disadvantage. Indeed, of the 40 utilities contacted, to date only 30 have complied, and several of those incompletely.

The subcommittee will of course in time obtain all of the detailed information, and then, after thorough analysis, we hope to be able to offer some definitive conclusions. We believe, by the way, that this will have been the first time such information has been compiled, at least in such detail and backed up by the threat of compulsory process.

In the meantime, Mr. Chairman, the staff is prepared to make some preliminary observations about the information we have received.

At least 15 American utilities have in the past received offers for the sale of foreign uranium, in several instances more than one per utility. Of these, 9 actually entered into contracts of purchase for a total of nearly 56 million pounds of yellowcake—enough, I might add, to supply the needs of TVA's service area for fully 15 years. In all, the number of consumers involved represented by the utilities purchasing this uranium is approximately 13 million.

Bearing in mind, Mr. Chairman, that we do not yet know with any certainty when the cartel disbanded, if it did disband, or what lingering effects on price its actions may have had even to this day, we can say confidently that nearly 85 percent of this 56 million pounds was purchased during what we know to have been an active cartel period—namely 1972 through 1975. About 70 percent of the total was contracted for by utilities that will be testifying before thre subcommittee today.

The names of the foreign suppliers who either contracted with U.S. utilities, or offered to do so, are all too familiar to members of this subcommittee. From Canada there is Rio Algom, a subsidiary of Rio Tinto Zinc, commonly referred to as "R–T–Zed;" Agnew Lake Mines; Eldorado Nuclear; Pyramid Gold Mines; Denison Mines; and, of course, Gulf Minerals Canada Limited.

From Australia we have Mary Kathleen Uranium Limited, Ranger Export Development Co., and Queensland Mines Limited. Uranex, owned partially by a Rothschild-controlled holding company, is nominally at least run by the French Government.

Rio Tinto Zinc, or "R–T–Zed," is situated, at least for the purposes of receiving mail, in London. NUFCOR operates in South Africa, where important cartel meetings took place. Finally, from Germany we have Gulf's partner in Canada, Uranerz, and Urangesellschaft.

Mr. Chairman, virtually every one of these club members has contracted with U.S. utilities, or offered to do so. More important, during the known pendency of the cartel, prices and other terms offered, some of which were accepted, closely tracked those established by the club.

In 1973, for example, one U.S. utility purchased uranium from a foreign supplier for delivery in 1977 and 1978. The contract price was set at $7.15 per pound for delivery in 1977, and $7.50 in 1978. Preceding the entering of this contract, at a meeting of the club in Johannesburg, South Africa, certain floor prices had been marked; that much we know from the documents recently released by this subcommittee. At that meeting the prices were set at $7.15 for delivery in 1977 and $7.50 for delivery in 1978—the identical contract terms.

In 1972 and 1973, one large utility was afforded some six offers for between 8 and 10 million pounds of yellowcake, from four separate cartel members, at prices which exactly track the prices set by the club. Nine million pounds were actually purchased.

Scarcely 2 weeks after the Johannesburg club meeting of the summer of 1972, other offers were made. Queensland Mines of Australia offered an American utility uranium for delivery between 1976 and 1985. The prices offered were $6.80 per pound for 1976 delivery, $7.15 for 1977, $7.50 for 1978, and something known as world market price thereafter.

Mr. Chairman, from the documents in the subcommittee's possession we know that the cartel did not quote specific floor prices beyond 1978, so it is not surprising that the amorphous concept of a world market price came into being after delivery dates set beyond 1978. What is important is that the specified base prices for the years in question square exactly with those handed down by the cartel. These prices are contained, by the way, in the chart appended to my testimony.

Incidentally, in August of 1972, barely a month after the Johannesburg meeting, Rio Tinto Zinc made an offer identical to that of Queensland—an offer also identical to those terms set by the cartel.

Mr. GORE. Was this to an American utility?

Mr. MCLAIN. Yes; Mr. Chairman.

It has been said by some, Mr. Chairman, that even if cartel actions affected prices the world over, at the very least, the club's rules on rigged bidding specifically excluded the U.S. market. That may be true, but there is at least one curious anomaly in the evidence presented thus far.

In December 1972, Ranger of Australia made an offer to an American utility to supply uranium at $7.25 per pound for delivery in 1977. Reference to the chart, Mr. Chairman, would indicate that at first blush the offer was inconsistent with cartel-fixed prices. But as the club rules were drawn, the selected leader selected by the secretary of the club, was allowed to offer 30 cents per pound more than the floor price set by the club, and a selected runner-up could offer yet 10 cents more. According to the chart, $7.15 was the minimum. Perhaps, though we don't know for sure, Ranger was nominated as runner-up in this case, which accounts nicely for the 10 cents difference.

In many, many cases, Mr. Chairman, the staff encountered in these incomplete responses the fact that price was pegged to something known only as world market price or even more vague, price subject to negotiation.

Whatever may be said of those vague phrases, certainly they had to be less vague in the minds of those international uranium producers who had participated in the cartel meetings in Paris and Johannesburg.

That completes my statement, Mr. Chairman. I will be happy to answer any questions you may have, and I thank you, Mr. Chairman.

Mr. GORE. Thank you very much.

We will insert your appended chart.

[The chart referred to follows:]

EVOLUTION OF CARTEL U_3O_8 PRICES, U.S. DOLLARS

	"Club" meeting date and location		
	June 1972, Johannesburg	Oct. 9, 1973, London	Jan. 28, 1974, Johannesburg
Year of delivery:			
1972	$5.40		
1973	5.75	$6.70	
1974	6.10	7.20	$8.50
1975	6.45	7.70	9.35
1976	6.80	8.20	10.30
1977	7.15	8.95	11.35
1978	7.50	9.70	12.50

Note.—Cols. 1 and 2 do not apply to Japan, Taiwan, and Korea.

Mr. GORE. You indicated that the utilities the staff has surveyed throughout this country are extremely reluctant to discuss the subject matter of their contracts, and this is because they feel that it is proprietary information. Is that your conclusion?

Mr. MCLAIN. That is the conclusion certainly, Mr. Chairman. In many cases, even beyond that, there are in the contracts with their suppliers' prohibitions against disclosure of information relative to the contract without the consent of the utilities. That fact, as the subcommittee has informed these utilities, will not bind the Congress in receiving this information. We will proceed on that basis.

Mr. GORE. Inasmuch as these utilities often depend heavily upon their suppliers for guaranteed supply into the future, might it not also be the case that they would be apprehensive about jeopardizing their business relationship with these suppliers? I guess that calls for a conclusion on your part. At any rate, you encountered reluctance on the part of the utilities you contacted?

Mr. MCLAIN. Indeed.

Mr. GORE. As a result of your survey nationwide, you found that members of the foreign cartel signed contracts with American utilities that exactly tracked the prices set secretly behind closed doors at Johannesburg. Is that correct?

Mr. MCLAIN. That is correct, Mr. Chairman.

Mr. GORE. That directly challenges the defense offered by cartel members that the American market was excluded from the operation of the cartel. Beyond that, you found one instance where the lead-bidder-runner-up strategy could be inferred from the evidence gathered?

Mr. MCLAIN. Certainly there is no question—and I do not think anybody wants to come to this subcommittee and say that contracts

were not entered into between U.S. utilities and foreign suppliers, very large contracts, and that offers were not made. Indeed, the rules of the club specifically stated that the rigged bidding process would not apply to the U.S. market. We do not know, but there is one questionable anomaly that certainly is not an illogical conclusion to say that this might have been one of those rigged bids.

Mr. GORE. Even though they say that it was excluded from the operation of the cartel, contracts were signed between cartel members and American utilities at prices which matched the price schedule agreed upon at Johannesburg in a secret meeting.

Mr. MCLAIN. That is correct, Mr. Chairman.

Mr. GORE. There is a second effect postulated on the American domestic market attributable to the cartel. That is the influence of cartel prices in raising domestic prices. Are you familiar with any evidence which demonstrates the effect of the cartel price on the domestic price?

Mr. MCLAIN. Mr. Chairman, I am, and through the subcommittee's investigation, as you have stated, we have received, mostly under subpena, many documents relative to the inquiry. One such document directly bearing on the question which you raise and which perhaps gives the best thinking on this question is one that was written in March of 1974. We think this is a reliable document, particularly because of the fact that the person who wrote it is a knowledgeable person about the uranium market and in fact an employee of Gulf Oil Corp.

The memorandum was written from a Mr. Wayne Fowler to a Mr. L. J. Colby, Jr., also an employee of Gulf.

Mr. GORE. If I could interject here, this gentleman is an economist working for Gulf; is that correct?

Mr. MCLAIN. That is correct, Mr. Chairman.

Mr. GORE. I would like to interject that when Gulf sent representatives down here to Nashville last night to issue statements challenging the work of this subcommittee, they did so by relying heavily on the expertise of this same Mr. Fowler who testified at the subcommittee's hearing earlier in the summer. They apparently put a great deal of confidence in his expertise and in his ability to analyze the workings of the marketplace.

Could you outline for me what Mr. Fowler, the economist for Gulf, foresees as the effect of the cartel on the domestic price?

Mr. MCLAIN. Mr. Fowler, as the memo states, was trying to explain to Mr. Colby the dynamics of what happens between the establishment of domestic prices and the establishment of foreign prices. I think that the best understanding is just a recitation of what he says. In the middle of the memo he states:

> What appears to be happening is that the international producers are in effect setting the world price 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 doesn't 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 transaction by constantly nudging the floor upward. In the interim the U.S. buyer becomes increasingly frustrated, offers a higher price in order to get some response, and the cycle starts over again. [For complete text, see appendix A, at p. 627.]

I think it is pretty clear-cut how that cycle works. It moves gradually upward, Mr. Chairman.

Mr. GORE. To illustrate what happened during this period, I want to direct your attention to this chart just briefly. It has been said that OPEC was one of the factors increasing the prices but I think it is important to know that while oil was going up in price some, the price of uranium went from 1973 straight upward, an increase of 700 percent—an increase that is much more rapid than the increase experience in oil prices during this same period. Is that correct?

Mr. MCLAIN. That is correct, Mr. Chairman.

Mr. GORE. Let me ask you another question. Mr. Fowler says in his memorandum that the actions of the cartel could force American producers to withhold uranium from the marketplace until they could get a higher price. Are you familiar with any utility which has experienced the frustration that he describes so vividly—utilities that attempted to buy uranium from domestic producers who then refused to sell?

Mr. MCLAIN. Indeed, I am, Mr. Chairman. I think we will hear further about this from the Tennessee Valley Authority representative. I cannot place a motive on it at this time, but there is one occurrence that warrants at least very raised highbrows, I believe.

In October of 1973 the Tennessee Valley Authority solicited for the purchase of foreign uranium. They solicited bids. They told all of the suppliers, numbering 53 all together, that they were on the market to purchase any amount up to 86 million pounds of uranium. They made no stipulation about how much could be offered or any price that could be offered. It was a very open solicitation. In response to those bid solicitations, Mr. Chairman, three offers were made out of the 53 producers requested. Two of those offers came from domestic producers—Kerr-McGee and Western Nuclear. Both of those offers, because of the price, were unresponsive to TVA's needs and they were rejected. Another offer was made by the German firm, Urangesellschaft. The price quoted was the world market price.

None of these bids was accepted. Now we do not have documentary proof today on what the motive was or what the dynamics were or why these firms were not bidding. However, it is curious, indeed, that in 1973 when the market was soft, when there was uranium to be sold, when there was a very open offer with very few restrictions, only three bids were given out of 53 producers.

Mr. GORE. I have one final question. I would ask you to clarify this world market price. There was an agreement by the cartel that no specific prices would be set after a particular date. Companies then started going to the world market price as the term in their contracts.

Correct me if I am wrong, but my understanding of this is that whatever the average world market price was at some specified date outlined in the contract, it would be the amount paid for the uranium contracted for. Is that correct?

Mr. MCLAIN. That is correct.

Mr. GORE. Congressman Maguire?

Mr. MAGUIRE. I have no questions, Mr. Chairman.

Mr. GORE. Counsel?

Mr. ATKISSON. Mr. McLain, you mentioned in your testimony that the world market price was quoted after 1978. From your review of

documents that have come into possession of the subcommittee, is there a reason why specific prices were not quoted after 1978?

Mr. McLain. Indeed, there is a reason. Your question was one that was raised by the members of the cartel in their meetings, which produced vigorous debate on when the cartel should stop setting specific prices. The Australian members, for example, moved very firmly that actual stated prices be established extending into the 1980's. Other members, foreseeing the future, did not want to get locked into any specific price in a long-term future. Instead the members of the cartel, against the strong urging of the Australians, in order not to be locked in and because they could foresee what the market might be up until 1978, they set the prices up to that date and then established this world market price as a means to achieve their goals after that.

Mr. Atkisson. In other words, it seems pretty clear that the members of the cartel, when they first met in Paris and later in Johannesburg, did not know how successful they were going to be.

Mr. McLain. That is correct.

Mr. Atkisson. Therefore, they did not want to set specific prices beyond 1978.

Mr. McLain. That is correct, Mr. Atkisson. I think the feeling was that it could get better or it could get worse, but if they locked themselves in, then they did not have any room to maneuver. With this world market price concept they could maneuver after 1978.

Mr. Atkisson. Thank you, Mr. Chairman.

Mr. Gore. Thank you, Mr. McLain. We appreciate your testimony.

We will now hear from the witnesses from TVA. Would they please come forward? The witnesses are Mr. Wagner, Mr. Gilleland, Mr. Mullins, and Mr. Kvaven.

Would all four of 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. Wagner. I do.

Mr. Gilleland. I do.

Mr. Mullins. I do.

Mr. Kvaven. I do.

Mr. Gore. Would each of you identify yourself to the reporter, please?

Mr. Mullins. I am Allan Mullins, Chief of the Nuclear Raw Materials Branch of TVA.

Mr. Wagner. I am Aubrey Wagner, Chairman of the Board of TVA.

Mr. Gilleland. I am Jack Gilleland, Assistant Manager of Power, TVA.

Mr. Kvaven. I am Erik Kvaven, Assistant Chief, Nuclear Procurement Branch of TVA.

Mr. Gore. Chairman Wagner, the subcommittee is particularly honored to have your presence here this morning. Your service to the people of the Tennessee Valley is well known. I personally appreciate your being here to enlighten us on this very complex subject.

You may proceed with your presentation.

TESTIMONY OF AUBREY J. WAGNER, CHAIRMAN, BOARD OF DIRECTORS, TENNESSEE VALLEY AUTHORITY; ACCOMPANIED BY JACK E. GILLELAND, ASSISTANT MANAGER OF POWER; ALLAN T. MULLINS, CHIEF, NUCLEAR RAW MATERIALS BRANCH, DIVISION OF POWER RESOURCE PLANNING; AND ERIK KVAVEN, ASSISTANT CHIEF, NUCLEAR PROCUREMENT BRANCH, DIVISION OF PURCHASING

Mr. WAGNER. Thank you, Mr. Chairman.

We welcome this opportunity to testify as to the possible effects on TVA of the international uranium producers' marketing arrangements.

I have with me this morning, as you indicated, Mr. Jack E. Gilleland, an Assistant Manager of Power, who has responsibility for managing and coordinating TVA's nuclear fuels and mineral rights activities. After my brief opening statement, Mr. Gilleland has a more detailed statement covering TVA's uranium purchases.

In addition, Mr. A. T. Mullins, Chief of the Nuclear Raw Materials Branch, and Mr. Erik Kvaven, Assistant Chief of our Nuclear Procurement Branch and Supervisor of the Nuclear Fuels Section, are here to answer any questions you may have.

Under the TVA Act of 1933, TVA is responsible for providing an ample supply of electric power at the lowest possible rates to the seven-State Tennessee Valley area.

To carry out this responsibility, TVA operates the Nation's largest electric generating system. Currently, the system is composed of 12 coal-fired steamplants representing 63 percent of system capacity, three units at the Browns Ferry Nuclear Plant representing 12 percent of the total, with the remainder consisting of hydroplants and oil-fired combustion turbines. However, by 1986, when 14 more nuclear units are scheduled to be in operation, we will have nearly doubled our present system capacity; about 40 percent of the system will be nuclear powered; and we will require 7 to 8 million pounds of uranium concentrate annually to fuel our nuclear plants.

TVA operates and is building uranium-fueled nuclear powerplants because they are environmentally and economically attractive.

To provide nuclear fuel for Browns Ferry and to assure adequate supplies of uranium for the 14 additional units we will begin to operate over the next 10 years, TVA has taken an active role in the uranium market. Since 1966, we have contracted to purchase uranium from reactor manufacturers and from independent uranium producers. We have also entered into a variety of arrangements for the exploration and development of uranium reserves.

In contracting for uranium and uranium reserves, just as in acquiring coal, we must constanty balance our desire to purchase the lowest possible cost fuel against an absolute requirement that we have sufficient uranium at all times to operate our system to meet the demands of our power consumers.

Making the balance between prices and assurance of uranium supply, we have currently contracted for uranium to fill 100 percent of TVA's projected requirements through 1981, and lesser amounts

through 1990, portions of which will be supplied from TVA's own uranium reserves. In contracting for uranium, we have had numerous contacts with foreign uranium producers and have actually contracted for about 20 million pounds of U_3O_8 from three foreign producers—Rio Algom Ltd., a Canadian producer; Uranerz Canada Ltd., a Canadian subsidiary of a German firm; and some material from Homestake Mining Co., a domestic firm which was reselling uranium produced by Uranex, a French company.

The documents this committee has made publicly available show that certain foreign producers may have been members of the international uranium producers' cartel, and I know this committee is interested in the effects the producers' international marketing arrangement may have had on TVA's ratepayer—and there may be future impacts on our consumers. However, none of our consumers has yet received an electric bill containing any charges which can be attributed to the cartel.

In calculating electric rates, we do not include the cost of uranium in the rate base until the fuel is consumed in a nuclear plant. Since no foreign uranium will be used in a TVA nuclear plant until 1978, our ratepayers cannot be affected by any increased cost caused by the cartel until then.

Although we cannot provide you with a dollar amount that measures the future effect the cartel may have on TVA and on our consumers, I can illustrate the substantial and serious impacts any increases in uranium prices can have. By 1986, TVA will be consuming 7 to 8 million pounds of uranium per year. Therefore, for each $1 increase in the cost of a pound of uranium, for whatever reason, TVA's consumers will have to pay an additional $7 to $8 million annually.

Mr. Gilleland, Mr. Mullins, and Mr. Kvaven are here this morning to answer your specific questions about TVA's uranium procurement experience which may help this committee to reach conclusions concerning the impact of the cartel's actions on TVA and our consumers.

To assess the injury to TVA which may have been caused by the cartel, TVA's legal staff is conducting an investigation of the impact of the cartel on TVA and of any possible cause of action TVA might have arising out of the international marketing arrangements. We expect this work to be completed shortly, and TVA will then take such appropriate action as may be necessary to protect our interests and the interests of TVA ratepayers.

In addition to our own work, we have also been cooperating with the Department of Justice in its grand jury investigation. Last winter we provided the Justice Department with copies of several hundred TVA documents which might bear on this matter.

Finally, we are very pleased with the active role this committee has taken in the investigation of the international marketing arrangements and, as you know, members of our staff have been working with you to provide you with such information and assistance as we can.

With your permission, Mr. Chairman, I would now like to ask Mr. Gilleland to provide you with the details concerning TVA's uranium purchases.

Mr. GORE. Chairman Wagner, the subcommittee appreciates your statement. All the residents of the valley appreciate your service.

I must note that your statement appears to me to be extremely cautious. It reminds me a little of the story of the two men looking at sheep in a field early in the spring. One said to the other, "It is mighty early for those sheep to be sheared." His companion was very cautious and said, "Well, they appear to be sheared on this side anyway."

You say that companies may have been members of the cartel. Is there any doubt in your mind that a cartel existed?

Mr. WAGNER. Mr. Chairman, I do not personally know that a cartel existed. I have seen the evidence that you have collected and heard the discussion this morning. I would say that it certainly appears that there has been a cartel.

Mr. GORE. On this side, anyway.

Mr. WAGNER. That is correct.

Mr. GORE. TVA purchased uranium from members of the cartel. The evidence indicates that Rio Algom was a very active member of the cartel. The president of Gulf Minerals Resources Co., said that to the extent that U.S. utilities purchased uranium in the foreign market from cartel members that they probably paid a higher price. Can you associate yourself with that statement?

Mr. WAGNER. I assume that if a cartel is formed, it is formed to control the price and certainly it could have resulted in higher prices. I do not know whether it did or not, as a matter of fact.

Mr. GORE. TVA has already paid for 1.2 million pounds of uranium purchased from the cartel. I understand from your statement that the first of that uranium will be burned next year. What time, early next year?

Mr. WAGNER. I would like to ask Mr. Gilleland to respond to that, if I may.

Mr. GILLELAND. This will go into a unit which will begin operation in 1979. It will be fueled in late 1978.

Mr. GORE. So the first uranium will be put into the reactor late next year.

Next, Mr. Chairman, you say that there is no present impact. You do not mean to make the flat statement that the cartel had no effect on domestic prices. You are not saying that, are you?

Mr. WAGNER. I am saying that any uranium that was bought under the arrangement you are discussing here has not yet been burned; therefore, the ratepayers have not felt the impact of price or any effect it might have had upon the price.

Mr. GORE. If the Fowler memorandum that we read earlier is correct, if the cartel was responsible for TVA not getting any response to its bid request, if the cartel had an effect on the price paid for uranium here in the domestic market, then TVA ratepayers are currently paying higher prices due in part at least to the activities of the cartel.

Mr. WAGNER. I would think that is probably not accurate because all of the uranium that has been burned so far was burned under a contract we had with GE when we bought the unit. I think that was before the cartel was formed.

Is that right, Jack?

Mr. GILLELAND. Yes.

Mr. GORE. Does TVA anticipate buying any uranium from foreign companies pursuant to that contract?

Mr. GILLELAND. We do not really know the source of uranium which GE would acquire. They have the responsibility and it is included in a comprehensive fuel cycle contract. We do not know the source of that uranium or what they pay for it.

Under Browns Ferry 3, they still have the responsibility. We pay the price but we do not know where they get it.

Mr. GORE. The uranium purchased impacted by the cartel will be burned late next year. The first will be put in the reactor vessel late next year and the impact is yet to come on TVA consumers?

Mr. WAGNER. Yes, sir, that is correct.

Mr. CORE. I have one final line of questioning before we go to Mr. Gilleland, Mr. Chairman.

I was asked several times about whether or not TVA was aware that a cartel existed. During our first conversation I indicated to you, as I have to others, that I had no evidence to that effect whatsoever.

Subsequently, in a telephone call to you I informed you that the subcommittee staff had uncovered a memorandum which is at least subject to the interpretation that there may have been some knowledge of the cartel. I said that we would wish to explore that matter here today.

Just briefly, did you personally have any knowledge that a cartel existed?

Mr. WAGNER. No, sir; I did not.

Mr. GORE. No one told you anything about an international uranium cartel?

Mr. WAGNER. No, sir. I follow the press. At the time that the stories appeared there I probably saw them, but I do not recall specifically when it was. At the time we entered into our first contract I had no knowledge from inside TVA that there was a cartel or any suspicion of one.

Mr. GORE. If you had known as Chairman of the Board that TVA was about to enter into the largest contract for uranium that it had ever signed, that you were about to approve a contract with a member of a cartel that was meeting secretly and setting fixed prices, would you have approved that contract?

Mr. WAGNER. Mr. Chairman, that is an "iffy" question. It is hard to answer. I have pondered that question since your investigation has begun.

It seems to me that we face the problem of providing electric power for the region. We have some nuclear reactors under construction. We need uranium for them. We are making every effort we can to get uranium of our own but we do not have enough.

I reflect, for instance, on the situation when we discovered that there was price fixing on turbogenerators. We did not stop buying from the participants in that price fixing because there was no other source and we had to have turbogenerators.

I suppose we might have had to go ahead and buy this uranium anyway. We would have to take whatever action we could to recover as we went along, which, as I indicated, we are investigating now.

Mr. GORE. In other words, even if you had know at the time that they were fixing prices, you still would have signed the contract with them?

Mr. WAGNER. Well, I say it is an "iffy" question. I really do not know what alternative we would have had.

Mr. GORE. If you say that you would have signed the contract anyway even though you knew that they were fixing the price, would you nave felt an obligation to report this to the Justice Department?

Mr. WAGNER. Surely we would have done that.

Mr. GORE. You say it is an "iffy" question. You personally did not have any knowledge at all?

Mr. WAGNER. The reason I say it is an "iffy" question is that probably we would have asked the staff to look other places. I am not sure what action we would have taken. We did not know it and that is why it is an "iffy" question.

Mr. GORE. Who signed the contract?

Mr. WAGNER. The contract is approved by the Board. It is signed on behalf of the Board by the TVA General Manager. It was approved by the Board upon staff recommendation.

Mr. GORE. Whose name is on the contract?

Mr. KVAVEN. Mine.

Mr. GORE. Mr. Kvaven, you negotiated the contracts and signed them on behalf of TVA?

Mr. KVAVEN. That is correct.

Mr. GORE. I am sure you are familiar with the memorandum to which I am referring, and I will ask the staff to give you a copy of it.

[The memorandum referred to follows:]

FOR
NAME: A. T. Mullins
ADDRESS: 261 HB-C
DATE: 2/27/74
Chatt ☐ Knox ☐ M. S. ☐

Fold here for return

FROM
NAME: C. W. Pickering
ADDRESS: 261 HB-C
EXTENSION
Chatt ☐ Knox ☐ M. S. ☐

George White, Jr., Energy Services Company, informed Erik Kvaven a few weeks ago that--according to a reliable source--the "unofficial club" of foreign uranium producers had met in Paris and had established the world uranium price for 1974 at $11.00 per pound.

Mr. White reports now that he is aware of three different offers made by Canadian producers since the "club" met (in addition to Rio's offer to TVA). All three offers have a base price of $11.50 to $12.00 per pound plus escalation from 1974 as a minimum price. It would appear that Rio is a member of the "club" and our meeting with them tomorrow should provide some interesting insights.

cp

CWP:SPB
CC: Frank Kruz, 261 HB-C
MRMS Files

TVA 40 (05-64) INTEROFFICE MAILING SLIP

Mr. GORE. This memorandum is dated the day before you had negotiations with Rio Algom, which you subsequently contracted with to buy 17 million pounds.

In February of 1974, some 5 months before the contract was signed—and, Mr. Mullins, you were the recipient of this memo—it says:

> George White, Jr., Energy Service Company, informed Erik Kvaven a few weeks ago that—according to a reliable source—the "unofficial club" of foreign uranium producers had met in Paris and had established the world uranium price for 1974 at $11 per pound.
>
> Mr. White reports now that he is aware of three different offers made by Canadian producers since the "club" met (in addition to Rio's offer to TVA). All three offers have a base price of $11.50 to $12 per pound plus escalation from 1974 as a minimum price. It would appear that Rio is a member of the "club" and our meeting with them tomorrow should provide some interesting insights.

Mr. Kvaven, this was written the day before you met with Rio on negotiations. Am I mistaken in concluding that it implies you were aware that there was a cartel?

Mr. KVAVEN. I was not aware that there was an effective cartel at this point in time. The statement that Rio was a member of the club was speculation on the part of the author of this particular memorandum, who is a gentleman who works for Mr. Mullins.

There have been reports from time to time in "Nucleonics Week" and other places that there might be a club or that there might be a cartel.

I would like to point out that we had already recommended to the Board on February 20, before receipt of this information, acceptance of a contract with Uranerz in which the price was $10.75. This was considerably less than the prices being quoted as a cartel. If there was a cartel, whatever information we had in hand at that point in time was that it either was not very effective or they were not all hanging together.

Mr. GORE. Did you report this to the Board, your suspicion that it might have been a cartel? You did not, Mr. Wagner has already testified.

Mr. KVAVEN. That is correct.

Mr. GORE. Did you feel any duty to report it to the Justice Department?

Mr. KVAVEN. We had no hard evidence that there was a cartel. I am sure the Justice Department had the same information that we had, which was whatever was written in the "Nucleonics Week."

Mr. GORE. Counsel?

Mr. ATKISSION. Mr. Kvaven, I call your attention to the substance of this memorandum. There is a reference to three offers being made by Canadian producers. "All three offers have a base price of $11.50 to $12 per pound plus escalation from 1974 as a minimum price."

Is there any doubt in your mind that those facts on their face represent an effective cartel?

Mr. KVAVEN. I am not familiar with the details of the offers that are being discussed here.

Mr. ATKISSON. Let's just take three offers in the abstract, anywhere in the world. If on the same day three offers were made and they happened to be identical, wouldn't it occur to you that they had probably been talking to each other?

Mr. KVAVEN. Probably, yes.

Mr. ATKISSON. Mr. Mullins, do you recall receiving this memorandum?

Mr. MULLINS. No, sir, I do not.

Mr. ATKISSON. You do not recall?

Mr. MULLINS. I do not remember receiving it in detail. There is no question that I would have in the ordinary course of business.

Mr. ATKISSON. I take it that it is not an ordinary event to receive news of a cartel?

Mr. MULLINS. If you place it in perspective, starting sometime in 1972, there were periodic reports in at least "Nucleonics Week," if not other publications, on meetings by so-called club members, which I think originally started off as government groups rather than individual producers but also ended up as producers. We would see these several times a year. This was undoubtedly not the first instance that the words "club" or "cartel" began to be used.

Mr. ATKISSON. The memorandum indicates that some sort of contact was made by Mr. George White of Energy Services Co., later to be called Nuexco. Do you know Mr. White?

Mr. MULLINS. I have met him.

Mr. ATKISSON. Did you ever talk to him on the phone?

Mr. MULLINS. I may have but not on this subject.

Mr. ATKISSON. Rereading this memorandum now, is it your impression that Mr. Pickering who wrote this memorandum had talked to Mr. White on the telephone?

Mr. MULLINS. No, sir. I think he is reporting a conversation that Mr. Kvaven had with Mr. White. That is the first paragraph.

Mr. ATKISSON. What is your perception of how Mr. Pickering learned of this conversation between Mr. Kvaven and Mr. White?

Mr. MULLINS. In the course of business Mr. Kvaven must have told him.

Mr. ATKISSON. The last line of the memorandum says, "It would appear that Rio is a member of the 'club' and our meeting with them tomorrow should provide some interesting insight."

Isn't the whole import of this memo to alert the people who would be talking with Rio Algom the next day to the fact that they might be a member of an international uranium cartel?

Mr. MULLINS. It would raise that question; yes.

Mr. ATKISSON. Thank you.

Mr. GORE. Yet no contact was made with the Justice Department?

Mr. MULLINS. At this point in time, Mr. Chairman, all of the evidence that we could see ourselves from our own experience of talking with individual producers indicated that if a cartel were operating, the effects of it were so small that we could not see them. We neither denied nor confirmed that there may or may not have been such a group. We just could not see any effects of it.

Mr. GORE. But the day after this memo you entered into a contract with a cartel member at a price that approximated the world market price for 17 million pounds, the largest contract for uranium that TVA had ever signed.

Mr. MULLINS. We had a meeting with them several days after that. We ultimately did enter into a contract.

Mr. GORE. Mr. Maguire?

Mr. MAGUIRE. Thank you, Mr. Chairman.

I want to explore for a moment your response that you did not perceive the effects. When you said that, it sounded as if you would be looking for demonstrable changes in price rather than identity of price. We have just had testimony that the identity of price was present in three different offers. It would seem to me at least at the outset that the identity of price would be the important criterion for whatever future implications for actual increases in price might arise. Am I understanding you correctly that the actual increments in price would be the important criterion to you rather than the identity of price?

Mr. MULLINS. The three offers that are indicated in this memo, Mr. Maguire, were not made to TVA. The offers that we had in hand seemed to violate some of the basic thesis that the cartel was asking for. That was no firm prices after 1978.

The offer that Mr. Kvaven mentioned that was recommended to the Board several days prior to this was quoted in 1978 dollars escalated but the delivery was 1982, 1983, and 1984, which was definitely not a market-price type contract.

The numbers and the terms that we were being offered just did not seem to indicate a strongly working cartel relationship.

Mr. GORE. Yet the eventual contract had a very flexible price term. In the meeting the next day did you ask Rio if they were a cartel member, if they were fixing prices?

Mr. MULLINS. I do not remember specifically this coming up in that meeting.

Mr. GORE. You took it upon yourself to determine that the cartel was not going to have an effect on TVA. You saw the chart over there. In 3 years' time we had a 700-percent increase in the price of uranium from $6 a pound to $41 a pound. You were informed that there may have been a cartel. In the meeting the next day you do not remember if you ever brought that subject up? You didn't think to ask them if they were in a cartel?

Mr. MULLINS. Mr. Chairman, we were informed in approximately the same way in the various trade publications starting in 1972 that there was such a group formed.

Mr. GORE. But you are about to sign a contract with them, the largest contract TVA has ever signed for uranium, and you had indications that they were members of the cartel, but you did not even ask them if they were—to confirm it or deny it?

Mr. MULLINS. Not that I remember, sir.

Mr. GORE. Mr. Kvaven, did you ask them if they were members of a cartel?

Mr. KVAVEN. I did not.

Mr. GORE. Mr. Gilleland, were you involved in the direct negotiations? Did you ask them if they were members of the cartel?

Mr. GILLELAND. Yes; I was directly involved. I would like to make a few comments on this.

I guess as far as I personally was concerned I was not aware of the existence of this memo at the time we had the meeting with Rio. My

own personal knowledge of the existence of a cartel stemmed only from what I read in the various trade publications. I do not remember when I started reading this.

The information that I saw and that I recall was that this was a reporting of the fact that the four foreign Governments of Canada, Australia, France, and South Africa were attempting to get together to establish a club of some type to establish prices of uranium. As a layman, I noted that with some interest but considered there was not anything to be done about the situation anyway because these were foreign governments.

I am speaking of the earlier years now. There was one other fact that entered our thinking here. That is that there was an embargo against the purchase of foreign uranium. My understanding of the operation of the cartel was that it applied to actions by foreign governments and to production of foreign uranium, so it was something which did not directly affect us at that time.

In the negotiations with Rio I was not aware of this particular memo. I suppose the question that I might have considered was whether or not I thought that that was accurate informatoin or whether that was just another bit of information that was being bandied about.

So I did not ask Rio if they were members of the club, as I said, because I was not aware of this.

Another thing about it is our primary purpose, of course, in entering into that contract was assurance of supply.

Mr. GORE. Whether it was from a price fix or not?

Mr. GILLELAND. I guess the question here, it seems to me, is what alternative do you have. We buy oil under known conditions of cartels. If you have to have a product, then you have to balance, it seems to me, the question of assurance of supply against the kinds of conditions which might exist under the purchase arrangements. It is not something we would like or something we would choose.

As Mr. Wagner says, I really do not know what our actions would have been if we would have had positive evidence at that time but we did need uranium and this was a large block.

Mr. GORE. Mr. Maguire?

Mr. MAGUIRE. Thank you, Mr. Chairman.

I would like to point out that Rio is mentioned in an internal TVA memorandum of October 2, 1972, as one of the companies which will in all likelihood be selling uranium in the future. In the preceding paragraph the cartel is referred to by TVA officials. This is a memorandum from Clark E. Grover, Chief, Fuels Planning Branch.

[The memorandum referred to follows:]

6500001961 Mullins Ex 314 111.10.8.552

TENNESSEE VALLEY AUTHORITY (651)

UNITED STATES GOVERNMENT

Memorandum TENNESSEE VALLEY AUTHORITY

TO : Manager's Files, 630 PRB

FROM : Clark E. Grover, Chief, Fuels Planning Branch, 514 PRB

DATE : October 2, 1972

SUBJECT: REPORT ON KIBBE MEETING

attached 10-6-72

On September 29, 1972, a meeting was held with Payne Kibbe under Contract No. TV-37357A. Representing TVA were G. O. Wessenauer, J. E. Gilleland, Clark E. Grover, H. G. Parris, and Allan T. Mullins.

The bulk of the meeting was taken up with TVA's discussion with Mr. Kibbe on uranium proposals which had been submitted to TVA, such as the Teton proposition, the Homestake, and NEDCO properties submitted by ANC.

To the question on finder's fee or brokerage of a property, Mr. Kibbe said that a broker would receive from 3 to 5 cents per pound for bringing a buyer and seller together where he had no interest in the property. In packaging a deal including some assessment and evaluation, the fee might run up to 5 percent, depending upon the total amount of money. Carried interests might run from 10 to 50 percent, depending upon the particular circumstances, but for that over 10 percent it should be with the owner of the property, not a broker.

Mr. Kibbe says that TVA might consider approaching the larger companies as to projects for which they would accept outside participation. He mentioned that Federal Resources had an ore body in Farragut, Canada, including a mine and mill which they would probably sell outright. He further suggested Bob Adams of Western Nuclear as one who might be interested in a joint project. The property proposed to TVA by Kibbe & Associates, for example, is owned by Western Nuclear with Kibbe having an option. It is currently being looked at by another party.

Mr. Kibbe commented that he feels the embargo on foreign uranium will be lifted in 1976. The EEI has recommended that the embargo be lifted in 1975, and the AEC says possibly 1978. Mr. Kibbe thinks that the embargo will ultimately be lifted as a percentage of market, with Canada probably receiving some preference and South Africa possibly some restrictions. A quota might be established along the lines of import tickets as has been done in the oil industry.

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TENNESSEE VALLEY AUTHORITY

2

Manager's Files
October 2, 1972

REPORT ON KIBBE MEETING

The cartel to control uranium prices probably started in September, composed of France, South Africa, Canada, and Australia, and appears as if it might be effective for awhile. Prices expected in the 1977-1978 period will be $8 per pound at today's dollar value.

Kibbe believes that potential foreign sales will be made by the following: South Africa, Southwest Africa, French Government, Dennison Mines, Rio Algom, Eldorado, Peko-Wallsend (Ranger deposit), and Queensland Mines.

Mr. Kibbe wrapped up the meeting with a series of news items on both domestic and foreign issues from a series of notes. He agreed that he would furnish TVA a copy of his trip notes which he will include in the files.

ATM:CEG:CM
CC: J. E. Gilleland, 831 PRB
N. B. Hughes, 403 PRB
Allan T. Mullins, 514 PRB
H. G. Parris, 415 PRB
G. O. Wessenauer, 850 PRB

Mr. MAGUIRE. It appears to me that in the early months of 1974 this was hardly a new matter; yet for 1½ years apparently, as has been so clearly elicited in the questioning, questions were not asked and comments were not made to the Justice Department. That is the way I read the memo. Perhaps we could elicit some comments on that from Mr. Gilleland or Mr. Mullins.

Mr. GILLELAND. Again I remember this meeting. This was a visit to TVA by one of our consultants. We had many items on our agenda which were of very much concern to us.

I guess I had forgotten about the fact that this item was an item of discussion. While I do not remember exactly what I would have thought at that time, I think I would have put this into the same category as what I had read before. That is that these companies were foreign companies, that the control of their production would be by the governments under which those companies served.

Mr. GORE. Is Rio Algons controlled by a government?

Mr. GILLELAND. I am talking about the price at which uranium would be sold because the Canadian Government has to approve the contract for the sale, as they did our contract with Rio.

Mr. GORE. It seems to me that you are bending over backwards to be doubly cautious not to in any way upset this major supplier of TVA. I would hope that instead TVA would redouble its efforts to represent the consumers and institute antitrust actions and report to the Justice Department when evidence of a cartel is received.

I take it from your statement, Chairman Wagner, that TVA is now considering antitrust action against the cartel; is that correct?

Mr. WAGNER. Yes. Our legal division is looking into this. We will not know what action we will take until we find what evidence there is. If the evidence indicates there is action which we can take, we will take it; yes, sir.

Mr. GORE. Mr. Gilleland, please proceed with your statement.

TESTIMONY OF JACK GILLELAND

Mr. GILLELAND. Thank you, Mr. Chairman.

I might point out that further on in my testimony I make a few other comments which I think are pertinent to the line of questioning that we have just had.

Mr. Chairman, my name is Jack E. Gilleland, and I am an assistant manager of power of the Tennessee Valley Authority. In that position, one of my duties is to manage and coordinate TVA's nuclear fuels planning and mineral rights activities.

I would like to begin with a discussion of the history of the uranium market. As we move through time I will relate TVA's past uranium purchases and procurement strategies in light of the then current market conditions. I believe that an understanding of the history of the uranium market and TVA's procurement experience prior to, during, and after the existence of the alleged foreign cartel is necessary to determine what effect, if any, the cartel had on raising uranium prices both to the domestic utility industry and TVA.

Mr. GORE. Mr. Gilleland, if I can interrupt you briefly there, you refer to the alleged cartel. I might point out to you that the member of the cartel with the most exposure under the antitrust laws, Gulf,

acknowledges that a cartel existed. The record in intricate detail shows that the minutes of the meeting show the participants, their agreement to fix prices, and it shows their conversations where they agreed to rig bids. If you have any doubt about the existence of the cartel, you will be one of the few in the uranium industry remaining who does have any doubt about its existence.

Do you still insist on referring to it as an alleged cartel? Do you have any doubt about its existence?

Mr. GILLELAND. Mr. Chairman, my choice of words is a recognition of the state of my own personal knowledge of the existence of a cartel.

I compliment the chairman and the committee on the investigation it has made. I read in some detail in the press the results of that investigation.

While I have not personally read those papers and personally have no knowledge, I have no doubt but that the releases that appeared in the press and the investigation of this subcommittee are correct.

Mr. GORE. I appreciate the position you are in. I appreciate your statement. However, I think it does illustrate the extreme caution that is contained in your statement.

It is not an alleged cartel. That is an established fact.

I apologize for interrupting. Please proceed.

Mr. GILLELAND. I would stress that the following comments and observations are based on TVA's experiences in the uranium market and consequently represent a small segment of the available information.

The uranium industry itself was largely developed during the 1950's to meet defense needs. The task fell to the Atomic Energy Commission—AEC, now ERDA—for developing uranium supplies to fill large requirements needed quickly when there was virtually no production anywhere in the world. The job was accomplished by a combination of Government and industrial efforts. Direct Government exploration, production, and technology developments were accompanied by incentive programs to encourage industrial exploration, mining, and milling activities.

AEC's domestic purchases grew from a few hundred tons per year in the late 1940's to a peak of 17,600 tons U_3O_8 in 1960. Buying was gradually reduced in the 1960's as defense needs were filled, and ended in 1970. Known uranium ore reserves, the basis for the expanded production, increased from about 2,000 tons U_3O_8 in 1948 to over 200,000 tons in the late 1950's.

Mr. Chairman, I might interject here that I have used some terms interchangeably throughout—uranium, uranium concentrate, yellowcake, U_3O_8. It is all the same item.

The program very successfully met defense needs. Much of the production capacity—the reserves, the facilities, and the expertise—that developed to meet AEC's demand is now and will be the basis for meeting civilian uranium requirements for some time. In fact, some three-fourths of the milling capacity of present uranium mills resulted from the AEC programs.

Average annual prices paid by AEC under its incentive buying program increased to a peak of about $12 per pound in the mid-1950's. Prices paid by the AEC decreased in the early 1960's to around the $8

level. From 1962 through 1968 AEC fixed the price for concentrate at $8 per pound U_3O_8. In the mid-1960's a special stretch-out program was implemented to maintain the industry while commercial markets developed.

AEC's $8 per pound price was adequate at that time to sustain production from the then existing production centers, because much—and in many cases all—of the capital investment had been amortized. However, as later developments showed, it did not provide adequate incentives for the exploration and investment in the new production facilities to be required to meet future demand.

In the mid-1960's nuclear powerplants gained commercial acceptance and new legislation allowed private ownership of nuclear material. The termination of AEC's procurement was planned to coincide with the anticipated development of the needs for uranium for power generation. However, the demand by powerplants did not develop as rapidly as expected, resulting in depression of the uranium industry, as will be discussed in more detail later. Small quantities of uranium oxide were delivered to private owners in 1966 and 1967.

In the mid-1960's TVA determined that its next generating station should be a nuclear plant. Since we had not owned or operated nuclear plants before, and had no experience in the purchase of uranium, we determined that it would be TVA's policy to begin our nuclear program by buying comprehensive fuel cycle services from the reactor manufacturers and depend upon them for early uranium supply. It was also TVA's policy that as we gained experience and expertise, we would gradually take over more and more of the fuel cycle responsibilities ourselves, and with the issuance of the invitation for the Hartsville Nuclear Plants in 1972 TVA did not ask nuclear steam supply system vendors to supply any uranium for those plants.

Therefore, in 1966 when we entered into a contract with GE to supply the nuclear steam supply system for Browns Ferry units 1 and 2, our first nuclear plant, we also contracted with GE to provide us with complete fuel cycle services through 1982. Under those arrangements, GE is responsible for providing the uranium yellowcake needed for Browns Ferry, for converting it, enriching it, fabricating the fuel, and disposing of the spent fuel.

In late 1967 TVA decided to add unit 3 to the Browns Ferry plant and again contracted with GE to supply the nuclear steam supply system. At this time although GE was willing to provide us with complete fuel services, they were unwilling to bear the risk of long-term price increases in U_3O_8 for reloads. Under our contract for unit 3, GE is responsible for supplying yellowcake although generally increases in the price of uranium for reloads are for TVA's account. Also TVA had the right to assume responsibility for the uranium supply.

TVA's first entry into the market for uranium from the independent producers was in August 1968, when bids were requested for reload uranium for Sequoyah units 1 and 2, TVA's second nuclear plant, and Browns Ferry unit 3 to compare with offers previously made by GE and Westinghouse.

With our 1968 invitation to bid, we established a policy, which we followed in our subsequent 1970 and 1973 invitations for uranium—to provide the uranium producers with as much information about our

uranium requirements as we possibly could and to provide them with the flexibility to bid on all or any portion of our requirements. Thus, with our 1968 invitation to bid, we provided the uranium producers with information on the number of pounds of uranium we required for each reactor for each year, and invited them to offer any portion of TVA's requirements for whatever number of years they desired.

We received one foreign bid—which was not allowed under the terms of the invitation—and three domestic responses offering a maximum of 12.8 million pounds for the period 1972 to 1978. The bid prices ranged from $6.98 to $7.80 per pound. Those bids were rejected and the decision was made to let General Electric and Westinghouse supply our early uranium needs for Browns Ferry unit 3 and the Sequoyah units, respectively, since the bids offered provided no advantages over the previous commitments made by the NSSS vendors.

I have attached to my prepared statement tables of bona fide bids and proposals TVA received from domestic and foreign producers since our 1968 invitation [see p. 366]. This is the same information we provided to the committee earlier, with certain corrections and additions.

TVA entered the uranium market for the second time in 1970 when we invited bids for up to approximately 27 million pounds to be delivered over the period 1974 through 1985. The uranium market at that time was definitely depressed, with a strong buyer's market.

We received responses from six domestic companies offering a total of approximately 30 million pounds. However, bidders offering 19 million pounds of the total, took exceptions to the terms and conditions of the bid invitation, and under the terms of the invitation were nonresponsive and could not be considered for award. Thus, we received responsive bids on only 11 million pounds. The base prices offered subject to escalation ranged from a low of $6.40 to a high of $14 per pound.

TVA purchased a total of 1.2 million pounds from Exxon Nuclear Corp., for a base price of $6.40 per pound subject to escalation, for delivery 1976–79, and 2.9 million pounds from Continental Oil Co., for prices ranging from $7.43 in 1975 to $8.33 per pound in 1980 with escalation beginning in 1976. The other 6.9 million pounds offered under responsive bids were rejected either because prices were unattractive in comparison to other alternatives then available or because TVA already had contracts with NSSS vendors for the supply of uranium during the periods offered in the bids and therefore delivery schedules did not fit TVA's needs.

The period 1970 to 1973 saw very little activity in the uranium market. The predicted rapid growth of nuclear power in the late 1960's had not materialized. Plant delays, caused in part by implementation of the National Environmental Policy Act and protracted licensing proceedings, contniued; and each succeeding year the AEC lowered its forecast of future nuclear power growth. Inventories were accumulating and many utilities were not contracting for their long-term needs.

In any event, the depressed prices had a distinct effect on the producing sector as commitments for new mines and mills were not being made. Exploration and development drilling dropped by 50 percent

between 1969 and 1972. The lack of sufficient cash flow to the uranium producers made it difficult for them to obtain or commit the capital needed for expansion of production capacity. It was questionable at that time whether foreign supplies would be available to meet projected domestic shortfalls since it was not until 1974 that the United States announced a gradual relaxation of its total embargo against the use of foreign uranium, beginning in 1977. Further, foreign demand was projected to exceed foreign supply by the late 1970's.

It was during 1970 and 1971 that TVA became concerned about the assurance of a uranium supply. Considering the 8- to 10-year leadtime for bringing into service new uranium production facilities, it seemed apparent that a shortage of domestic uranium production capacity could occur as early as the mid to late 1970's.

Based on our predicted shortage of production capacity and in order to assure TVA of an adequate supply of uranium at a reasonable cost for TVA's substantial nuclear commitment, the decision was made to acquire uranium reserves and develop the capability to supply portions of our own uranium requirements.

We made our first contract for uranium exploration in 1971. After TVA expressed an interest in participating directly in uranium exploration and production, various uranium companies, both large and small, approached TVA seeking financial support for exploration programs and/or offering for sale uranium reserves in the ground. Since then we have vigorously pursued uranium reserve acquisitions, contracting for exploration of uranium properties and development of production capability.

In early 1973 TVA was still concerned that the uranium producing industry might not be up to the massive expansion in reserves and production facilities that would be needed in the future. In order to encourage the development of these facilities and provide TVA with an assurance of supply, TVA once again entered the market asking for uranium for future deliveries.

Throughout the summer of 1973, we held discussions with potential foreign and domestic suppliers in an attempt to structure an acceptable bid invitation. This resulted in TVA's third invitation for uranium issued in October 1973 to 53 companies, both foreign and domestic, asking for bids on supplying up to 86 million pounds of uranium for any period from 1979 up to 1990. Only three bids were received—two domestic and one foreign, and each was nonresponsive.

Of the domestic companies, Kerr-McGee Nuclear Corp., offered 8 million pounds over the period 1977–82, while Western Nuclear Inc., offered 12 million pounds over the period 1979–90. The base prices for this material ranged between $12 and $16 per pound, with prices subject to 100-percent escalation. The foreign bid received in response to the October 1973, invitation was from Urangesellschaft. This German firm offered to negotiate a contract on the basis of a world market price in effect at the time of delivery from sources in Australia and Africa. The African material was subsequently sold to someone else, and the Australian Government prohibited Australian companies from contracting for the sale of uranium.

Because of our inability to obtain the needed uranium supplies through the bidding procedure, the TVA Board gave permission in

December 1973, to issue a request to the same 53 companies asking them to submit proposals based on substantially their own terms and conditions for supplying uranium.

The response to this request was only slightly better than the first and still inadequate. Western Nuclear was still the only domestic company which was willing to offer uranium for delivery over the entire 1980–90 period. However, between November and December, Western Nuclear increased its quoted price by $2 per pound.

TVA also received an offer from Gulf Minerals Canada, Ltd., for delivery of 1 million pounds of Canadian uranium per year during the period 1974–85 at a base price of $12.50 per pound in 1974 dollars and prepayment of $6 million. This offer was subsequently withdrawn by Gulf before a final purchase decision was reached by TVA.

In April 1974, TVA entered into a contract with Homestake Mining Co., of San Francisco for the resale of foreign uranium to TVA. In this agreement Homestake was reselling uranium it had previously contracted to purchase from Uranex, which is partially owned by the French Government. Homestake's contract with TVA contained a provision that excused Homestake from delivering, if its foreign supplier failed to deliver to it. In August 1976, that contract was renegotiated because of pressure from the French Government on Uranex to negotiate a price increase and TVA's belief that otherwise the uranium would not be delivered.

The Homestake/TVA contract at that time provided for 2.1 million pounds of uranium to be delivered to TVA at an average fixed price of $12.40 per pound from 1976–79. The renegotiation resulted in the immediate delivery of 1,211,970 pounds at $24 per pound, and TVA obtained an option which we have not yet exercised for an additional 443,820 pounds in each of 1979 and 1980 at 95 percent of the market price, defined as the price per pound of U_3O_8 published by the Nuclear Exchange Corp.—Nuexco—for prompt delivery in the United States in the month of actual delivery to Homestake.

In August 1974, TVA reached agreement with Uranerz Canada, Ltd., for the delivery of 400,000 pounds of Canadian uranium per year during the period 1982–84 at a base price of $10.75 per pound in 1978 dollars. However, the Canadian Government refused to approve the contract and forced a renegotiation in June 1975, to a price level similar to the Gulf offer mentioned above; that is, a base price of $12.50 per pound in 1974 dollars.

As a result of a proposal made to TVA in late 1973, TVA finalized a contract in August 1974, with Rio Algom, Ltd., of Canada—Rio—for the delivery of 17 million pounds of Canadian uranium during the period 1979–90. The price to be paid by TVA is the higher of an amount based on Rio's cost of production or a market price to be negotiated 2 years prior to delivery.

At the time we entered the Rio contract, there were a number of factors that TVA had to consider. In light of predicted uranium shortages, our primary concern was the assurance of an adequate supply of uranium for our large nuclear commitment. As we have already noted, shortages of both domestic and foreign production capacity were predicted beginning in the late 1970's.

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While we were confident of the adequacy of uranium supplies in the long term, the necessary development work required to support needed new production facilities in the short term had not yet begun. We had seen that few domestic companies had proven reserves available for sale in the 1980's. In fact, only a few producers worldwide had developed the reserves necessary to support deliveries in the 1980's.

Because of close geographic, economic, political, and social ties between the United States and Canada, we considered Canada as the most reliable source for foreign uranium. This was a major factor in our willingness to enter large long-term contracts with Canadian producers. Rio, as part of a large international corporation, was also considered a reliable supplier. Rio's Elliott Lake deposit in Ontario, from which our 17 million pounds will be delivered, is a very large deposit containing upwards of 100 million pounds of uranium.

We should note that there were very few known ore bodies of this magnitude in the world in 1974 from which sales commitments could be made. Considering the possibility of substantial uranium shortages in the 1980's, being able to obtain a 17-million-pound commitment in this period was very attractive. These 17 million pounds represented some 15 to 20 percent of TVA's projected requirements over the 1979–90 period and were an attractive hedge against future shortages. The Rio contract is still very important in assuring TVA an adequate supply of uranium in future years.

The procedure for determining market price in the Rio contract received close examination and was the subject of considerable negotiation. The contract procedure provides that if TVA and Rio cannot mutually agree on a negotiated price for each delivery year such price will be determined by a mutually acceptable third party. What was not known at the time was the role the Canadian Government would take in setting prices under such contracts. The Canadian Government recently overruled a third-party determination under a market price contract.

Mr. GORE. If I could interrupt there, what did the price in that contract turn out to be?

Mr. GILLELAND. As I recall the letter, which I do not have in front of me, the negotiated price was $32.50 per pound. The Canadian Government overruled that $32.50—I do not believe they set the price—I think they overruled $32.50 with the observation that going prices at that time were $42.50, as I recall.

Mr. GORE. I have the letter here. It is $42 per pound.

Excuse me for interrupting. Please proceed.

Mr. GILLELAND. It is TVA's strong preference to purchase uranium supplies under pricing provisions other than market price and, if at all possible, TVA would not acquire a major portion of its uranium under this type of pricing arrangement. However, weighing the potential short-term shortage of uranium and the assurance of supply of a larger block of uranium over a long term, the fact that market price would be based on other long-term contracts with different pricing mechanisms, and that a third party would settle any price disagreements, it was decided that it would be in the best interest of TVA to enter the Rio contract. TVA's alternative of waiting and attempting to bug these quantities on the spot market would

have resulted in an uncertain assurance of supply and a price certainly no better than under the Rio contract.

In closing, as we have said before, it is extremely difficult for TVA to determine the effect, if any, that the cartel had on either the foreign or domestic price of uranium at any point in time. Other factors such as the way Westinghouse conducted their uranium business obviously had a large effect. However, if the alleged cartel reached agreement on selling uranium only under market price type contracts, the buyers under these contracts have been damaged in the short term and may be damaged in the long term because without the producers' agreement presumably prices would have been quoted on some other basis, such as cost plus a reasonable profit, without a market price mechanism. Such contracts would have resulted in substantially lower prices to the buyers than the market prices in effect today.

I used the word "alleged" cartel again, but I think I have already clarified my view about that.

Mr. GORE. That is fine. Thank you, Mr. Gilleland.

The charts appended to your prepared statement will be inserted in the record at this point.

[The charts referred to follow:]

August 24, 1977

SUMMARY OF BONA FIDE PRICE QUOTATIONS OF U_3O_8
SUBMITTED TO TENNESSEE VALLEY AUTHORITY
From 1965 to July 1, 1977

Date of Offer	Offeror	Base Price	Period for which base price is effective (i.e., date when escalation takes place)	Percentage of base price subject to escalation	Terms of escalation	Delivery Schedule by year (if requirements, estimate in lbs of U_3O_8)	Comments: (a) Prepayment (b) # invitation/ # responses (c) Foreign or domestic source (d) Material actually bought (e) Non responsive (f) Pricing Variations (g) Liability limitations
8-30-68	Rio Algom	72-73 $7.60 74-78 $7.80	Base 1968	100%	25% Labor 75% Material	1972-1978 Min. 300,000 1972 Max. 323,000 1973-1978 Max. 500,000	(a) None (b) 30/4 (c) Domestic (d) No

SUMMARY OF BONA FIDE PRICE QUOTATIONS OF U_3O_8
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From 1965 to July 1, 1977

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9-20-68	Kerr-McGee	$22.70 kgu ($7.70/lb. U_3O_8)	Base 1967	90%	30% Labor 60% Material	1974-1978 191,350 kgu	(a) None (b) 30/4 (c) Domestic (d) None
9-23-68	Union Carbide	$6.98	Base 1967	70%	40% Labor 30% Material	1972-1,401,000 1973-1,401,000	(a) Escalated base price and/or settlement price (b) 30/4 (c) Domestic (d) No (e) Non responsive
7-10-70	Western Nuclear, Inc.	1974 - $9.00 1975 - 9.50 1976 - 10.00 1977 - 10.50 1978 - 11.00 1979 - 11.50 1980 - 12.00 1981 - 12.50 1982 - 13.00 1983 - 13.50 1984 - 14.00 1985 - 14.50	Firm	-	-	1974-1985 1,500,000 lb U_3O_8	(a) None (b) 45/6 (c) Domestic (d) No (e) Non responsive
3-3-70	Stoller	$7.25				919,000 lb	
9-1-70	Westinghouse	$6.62	Base 1970	80%	40% Labor 40% Material	1974-79 2,263,000 lb	Subject to purchase of nuclear fuel and steam supply system components on Requisition 11

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7-13-70	SQW	1971 - $6.45 1972 - $6.70 1973 - 1974 - $7.35 1975 - $7.60	Firm	-	-	1971 - 500,000 1972 - 500,000 1973 - 1974 - 500,000 1975 - 500,000	(a) None (b) 45/6 (c) Domestic (d) No
6-15-70	Kerr-McGee	$23.40 kgu ($7.74/lb. U_3O_8	Base 1970	70%	35% Labor 35% Material	1974-1985 191,350 kgu	(a) None (b) 45/6 (c) Domestic (d) No
7-16-70	UNC	1975-1977 $22.40 kgu ($7.34/lb. U_3O_8	Base 1970	80%	45% Labor 35% Material	1975-1977 110,000/yr.	(a) None (e) Non responsive (b) 45/6 (c) Domestic (d) No
8--70 Amendment 8-74*	Conoco	$9.00* $7.43 $7.51 $7.72 $7.91 $8.12 $8.33	1974 1975 1972 1972 1972 1972 1972	50%	30% Labor 20% Material	1974 - 200,000 1975 - 411,000 1976 - 507,000 1977 - 500,000 1978 - 500,000 1979 - 500,000 1980 - 500,000 3,113,000	(a) None (b) 45/6 (c) Domestic (d) Yes

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From 1965 to July 1, 1977

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8--70	Exxon Nuclear	$6.40	1970 Dollars	90%	45% Labor 45% Material	1976 - 300,000 1977 - 300,000 1978 - 300,000 1979 - 300,000 1,200,000	(a) None (b) 45/6 (c) Domestic (d) Yes
11- 27-73	Kerr-McGee	1977 - $12.63	Nov. 1973	100%	35% Labor 35% Material 30% CPI	1977-2,000,000 1978-2,000,000 1979-1,500,000 1980-1,500,000 1981- 500,000 1982- 500,000	(a) None (b) 53/3 (c) Domestic (d) No (e) Non responsive
1-29-74	Kerr-McGee	$35.90 kgu (12.31/lb) 11/73 $37.86 kgu ($13.02/lb) $39.82 kgu ($13.73/lb) $41.78 kgu ($14.44/lb) $43.08 kgu (14.92/lb) $44.39 kgu (15.39/lb) U_3O_8		100%	35% AHE Chemical and Allied Produce 35% WPI Industrial Commodities 30% CPI All Items	1977- 2,000,000 1978-2,000,000 1979-1,500,000 1980-1,500,000 1981- 500,000 1982- 500,000	(a) None (b) - (c) Domestic (d) No

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11-15-73	Western Nuclear	1979 - $12.00 1980 - $12.00 1981 - $14.00 1982 - $14.00 1983 - $14.00 1984 - $14.00 1985 - $14.00 1986 - $16.00 1987 - $16.00 1988 - $16.00 1989 - $16.00	Base 1973	90%	45% Labor 45% Material	1979-1990 1,000,000/yr.	(a) Advance payment - $3,000,000 (b) 53/3 (c) Domestic (d) No (e) Non responsive
1-24-74	Western Nuclear	1978-1980 $14.00 1981-1985 $16.00 1986-1991 $18.00	Aug. 1973	100%	50% WPI Ind.Commodity 50% AHE Prod Workers Non-Ferrous Metals	1979-1990 1,000,000/yr. In equal monthly shipment	(a) $3,000,000 (b) - (c) Domestic (d) No
1-2-74	Reserve Oil and Mineral Corporation	$12.00 lb.	March 1, 1974	Not Specified	-	500,000	(a) $3.00/lb. (b) - (c) Domestic (d) No

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2-21-74	Nuexco	1974 - $9.00 1975 - 9.50 1976 - 10.00 1977 - 10.00	Firm Firm 9-73 9-73	- - 100% 100%	- - 50% Labor 50% Material	1974- 400,000 1975-1,000,000 1976-1,000,000 1977-1,000,000	(a) Broker Fee $35,000 plus 2 1/4¢/lb. over 1 million (b) - (c) ? (d) No
2-21-74	NAC	1975-1977 $7.40	March 1974	95%	30% WPI 30% CPI 35% Labor	1975-1 to 2 M 1976-1 to 2 M 1977-1 to 2 M	(a) Add @ delivery 2/3 market price of 1 gallon diesel fuel to each pound (b) - (c) Domestic (d) No
3-14-74	United Nuclear	$8.00 lb 9.00 lb 10.00 lb 11.00 lb 12.00 lb 12.50 lb 13.00 lb 13.50 lb 14.00 lb 14.50 lb 15.00 lb	1st Quarter 1974 To month of delivery	100%	35% AHE Metal Mining Industry 35% WPI Industrial Commodities 30% CPI All items	1976 - 300,000 1977 - 600,000 1978 - 600,000 1979 - 600,000 1980 - 600,000 1981 - 600,000 1982 - 600,000 1983 - 600,000 1984 - 600,000 1985 - 600,000 1986 - 600,000 6,300,000	(a) $2.00 lb. U_3O_8 (b) - (c) Domestic (d) No (e) - (f) UNC option to price 50% of contract in 1978 and after on a market price basis. (g) Contained $0.50 per pound limitation of liability

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5--75	United Nuclear (Renegotiation of 1973 contract)	$7.50 $7.75 $8.00 $8.25 $8.60	1972 Base yr.	100%	50% Labor 50% Material	1978-1,000,000 1979-1,000,000 1980-1,000,000 1981-1,000,000 1982-1,000,000 5,000,000	(a) $10,000,000 Downpayment (b) - (c) Domestic (d) Yes
4-25-74	Homestake	1977-1983 $12.50	June 1973	90%	45% Labor 45% Material	1977-1983 400,000/yr.	(a) Advance capital for mine development (b) - (c) Domestic ? (d) No
4-26-74	B&W	$7.10	Base 12/72	70%	40% Labor 30% Material	1975 - 350,000	(a) $2.70/lb. prepayment (b) - (c) Domestic (d) No (Sold while considering
4--74	B&W	1976 -*$12.00 1977 - 13.50 1978 - 15.00 1979 - 16.00 *Est. Firm price on del.	-	-	-	1976 - 300,000 1977 - 600,000 1978 - 600,000 1979 - 600,000	(a) None (b) - (c) Domestic (d) No

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From 1965 to July 1, 1977

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4-15-74	Kerr-McGee	$12.00 lb. 12.75 lb. 13.50 lb.	Assumed: April 1974	100%	1%/yr. 1974-1976 5%/yr. 1977-1978	1976-1,100,000 1977-2,100,000 1978-1,700,000 4,900,000	(a) None (b) - (c) Domestic (d) No
5--74	Nuexco	1974 - 10.25 1975 - 11.50	Firm for yr. of delivery	-	-	1974 - 500,000 1975-1,000,000	(a) None (b) - (c) Domestic (d) No
6-3-74	Nuexco	1976 - $13.50 1977 - 14.50 1978 - 15.50 1979 - 16.75 1980 - 18.25	Firm	-	-	1976-1980 1,000,000/yr.	(a) $2.00 per lb. prepayment (b) - (c) Domestic (d) No
8-5-74	Atlas	Not stated	-	-	-	1975 - 300,000	(a) None (b) - (c) Domestic (d) No

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4-2-75	Western Nuclear	$40.00	Final Index 1974	100%	50% WPI Indust. Commod. 50% AHE Prod. Worker Non-Ferrous Metals	1979 - 500,000 1980 - 500,000 1981 - 500,000 1982 - 500,000 1983 - 500,000	(a) - (b) - (c) Domestic (d) No
2-27-76	Atlas	Not stated	-	-	-	1977 - 200,000 1978 - 150,000 1979 - 250,000 1980 - 500,000 1981 -1,000,000 1982 -1,000,000	(a) None (b) - (c) Domestic (d) No
4-1-76	Utah International	$28.00	1st Quarter 1976	100%	25% AHE Mining Indust. 35% WPI Industrial Commodities 10% WPI 30% IPP-GN	4-1-76 thru 3-31-77 522,000 4-1-77 thru 6-30-78 522,000	(a) - (b) - (c) Domestic (d) Yes

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From 1965 to July 1, 1977

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6-1-76	Union Carbide	Bid to them Min. $40/lb.	1978 base	100%	40% Labor 60% Material	1978 - 300,000 1979 - 400,000 1980 - 0 1981-1,000,000	(a) Negotiable, Prefer $4/lb. (b) - (c) Domestic origin (d) No
7-30-76	Utah International	Bid to them $41 Min.	Spot Sale	-	-	300,000	(a) - (b) - (c) Domestic (d) No
9-22-76	Utah International	Bid to them $41 Min.	Spot Sale	-	-	500,000 lbs	(a) - (b) - (c) Domestic (d) No
9-23-76	Kerr-McGee	$45	Spot Sale	-	-	100,000 lbs	(a) - (b) - (c) Domestic (d) No

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3-15-77	Kerr-McGee	1977 - $42	Firm	-	-	1977 - 100,000	(a) None (b) - (c) Domestic (d) No
3-2-77	Utah International	$41	-	-	-	5-77 150,000 lb. 6-77 200,000 lb. 7&8/77 200,000 lb. 10-77 150,000 lb. 2nd half '79 400,000 lb. 1980-600,000 1981-1,000,000	(a) No (b) - (c) Domestic (d) No
4-25-77	Anaconda	Bid to them	-	-	-	May 1977 500,000 June 1977 500,000	(a) None (b) - (c) Domestic (d) No

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4-15-77	Earth Sciences Inc.	$41.50	April 1977	100%	Inflation	100,000 lb/ year beginning 8--78 for 10 years	(a) Yes, $7,500,000 (b) - (c) Domestic (d) No

Foreign Offers

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9-10-68	Noranda Sales Corp Ltd.	72-73 $7.10 74- $7.30 75- $7.50	Base 1968	65%	40% Labor 25% Material	1972 - 323,000 1973-1,078,000 1974-1,466,000 1975-1,347,000	(a) None (b) 30/4 (c) Foreign (d) No (e) Non responsive
11-8-73	Urangesell-schaft	Market price	-	-	-	1980-90 11,000,000 1979-90 7,200,000 Total-18,200,000	(a) None (b) 53/3 (c) Foreign (d) No (e) Non responsive
12-19-73	Uranerz Canada,Ltd.	$10.75/lb. U_3O_8	1978 Base year	70%	40% Labor 30% Material	1981 - 400,000 1982 - 400,000 1983 - 400,000 1984 - 400,000 1985 - 400,000 2,000,000	(a) None (b) - (c) Foreign (Canada) (d) No
8-74	Uranerz Canada,Ltd.	*$10.75/lb. U_3O_8 *Increased to $12.50 lb. Instruction of AECB (Canada) (1973 Base)	1978 Base Year	70%	40% Labor 30% Material	1982 - 400,000 1983 - 400,000 1984 - 400,000 1,200,000	(a) None (b) - (c) Foreign (Canada) (d) Yes - reduced offer to 400,000 lbs. 82-84
12-21-73	Urancx	1974 - 7.50 1975 - 7.90	-	-	-	1974 - 500,000 1975 - 500,000	(a) None (b) - (c) Foreign (d) No

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SUMMARY OF BONA FIDE PRICE QUOTATIONS OF U_3O_8
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From 1965 to July 1, 1977

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3-8-74	Homestake	1977- 9.05 1978- 9.75 1979- 10.65 1975- 8.00 1976- 8.60 1976- 9.25	Date of delivery	-	-	1975- 250,000 1976 - 450,000 1977- 350,000 1978- 600,000 1979- 300,000	(a) 25¢ downpayment (b) - (c) Foreign (d) No
4-9-74 Amendment 4--75*	Homestake	1976 - 9.05 1977 - 9.05 1978 - 9.75 1979 - 10.65 1979*- 21.33	Date of delivery	-	-	1976 - 350,000 1977 - 350,000 1978 - 600,000 1979 - 300,000 1979 - 500,000	(a) 25¢ downpayment (b) - (c) Foreign (d) Yes
8-31-76 Amendment	Homestake	1976-$24.00 1979-95%market price 1980-95%market price	-	-	-	1976-1,211,970 1979- 443,820 1980- 443,820	(a) None (b) - (c) Foreign (d) Yes
3-19-74	Gulf Minerals Canada Ltd	$12.50 lb 12.50 12.50 12.50	Jan. 1974	90%	50% Labor 40% Material 10% Firm Canadian Indices	1977-1,000,000 1978- 500,000 1979- 300,000 1980-1985 1M lbs/yr.	(a) $6,000,000.00 (b) - (c) Foreign (Canada) (d) No

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1-28-74	Rio Algom (Canada)	Market Price	-	-	-	1979-1990 1 M lbs/yr.	(a) - (b) - (c) Foreign (d) No
3-8-74	Rio Algom	Market Price	-	-	-	1979-1990 12,000,000 1982-1990 9,000,000	(a) None (b) - (c) Foreign (d) No
8--74	Rio Algom	Market price 2 yrs. before del. date	-	-	-	1979-1,000,000 1980-1,000,000 1981-1,500,000 1982-1,500,000 1983-1990 1,500,000 17,000,000	(a) None (b) - (c) Foreign (Canada) (d) Yes
2-19-74	Homestake	1977 - $9.05 1978 - 9.75 1979 -10.65	Date of Delivery	-	-	1977 - 350,000 1978 - 600,000 1979 - 300,000	(a) 25¢ downpayment (b) - (c) Foreign (d) No

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2-19-75	Rio Algom	$18.00	Firm	-	-	1975-1,000,000	(a) None (b) - (c) Canadian (d) None
9--75	Rio Algom	$21.00	Firm	-	-	1975-1,000,000	(a) None (b) - (c) Canadian (d) None
11-4-75	Nuexco	Not stated	-	-	-	1980-94 400,000/yr.	(a) None (b) - (c) Foreign (d) No

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2-24-76	Nufcor/ Phillipp Brothers	Market price $21.77 Min.	Contract date	100%	Index of Gold mine working costs	1,980,000 lbs. Annually, beginning 1980	(a) $100 M at signing (b) - (c) Foreign - S. African (d) No
3-30-76	Nufcor	Market Price $27.95 Min. $40.00 Max.	Contract date	100%	Gold mine Working costs	1982-85 440,000 lbs/yr 1986-90 1,320,000lbs/yr	(a) 25% prepayment within 2 yrs. of signing (b) - (c) Foreign - S. African (d) No
6-76	New Pyrenic Mines, Inc.	$40/lb.	-	-	-	500,000 lbs 24-36 mos. Following Contract signing	(a) $3.5 M prepayment (b) - (c) Foreign - Canadian (d) No
7-9-76	Transnuclear Inc.	$113/kgu	Firm	-	-	1977-27,000 kgu	(a) 50% of contract value (b) - (c) Foreign (d) No

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Date of Offer	Offeror	Base Price	Period for which base price is effective (i.e., date when escalation takes place)	Percentage of base price subject to escalation	Terms of escalation	Delivery Schedule by year (if requirements, estimate in lbs of U_3O_8)	Comments: (a) Prepayment (b) # invitation/ # responses (c) Foreign or domestic source (d) Material actually bought (e) Non responsive (f) Pricing variations (g) Liability limitations
9-23-76	RTZ	$35-$37	1976	100%	-	1979-82 1,800,000lb/yr 1983-85 860,000 lb/yr.	(a) $8/lb. (b) - (c) Foreign (d) no
12-15-76	Nuexco (Canada)	1978 - 47.00 1979 - 51.00 or $35 base price or market price	Dec. 1976	100%	8% annual escalation	1978 - 500,000 1979 - 500,000	(a) None (b) - (c) Foreign (d) No
12-21-76	Transnuclear, Inc.	1977 - $42.00	Firm	-	-	1977 - 50,000 lb.	(a) None (b) - (c) Foreign (d) No

Mr. GORE. Finally, after all of the cautious wording in your statement, at the end of your statement you say that "if the alleged cartel reached agreement on selling uranium only under market-price type contracts, the buyers under these contracts have been damaged" and the difference is substantial in the price paid and the price which would have been paid.

Now you conditioned the statement that the impact would be substantial on the promulgation of a market-price type contract by the cartel.

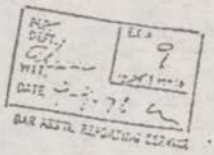
I am going to ask the staff to pass out to you a letter that has not been made public heretofore. It is from the parent company of Rio, with whom you contracted, a member of the cartel. It is addressed to a domestic uranium producer, Western Nuclear, Inc.

[The letter referred to follows:]

R.T.Z. Services Limited

DX-3010

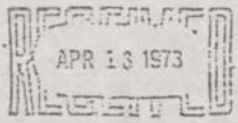
PO Box 133
6 St James's Square London SW1Y 4LD
Telephone 01-930 2355
Telegrams Riozinc London Telex SW1
Telex 24639



LCM/dc

12th April, 1973.

Mr. Robert W. Adams,
President,
Western Nuclear Inc.,
Suite 337,
One Park Central,
1515 Arapahoe,
Denver, Colorado 80202,
U.S.A.



Dear Bob,

I am very glad that we had the opportunity, although briefly, to meet in Chicago and further may I say how appreciative we are of the fact that you were able to invite members of our staff as non American producers to attend your ad hoc committee for the Mining and Milling Committee paper.

My reason for writing is that there are a couple of points of mutual interest, the first of which relates to the work of the sub-committee and the second of which lies outside the responsibility of the sub-committee, but both of which are of some concern to us at this time.

Firstly may I say that we fully agree with your suggestion that in 1980 about 30% of U.S. requirements can be fulfilled under a quota system from non U.S. sources. However we would go further in that it is our belief that in order to facilitate matters and in order to ease the problems which exist for both U.S. and non U.S. producers, perhaps a more gradual lift of the embargo could be envisaged. We would like to propose for consideration by the committee for example that a quota of 5% could be imported in 1977, 10% in 1978, 20% in 1979 up to the full 30% quota for 1980. From our assessments of the various supply and demand figures which have recently been published this gradual lifting of the embargo could be a reasonable solution which fits in well with these current forecasts.

The next point which is outside the responsibility of the committee is the concern which we presently share with many non U.S. producers over the pricing and forms of escalation which presently apply to many of the current bids for uranium material within the U.S. Over the past few years we have adopted

with some success in Japan and to a lesser extent in Europe, but for only one contract in the U.S., a method of pricing which we describe as the world market price concept. Over the longer term we believe that in the interest of both producers and the utilities it is better to arrive at a pricing structure which allows the utilities to pay a reasonable price for the material and allows the producers to make a reasonable profit. As producers we probably share your concern over attempting to fix prices over the long term and at the same time we understand that there are many utilities who similarly dislike fixed prices associated with escalation clauses, and it is because of this that we have been fairly successful in persuading utilities to accept our world market price concept.

As we have not had the opportunity before of discussing this concept with a U.S. producer I wondered whether the enclosed example of how we operate the world market concept might be of interest to you in order that perhaps we could discuss this together when we next meet.

In this context I would like to emphasise that it is definitely not our idea nor the idea of any other non U.S. producer to sell into the U.S. market at low prices. All of us would really like to maximise our profits and are therefore very much more interested in U.S. prices than in non U.S. prices.

I very much hope that these few remarks may be of some help and I sincerely hope that the AIF will see their way towards accepting the recommendations of the ad hoc sub-committee.

With kind regards,

Yours sincerely,

Louis Merel

L.C. Merel

WORLD MARKET PRICE CLAUSE

For deliveries during the years through the prices shall be determined as follows :-

(i) The year three years prior to the Delivery Year is hereinafter in this Clause referred to as the "Pricing Year" (i.e. the first Pricing Year shall be).

(ii) During April or May of each Pricing Year Minserve shall propose a reasonable price to for the U_3O_8 in the concentrates to be delivered during the relevant delivery year (such price is hereinafter in this Clause called "the concentrates price").

(iii) shall either agree that price or before the end of June of the relevant Pricing Year propose a reasonable alternative. If fails to propose an alternative price it shall be deemed to accept the price proposed by Minserve.

(iv) If an alternative is proposed Minserve and shall meet as soon as possible with the intention of reaching an agreement.

(v) If no agreement can be reached by the end of September of the relevant Pricing Year the concentrates price shall be settled by an expert in the following manner :-

(A) The expert shall be appointed by agreement between Minserve and or, failing agreement, appointed for that purpose by the President for the time being of the International Chamber of Commerce. In settling such price the expert shall be instructed to arrive at a fair market price for sales by a major producer to a major utility under a long-term contract for substantial tonnages having regard to :-

(I) the then current market conditions for deliveries in the relevant delivery year;

(II) the long-term nature of the contractual obligations under this Agreement and the quantity of concentrates involved;

(III) all other relevant factors.

Minserve and shall submit to the expert all market information which they may possess and be at liberty

to reveal relating to contracts for sales of concentrates for delivery in the relevant delivery year. The expert shall be instructed to treat such information confidentially and in evaluating such contracts have regard to prices, year of delivery, quantities, dates when contracts were concluded and the geographical locations. The expert shall further be instructed that he may if he chooses settle a range of prices (which should be as narrow as possible) rather than a single price, in which ever the mean of the range shall be taken as the price settled by the exp Subject to the provisions of sub-paragraph (vi) below the expert's settlement shall be final and binding on the parties except that such settlement shall be invalid unless made before the end of November of the relevant Pricing Year.

(B) The cost of the fee to the expert shall be paid by the parties in such proportion as the expert shall decide.

(C) The "Call Price" means the lowest concentrates price proposed in writing by Minserve to from April to August of the relevant Pricing Year inclusive and the "Put Price" means the highest concentrates price proposed in writing by to Minserve from April to August of the relevant Pricing Year inclusive.

(D) If no valid expert's settlement is forthcoming shall have the option, exercisable by notice given to Minserve during the first 15 days of December of the relevant Pricing Year, to buy at the relevant Call Price, or in the absence of a Call Price at the relevant Put Price.

(E) Failing the exercise of this option, Minserve shall be free to sell elsewhere and shall furthermore have the option, exercisable by notice given to during the 30 days following 15th December of the relevant Pricing Year, to sell to

(vi) Notwithstanding the provisions of the above sub-paragraphs the concentrates price payable to Minserve for concentrates to be delivered from to inclusive shall under no circumstances be less than per pound of U_3O_8.

Mr. GORE. Do you have any contracts with Western Nuclear?

Mr. KVAVEN. Not really. Indirectly, they are a supplier to B. & W. with whom we do have a contract.

Mr. GORE. This letter is from a cartel member, R–T–Zed. It is written to a domestic uranium producer. It is written right after the Oakbrook meeting, which I believe you attended; did you not?

Mr. GILLELAND. I did not but we had representatives there. I personally did not.

Mr. GORE. TVA had representatives there. All right.

It talks about the embargo. He says:

> The next point which is outside the responsibility of the committee is the concern which we presently share with many non-U.S. producers over the pricing and forms of escalation which presently apply to many of the current bids for uranium material within the United States.

I am reading from the last paragraph on the first page:

> Over the past few years we have adopted with some success in Japan and to a lesser extent in Europe, but for only one contract in the United States, a method of pricing which we describe as the world market-price concept. Over the longer term we believe that in the interest of both producers and the utilities it is better to arrive at a pricing structure which allows the utilities to pay a reasonable price for the material and allows the producers to make a reasonable profit. As producers we probably share your concern over attempting to fix prices over the long term and at the same time we understand that there are many utilities who similarly dislike fixed prices associated with escalation clauses, and it is because of this that we have been fairly successful in persuading utilities to accept our world market-price concept.

He goes on to say—and this is between two producers which obstensibly are competitors:

> In this context I would like to emphasize that it is definitely not our idea nor the idea of other non-U.S. producers to sell into the U.S. market at low prices. All of us would really like to maximize our profits and are therefore very much more interested in U.S. prices than in non-U.S. prices.

Does this letter strike you as unusual, being written from one uranium producer to another?

Mr. GILLELAND. I think it would be unusual in the absence of cartel activities.

Mr. GORE. It does appear to promulgate the idea of a world market price, does it not?

Mr. GILLELAND. Yes.

Mr. GORE. You say in your statement that if the cartel was successful in promulgating the idea of a world market price, then the impact of the cartel would be substantial.

Mr. GILLELAND. Yes.

Mr. GORE. I guess the conclusion from that is that you would agree that the impact is substantial. I guess I do not want to put words in your mouth but you conditioned your statement on that premise. The premise appears to be established.

Mr. GILLELAND. Mr. Chairman, I think the situation we are in, as I said earlier, I have not read the cartel papers myself but I certainly have no doubt from the information that has been available that the cartel does exist. I think the question of the long-term effect of the cartel on TVA is something that we are in the process now of having our legal staff investigate. I think the detailed effect of that still has to be determined.

But certainly to the extent that we were forced to buy under conditions that we would not have chosen otherwise, which resulted in being locked into high prices, for whatever reason those high prices came about, then that would result in damage.

Mr. GORE. Mr. Mullins made an earlier statement that back when you were first looking at this Rio contract you projected the effect of a cartel if there was one, and you were not quite sure, would be minimal. TVA is reexamining that analysis, to say the least; is that correct?

Mr. GILLELAND. Yes.

Mr. GORE. I hope that you reach the conclusion in a way that will allow the TVA consumers to recover some of the damages which I believe they have suffered as a result of this cartel.

Now let me proceed a little bit further with this idea of the world market price. You say it is so important to establishing the impact of the cartel.

I have a letter here from a Gulf official addressed to Mr. Erik Kvaven. I would ask the staff to show you a copy of that letter. [See appendix A, at p. 611.]

This letter is written a month after the letter that I just read to you from R–T–Zed.

In other words, the members of the cartel were pushing this idea of a world market price. There was a meeting in early 1973 in San Diego that was between uranium producers. There was a meeting in Oakbrook. The R–T–Zed representative attended the meeting in Oakbrook. TVA had representatives there.

The idea of the world market price was discussed. R–T–Zed writes a domestic utility promulgating the idea of a world market price. Here a month later a representative of Gulf writes TVA and says:

> Dear ERIK: Wayne Fowler informed me that you would like our thoughts on mechanisms for determining world market price. While we do not pretend to have had a great deal of experience along this line, nevertheless, we have had some, and also have looked at various aspects of the problem in quite some detail. I am pleased to be able to present these thoughts to you.

I personally find it ironic that they would say they did not have much experience in figuring out what the world market price was at a time when they were setting the world market price behind closed doors.

You have said before that you had no idea that this was going on at the time.

Mr. Kvaven, why were you asking about the world market price?

Mr. KVAVEN. Quite a few of the producers were unwilling to quote prices at that time. This was the method by which they chose to make sales. The reason for this letter was to examine Gulf's purposal on the way of structuring a market price type contract.

These were quoted in various ways. Some had a compulsory arbitration in which the price arrived at by a third party becomes the price under the contract. Others had the approach that if the parties could not agree on the price, then neither party was bound to sell or deliver.

Mr. GORE. Without objection, I am going to insert in the record both of these letters, one from Mr. Mazel from R–T–Zed and one from

Mr. Gregg, representing Gulf. Without objection, I am also going to insert the explanation that these two men, representing different companies, respectively, give what the world market price is according to their understanding.

I think the record will reflect that both R–T–Zed and Gulf are not only promulgating this concept of world market price, but give explanations of what they mean by the concept and how it is arrived at that are substantially identical.

[See p. 385, and Appendix A, at p. 611.]

Mr. GORE. You say, Mr. Kvaven, that the utilities were being forced to buy at a world market price concept because they could not get uranium quoted to them in any other way.

Let me ask you and Mr. Gilleland about TVA's experience in putting out 53 bid requests in October of 1973.

Mr. Gilleland, why do you believe that TVA got no response to its offer to buy uranium?

Mr. GILLELAND. I guess from our understanding of what was happening in the market, we recognized in the long term some of the producers were having problems developing prices based on assurances of reserves. They had not been developed. The uranium market also was depressed. The producers did not have a lot of income. We recognized that as being one of the situations which we felt from our perspective existed in the market.

Also, prices had been going up. One of the explanations that we were given by producers was, "We are reassessing our reserves. We are reassessing the market." I suppose to some extent that sounded logical to us in the absence of more definitive knowledge about the activities of the cartel.

Mr. GORE. In December of 1973, you put out bid requests again. This time you said, "Set your own terms. Come in at whatever price you want." Yet you still got no response.

In retrospect are you curious about why none of the domestic producers would respond to an open-ended offer like that to sell as much as 86 million pounds or any amount thereof?

Mr. GILLELAND. Well, I would guess that there are probably a number of reasons. Maybe each potential producer had some different reason. I would guess in some cases they were looking ahead to a set of conditions that might develop that would be more favorable to them.

Mr. GORE. Higher prices?

Mr. GILLELAND. Yes.

Mr. GORE. Do you find it curious that all of them did that, that none of them offered to sell at anything close to what the price was?

Mr. GILLELAND. We certainly expected a better response than we got.

Mr. GORE. But you did not get that response.

Mr. GILLELAND. Right.

Mr. GORE. There were meetings of the uranium producers in the months prior to TVA's bid request. One of these meetings was in San Diego. Are you familiar at all with that meeting?

Mr. GILLELAND. No; I am not.

Mr. GORE. I am not sure how well that was publicized. The staff is conducting further investigations of that meeting now.

I am going to ask you to look at another memorandum which I will ask the staff to hand to you. This describes from a peripheral perspective the San Diego meeting. The domestic uranium producers gathered together in what I believe was the Mining and Milling Subcommittee of the Atomic Industrial Forum. A representative from Exxon apparently arrived at the meeting.

According to the memo, the embargo question was at least one of the things under discussion. It says:

> Exxon has very conservative guidelines on such participation and when Tom discovered that the AIF representation was not acceptable (lack of a lawyer and/or M. Gordon), he elected not to participate and returned to Seattle.

Does that indicate to you that the discussions that were taking place there were conducted in such a way that they violated the antitrust guidelines of at least one of the major oil companies of this country?

I recognize the fact that the oil companies' guidelines do not reflect the law in any way, shape, or form, but they give some indication of what kind of corporate conduct we ought to be looking for in this country.

We will insert this memo into the record, without objection. It is from Wayne Fowler to Mr. D. Hunter. Both of them are Gulf employees.

[The memorandum referred to follows:]

CONFIDENTIAL 4 2 28 2 2

IN REPLY REFER TO

W. D. Fowler

Mr. D. Hunter

DATE Feb. 23, 1973

EXXON Nuclear

86700 00011

Tom Upchurch advised me that he had come down to Los Angeles on Monday to attend the AIF meeting to discuss the embargo question where other producers were present. EXXON has very conservative guidelines on such participation and when Tom discovered that the AIF representation was not acceptable (lack of a lawyer and/or M. Gordon), he elected not to participate and returned to Seattle.

This may have some peripheral impact on your call to Ray and thought you should be aware.

Fowler

Mr. GORE. Let me rephrase the question if you had difficulty with the way I phrased it.

On reading this description, albeit from a peripheral perspective, of the San Diego meeting, does it pique your curosity any further about why the domestic producers refused to deal with TVA under any conditions and under any price?

Mr. GILLELAND. Congressman Gore, you know that is kind of a difficult question for me to answer because, as far as this particular item is concerned, I guess all I know is what I read. It does not really specify, although I would guess with other background information which you and your staff have you might draw conclusions.

Mr. GORE. Are you familiar with anything called the Uranium Institute?

Mr. GILLELAND. I have heard the term.

Mr. GORE. Has TVA been invited to join the Uranium Institute?

Mr. GILLELAND. I am told that we have been.

Mr. GORE. What was TVA's response?

Mr. GILLELAND. We have declined so far.

Mr. GORE. Why have you declined?

Mr. GILLELAND. I supposed that if it were something which we recognized as being involved in cartel activities, obviously it would be very much against our policy. As I recall what I have read about the Uranium Institute, it was really proposed to be a place for different entities of the industry to exchange views. I suppose from what I have read since then it was not so innocent.

Mr. GORE. In fact, members of the cartel which was allegedly disbanded are still meeting under the aegis of the Uranium Institute. The utilities were asked to join in some form for discussion between the different entities in the uranium business.

At some point TVA became aware of a uranium shortage and experienced—perhaps panic is too strong a word—but experienced an active concern about their ability to get uranium at any price. The assurance of a supply became of paramount importance.

Did the decision by the domestic producers to withhold uranium from the marketplace and stop selling at any price act to convert the uranium market from a buyer's market to a seller's market?

Mr. GILLELAND. Let me respond by giving a little background on some of the studies that we had made. Maybe this will put some perspective on some of our views.

As I pointed out earlier, we have been making studies. We developed the policy that we would become knowledgeable in the uranium production business. As a result of those studies, it appeared to us that the productive capacity of the United States would fall short of the requirements in the late 1970's and early 1980's. It was then when we made the decision to go into our program of acquisition of reserves and development of our own capabilities to supply some of our own reserves.

In light of those studies, some of the things that took place might have appeared logical to us because of our projection and prediction of some of the shortages that we felt were going to occur, recognizing that it did require capital to go into production centers, explore, find, build mines and mills, and it was a recognition of that. At that time

the state of our knowledge was such that some of the things that were taking place in the industry really did not seem to be all that out of character from what you would expect. Maybe in retrospect, from what we know now, there were some things that took place to a greater degree than was warranted by the actual conditions that took place in the industry.

Mr. GORE. You looked at the memorandum from Mr. Fowler earlier in which he described the effect of the cartel on the domestic marketplace. Would you care to comment on that?

This is where he said by constantly nudging the world price upward the cartel causes the domestic producers to constantly nudge their prices upward and to refuse to sell until the price is at a level higher than the foreign price at a particular point in time. By fixing the price at a steadily escalating level, the cartel effectively controlled the world market price and caused the increase in the domestic price.

Mr. GILLELAND. Mr. Chairman, I hesitate to get into discussion of another matter because it is the subject of pending litigation, but there were a number of other things that took place in the market.

I mentioned in my testimony the effect of the Westinghouse actions. While I would prefer not to be asked questions that would require me to get into a detailed discussion of that, I think there were many things, including the activities of Westinghouse, that had an effect on the increased market price in the United States. We just have not sorted all of those out to be able to define how much of the increase took place because of this action or that action.

The effect that we see in TVA is the fact that we would be locked in by the world market price at higher prices. Although I think there were a number of conditions which existed which could cause the price of uranium in the United States to go up, I do not think it would have gone as high as it did if it had not been for Westinghouse.

Mr. GORE. That is not a subject for this hearing. I will agree with you that I believe a fair reading of the evidence will indicate that Westinghouse gambled big and lost big. To speculate on uranium that was not at hand is negligent, if not worse. Whatever the factors for the increase in price, certainly short sales have an effect on the marketplace.

Do you agree that another effect on the marketplace was the activity of the cartel as outlined in the memorandum by the economist from Gulf?

Mr. GILLELAND. Yes; I would have to agree with that.

Mr. GORE. I will not ask you to characterize the effect of the cartel. You have said the cartel had an effect on the marketplace. You have said that the perception of TVA back in 1974 was that if there was a cartel, the projected effect would be minimal. You have said that TVA is actively reexamining that, to say the least.

Let me ask you this. You said in your testimony that TVA is preparing to produce its own uranium. I think that the Board of TVA is to be commended for looking into the future in an effort to protect the consumers in this area and assure them of a continuous supply of uranium. They are to be commended for getting into production and guaranteeing a supply.

Let me ask you this. What price do you believe you can produce uranium for?

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Mr. GILLELAND. I think it would be interesting to note that cost was part of the basis for the TVA perspective. When we entered our first exploration venture, at that particular time we had not located an ore body. Our expectation was that the cost of producing from that ore body would be above what was then perceived as the current market price. Those were the depressed prices I am talking about in 1971 and 1972.

The question of what it will cost to produce now varies considerably depending upon the kind of reserves. One thing that has happened in the industry is that as the prices that producers can command have gone up, they have automatically also gone to more marginal ore bodies. We will not know exactly what these things are going to cost until we get them into production. However, we feel confident it will be less than the market price.

Mr. GORE. I will yield to counsel briefly.

Mr. ATKISSON. Thank you, Mr. Chairman.

Mr. Gilleland, you recall speaking with the staff of the subcommittee in Washington a couple of weeks ago, do you not?

Mr. GILLELAND. Yes.

Mr. ATKISSON. Do you not express the opinion to me, to Mr. McLain, and to Congressman Gore that you felt the price with a built-in profit component for uranium at which you could produce would be roughly $25 a pound?

Mr. GILLELAND. Yes; I would agree with that. Let me explain what I meant by that. Maybe I did not understand exactly the way Congressman Gore meant this question.

What I think I said was this. In looking to production in the future, the question of an adequate incentive price we thought would be in the range of $25. We would say that a lot of our reserves could be produced for that.

The other thing I would say is this. By going to higher prices and lower grades, you can automatically get more pounds by spending the extra dollars to get the marginal pound. That is really what I was getting at.

In other words, to some degree at the marginal limits you can control how much you are willing to spend to get that last pound.

Mr. ATKISSON. Thank you.

Mr. GORE. Going after the kind of grade that the marketplace is accustomed to presently, TVA expects to be able to produce for around $25 per pound. That figure includes a profit guaranteed to your partner in this venture; is that correct? Somebody else is actually doing the digging, are they not?

Mr. GILLELAND. That is right, although there are arrangements under which we will get our uranium which do not factor into the cost, the cost TVA would pay for the same rate of return which the other partner might want for his uranium.

Mr. GORE. I see. So the profit guaranteed to the partner is only part of the profit that the partner expects from the deposit?

Mr. GILLELAND. I think the answer to that question is yes.

Mr. GORE. We have a memorandum which is already in the record at an earlier hearing to which I would like to refer now. This is from Mr. Gregg to Mr. Hoffman, saying that Canada and Australia agreed that

the floor price should cover operating costs plus capital recovery at a reasonable rate of interest together with an additional amount which would provide an incentive for high risk exploration. It is Canada's view that $6 per pound U_3O_8 is the least amount that will accomplish this.

This is a few years ago. Six dollars a pound there was described as an adequate incentive price. Certainly costs have gone up. The $25 estimate that you give certainly seems adequate for the company that expects to make a profit as a coventurer with TVA.

Is it fair to say that at the time this price has been going up the demand in the marketplace was increasing rapidly, staying about the same, or weakening?

Mr. GILLELAND. If I recall the forecast that I have seen for the U.S. domestic demand for uranium, it is this. Forecasts were going up until about 1971 and 1972. Since that time, the forecast of the requirement for uranium has continually declined as a result of slips or failure to order as much as has been forecast and the change in the ERDA assay for the enrichment plants.

From 1972 the figures I have seen have all come down.

Mr. GORE. Then while the price was going up, the demand compared to what it was projected to be was going down. It has a familiar ring.

We had a shortage which was caused in large part by the reluctance of producers to sell at any price. The utilities perceived this shortage. The price goes up 700 percent at a time when the demand is going down. Is that correct?

Mr. GILLELAND. I have not tried to check the numbers but I believe it has gone up substantially while the demand on the market has slackened.

Mr. GORE. How would you characterize, Mr. Gilleland, the effect of the ERDA decisions on the demand for uranium?

Mr. GILLELAND. You refer to the types of contracts?

Mr. GORE. Yes. I refer to their requirement that utilities inform them 10 years in advance of the enrichment need. Those who would minimize the impact of the cartel and the impact of other factors in the marketplace blame ERDA's decision for the increase in the demand for uranium. They say it caused an increase in demand.

Do you believe that ERDA's policies inflated the demand for uranium?

Mr. GILLELAND. I, of course, express my own personal view about how I see the situation. I do not understand why the so-called fixed commitment type contract should have had an effct on the demand for uranium. The reason I say that is that the primary commitment which the utility makes is to buy a reactor. It schedules that reactor and it knows it has to get its uranium scheduled and it has to schedule its enrichment services.

The fact that ERDA comes along and says, "You have to deliver to me uranium based on the schedule based on when the reactor is supposed to go into service"—it would appear to me that proper planning ahead would require that you schedule that uranium just like you schedule that reactor. The biggest commitment is for the reactor, not for the uranium or the enrichment.

Mr. GORE. You say that your personal view is that the ERDA decision had no effect on the demand for uranium in the marketplace.

Let me ask you about your opinion in your role with TVA. Did TVA's demand for uranium go up because of that decision by ERDA?

Mr. GILLELAND. No.

Mr. GORE. It did not?

Mr. GILLELAND. No.

Let me clarify that. A moment ago I said—and I do not know what other people might have done—but I do not understand why they have had a different view of their uranium requirements just because ERDA said we have a fixed commitment type contract.

Mr. GORE. They already had a long-term commitment to those supplies of uranium because they had committed themselves to build a reactor.

Mr. GILLELAND. That is, of course, a very large commitment.

Mr. GORE. The other decision by ERDA which some have blamed for this increase in prices was the decision on tailings. I understand that that decision was never even made. It was contemplated but not made. We are going to explore that with the representatives of ERDA a little bit later.

On the embargo question, you knew that the embargo would be lifted as far back as 1972; is that correct?

Mr. GILLELAND. No, sir, I would not say that.

First, let me say as a prudent planner you might look ahead and decide, because of ERDA's announcements or speculation, that some day it might be raised. However, we could not count on that until it took place.

Mr. GORE. When was the announcement made that it would be lifted?

Mr. GILLELAND. As I recall, ERDA put out an announcement in the fall of 1973, and asked for comments on this change in their regulations.

As you are aware, they then made the announcement in August 1974, that the embargo would be lifted.

Mr. GORE. That was the same month that you contracted with three members of the cartel for uranium?

Mr. GILLELAND. Yes; but it has to lie before the Joint Committee for 45 days before it becomes effective. The Joint Committee on Atomic Energy held hearings. I participated in those hearings. The final action to make the announcement official was in October of 1974. In that intervening year there were very strong indications that some kind of a relaxation of the embargo would take place and they had already announced a proposed schedule.

Mr. GORE. So in 1974 it was virtually certain—no one had much doubt—that the lifting of the embargo was imminent. As far back as 1972—and I will refer you to the memo from Clark Grover that we passed out earlier—the bottom paragraph refers to Mr. Kibbe. He was president of the forerunner of Nuexco: is that right.

Mr. GILLELAND. He is now the chairman of Nuexco.

Mr. GORE. He is the chairman of Nuexco.

This is a TVA document dated October 1972:

Mr. Kibbe commented that he feels the embargo on foreign uranium will be lifted in 1976. The EEI has recommended that the embargo be lifted in 1975, and the AEC says possibly 1978.

So you had pretty good indications, as did the other utilities, that the embargo was going to be lifted sometime within that time frame. In 1974 that expectation was firmed up and the announcement was in fact made.

I wanted to establish that for the record in order to point out the relationship that the cartel had on the domestic market.

The uranium that TVA purchased from cartel members will mostly be delivered in the future, but 1.2 million pounds of that uranium has already been paid for by TVA; is that correct?

Mr. KVAVEN. That is correct.

Mr. GORE. So to the extent that TVA paid more for that uranium because of the price-fixing activities of the cartel, TVA has already paid more money because of the cartel's activities. Would you agree with that?

Mr. KVAVEN. Yes.

Mr. GORE. I yield to Mr. Maguire.

Mr. MAGUIRE. Mr. Chairman, I am just struck with this situation here which impresses me as being one in which TVA had very limited leverage.

I simply wanted to confirm my thought—if the gentlemen are prepared to do so—that had you taken more decisive steps to act by informing the Justice Department or otherwise clarified what the documents show and your testimony shows—a recognition on your part that some sort of price fixing was going on—had you acted on that aggressively, you might have feared a continued inability in the future to find uranium which you knew you would need. Is that a fair assessment of some of your thinking during that period?

Mr. GILLELAND. No, sir; I do not think so. I think our past experience has shown that where we felt we had specific knowledge we acted strongly.

For example, I think TVA provided the basis for the later conclusion of price fixing between the turbogenerator manufacturers, GE and Westinghouse. This would not have deterred us from pursuing some activity in that area if we had had some basic personal knowledge, which we did not have.

Mr. WAGNER. Mr. Chairman, may I comment on that?

Mr. GORE. By all means.

Mr. WAGNER. I would also like to comment on some other points that have been discussed.

When you have the responsibility for supplying power for a region that has 7 million people, that is a pretty heavy responsibility. The one nightmare or cause for panic—I think you mentioned panic earlier—is the fear that some day you are going to have a major blackout. We can see the consequences of that in the two blackouts that have occurred in New York.

Mr. GORE. TVA has never had such a major blackout.

Mr. WAGNER. No, sir, we never have and, the Lord willing, we never will have.

Mr. GORE. In fact, we have supplied power to New York when they have experienced theirs.

Mr. WAGNER. Yes, sir; on the first one we did. We have had help from our neighbors which has helped us to avoid blackouts in this area, too. It is a two-way street.

Because we simply must have the light there when you flip the switch, we have got to have the fuel for these plants, whether it is uranium or coal.

I believe it was 1969 or 1970 when we began seeing our coal prices rise. Our Board determined then that we were not going to let that happen with our nuclear plants. We instructed the staff to go out and get some uranium under our belts so that we could control the price and be sure of supply. We bought coal, too, but we do not have as much coal as we should probably have.

When we got the bad reaction we did in putting out invitations to bid, we put even more heat on the staff to get out and get some uranium for us in the ground or somehow or other.

We try very hard to get competition. We believe that competition is what makes this country go. As you know, we normally by on competitive bids. When we cannot get competitive bids, we are in trouble.

I am satisfied that there ought to be competition in the energy field by some method or other. I think if there is a cartel, as there apparently is—and I will not quibble about that because I am sure there has been a cartel—its effect cannot be good for consumers and therefore something ought to be done about it.

I think that our record in going to the Justice Department and bringing suits for violation of antitrust in the consumer's interest is about as good as anybody's in the country.

Mr. MAGUIRE. Except, sir, you did not act in this case.

Mr. WAGNER. Let me say that we also do not like to jump off the deep end until we know that we have a basis for it. We are determining that now.

In retrospect, if you look at the history of this thing, the uranium business started out in this country as a Government controlled affair. As Mr. Gilleland has pointed out, this is really the governments of these foreign countries that were involved in the control at first. You do not bring suit in the U.S. courts against foreign governments for something such as this.

I think it has only been recently that domestic companies have been involved.

Mr. GORE. Rio was not a foreign government and was not in the same category as Uranex, for example.

Mr. WAGNER. Rio, as I understand it, their price is still controlled by the Canadian Government. That is correct.

Mr. GORE. They had a review procedure but they proposed price schedules in partnership with the other cartel members and set the price.

Mr. WAGNER. I think I pointed out that the Board was not aware that Rio was involved in the possible cartel at the time the contract was awarded.

Mr. MAGUIRE. That is not what the record shows.

Mr. GORE. The record shows that some employees may have had knowledge of some kind but that the Board did not.

Mr. WAGNER. That is correct.

As I said before, if we had known that there was a cartel and there was price fixing involved—and I indicated before that that was an

"iffy" question—but nevertheless I think if we had known that, we probably would have had to buy the uranium but we would have moved with the Justice Department to bring some kind of antitrust action.

The purpose of the investigation which our legal staff is making now is to determine whether there is a basis for doing that. If they find a basis, we will certainly act.

Mr. MAGUIRE. Mr. Chairman, may I pursue this for a moment?

Mr. GORE. Certainly.

Mr. MAGUIRE. I take it the early part of your statement in answer to my question is an acknowledgment of your concern about supplies of uranium in the future.

Mr. WAGNER. Yes, sir.

Mr. MAGUIRE. You have since gone on and said that you were not really sure that there was a cartel, based on your personal knowledge and so on. But am I right about the first part of your answer?

Mr. WAGNER. Yes; you are right about that.

Mr. MAGUIRE. Let's explore the second part of the answer because I am still a little perplexed.

A few minutes ago Mr. Gilleland said it would be "against our policy" to have participated in a price-fixing situation. This was in answer to Mr. Gore's question.

What policy was that? Where was that policy expressed? Was it expressed in written form anywhere or was it simply understood?

Mr. WAGNER. I do not know precisely what Mr. Gilleland had in mind. However, if they proposed to the Board that we join some organization which was engaged in the fixing of the price of uranium, it is understood that we would not join that. I can assure you.

Mr. MAGUIRE. Is that the answer to that question, Mr. Gilleland?

Mr. GILLELAND. Yes. I do not think I would even have to ask the Board what its views would be. I think I would suspect already.

Mr. MAGUIRE. What we have here is a situation which was not laid out in consecutive paragraphs on a single piece of paper to the Board, then making it possible for all of you to permit the situation to continue without really questioning it. Isn't that really what we have here?

Mr. WAGNER. I do not think so.

Mr. MAGUIRE. With everybody having sort of partial knowledge perhaps?

Mr. WAGNER. The institute which Mr. Gilleland talked about I think is an organization to fix prices.

Mr. MAGUIRE. I am not talking about that right now. I am talking about the record that we have developed so far in this hearing.

Mr. WAGNER. But you said we had that same sort of situation.

Mr. MAGUIRE. I said perhaps a similar situation in terms of its effects; namely that you were constrained to purchase uranium at prices which you would not otherwise have had to pay.

Mr. WAGNER. That is possibly right, but we will take whatever action is available to us under the law. We still will do that. It is not a question of one taking precedence over the other except chronologically.

Mr. MAGUIRE. We have Mr. Mullins saying this was all written up in the trade press at the time. That is introduced as a suggestion to

the effect that you did not have any particularly secret understanding of what was going on, but it does provide one part then of the confirmation of a pattern.

The second thing is that as early as, October 2, 1972, an internal memorandum of TVA indicates that a cartel—and it does not say an "alleged cartel" but it says "the cartel to control uranium prices"—probably started in September.

It goes on to say that Rio Algom, from whom you subsequently purchased a very large quantity of uranium, was expected to make sales in the future, presumably under this cartel arrangement.

There is this later memorandum in 1974 in which there is the notation about the three offers having the same base price.

I find it very difficult, gentlemen, to accept the hypothesis, which I think you have suggested to us, here, that this was going on in full view of the trade press, it was going on in full view of members of the staff—in this case Clark E. Grover, Chief of the Fuels Planning Branch. You signed a major contract with Rio without even, according to your own testimony earlier today, inquiring as to the existence of a cartel. Apparently the Board, to quote Mr. Wagner, did not know anything about this. That to me seems, to put it charitably, a rather curious situation.

I wonder if what we have actually is sort of a sub rosa recognition of what the facts were and an inability on your part to figure out how you were going to leverage the situation, which I think you have acknowledged and which I believe to be the case. Therefore, in spite of what you knew or in spite of what you at least had every reason to suspect, you did not look further and took no action.

Have I erred at any point along the way in suggesting such a gloss of the facts as they have been developed so far by this committee?

Mr. WAGNER. You have described some memorandum which I indicated I had not seen until today.

Mr. MAGUIRE. You have seen them now.

Mr. WAGNER. That is right.

As far as the Board is concerned, we are going to use whatever leverage we have by buying uranium in the ground, just to be sure we have it. Whether it was a cartel or not, that was important to us and we did it.

Mr. MAGUIRE. The reason this is important is that you have a difficult role to play, admittedly. On the one hand, you are in charge of insuring a supply of power to the consumers of power in your area. On the other hand, you also have a responsibility to protect those customers from unreasonable prices wherever they may originate.

We had a situation in New Jersey, Mr. Chairman, with which I am familiar where the same logic was present. There was a natural gas producer in Texas and Louisiana that was supposed to provide natural gas in given contract volumes to a pipeline, which in turn was to deliver it to a distributor in New Jersey. The gas was not delivered. The distributor and the pipeline, for their parts, failed to take aggressive action to insure that the contract volumes were delivered under the terms of the contract. One of the reasons they failed to do that was because hey had no other alternative. They faced a situation in which they might not get any gas if they complained or if they took legal

action. So their effort to represent their consumers in this situation was set aside in favor of playing along with the producer in its attempt to renegotiate a contract.

It seems to me, Mr. Chairman, that we have a strikingly similar situation here in which they have been torn between two objectives. They perhaps have not been as aggressive on the one as they might have been had they felt they had more leverage on the situation.

Mr. WAGNER. Mr. Maguire, let me say that we have been as aggressive on protecting our consumers as anyone has been.

Mr. MAGUIRE. But in this case you have not acted.

Mr. WAGNER. We bought the uranium. If there is a basis for a lawsuit to protect the consumers, we will bring one. I can assure you of that.

Mr. MAGUIRE. I hope perhaps this hearing will assist you in coming to those kinds of conclusions because you did not come to them between 1972 and 1977 on your own, did you?

Mr. WAGNER. We did not have a basis for it. We hope that the hearings will be helpful to us. As indicated, I think they will be.

Mr. MAGUIRE. I hope that they will, sir.

I might just say to the chairman that is seems to me that if TVA had read its own files carefully and perhaps asked the next question at some key meetings that were held, then perhaps there would have been a basis.

That is my judgment based on my reading of the record. Of course you are entitled to your alternative interpretation.

Mr. GILLELAND. May I make a few additional comments?

Mr. GORE. Absolutely.

Mr. GILLELAND. I would like to reiterate some of what I said before in order to put this in perspective.

The first thing you have to look at when you get reports is what kind of credence you put in those reports. The second thing, of course, is what kind of action do you consider that you could take in those situations.

I think the early reports, as I said before, were based on information as we heard it. It was action by foreign governments. Again, as a layman looking at this, I figured there was not anything I could do about that situation anyway.

The other thing is that since we have had specific knowledge—and, as I said earlier, I have not seen any of it personally—but since the specific knowledge of the activities of the cartel has come to the forefront, we have not bought any uranium from cartel members.

Our earlier action was based on what our perspectives were and what we thought the situation was. Because of our knowledge of the industry, we felt that some movement upward in the price was required. So there was not anything that we saw which you could put your finger on that would have made us think that there was a cartel in operation.

Mr. MAGUIRE. Mr. Gilleland, if a murder has been committed and somebody has a suspicion about how that murder occurred, it is not the obligation of that person to personally track down all of the evidence and to personally bring all of the charges against the party who may be suspect. It is simply the obligation of that person to make a

report and to say I think something happened. Somebody was killed and I suspect such and such. They do not even have to determine, when they make that report or give what they may believe is only partial evidence to an authority, whether a government was behind the action. Those are questions which are resolved in due process by the appropriate investigating authority.

If this is an analogous situation in the world of economics where a cartel may be operating or there is at least a basis for believing that one may be operating, it would seem to me that all that would be required of a responsible party would be to go to the proper authorities, as Congressman Gore suggested at the outset of this hearing. Then it can be looked into and perhaps the answer is one way or perhaps the answer is another, but at least you have then discharged your obligation to the extent that you have an obligation—I am sure you agree you do—to report such untoward activities. You said you have a policy against it.

Mr. GILLELAND. I think the information that we had, to use your analogy of the murder, was that we had a report that there might have been a murder but we had no evidence that there had been one.

Also, as I said earlier, these memos which were in-house memos were merely reports by staff members of things that they had read and heard. Again there was no hard evidence that the murder had been committed.

The other point I wanted to make here is this. I think the specific actions that we took were actions which were prudent at the time. I think the information that we had was only information that was in the trade press, and the Justice Department presumably had as much of that information as we had.

Mr. MAGUIRE. And you tried to know as little about all of that as you possibly could; isn't that right?

Mr. GILLELAND. No.

Mr. GORE. Well, the murder metaphor is a little gruesome and perhaps unfair to even the price fixers involved. To explore it within the terms of that metaphor, you say that you received only a report of the murder; yet you were prepared to enter into a contract with a person who was reported to be the committer of that crime. At that point I think your obligation might have been a little more acute.

There is something else I wanted to ask you about. You said that since you had firm knowledge that the cartel existed, you had not entered into any contracts with cartel members; is that right?

Mr. GILLELAND. That is correct, not to my knowledge.

Mr. GORE. Did you mean to indicate by that that the fact of the cartel and the fact that these firms were members of the cartel would lead you not to contract with them? Is it just by coincidence that you have not entered into any contracts with them or is that in any way a result of your distaste for these companies because they have been fixing prices?

Mr. GILLELAND. Again I think there would be a situation that we would have to appraise. Again I do not know whether the situation is analogous but I think it has some relationship. That is the situation that we are in now with oil. We are buying a lot of oil from cartel members and we know we are. The only reason we do it is because we have to have oil and there is nothing we can do about it.

Mr. GORE. There is a big difference between what nations do in regard to their natural resources policy and what private companies do. One of the private companies here is an American company. Others have subsidiaries in the United States. Most have assets in the United States. They are vulnerable to antitrust actions.

TVA has the possibility of recovering damages against private companies. They do not have any possibility of recovering damages under the antitrust law against foreign governments. So I think the analogy between oil and uranium and the analogy between OPEC and the uranium cartel in that respect is misleading.

Mr. GILLELAND. I think I was only referring to the situation where as far as we knew it was being controlled by foreign governments.

As a matter of fact, I guess it is a question of how you categorize the current actions that are being taken by foreign governments.

We had the earlier reference to the action of the Canadian Government.

I guess in answer to your earlier question, we have not gone into the market for additional uranium since we entered the Rio contract. We bought a small quantity of uranium from a domestic supplier but it was at a price which was well under any price that might be implied by the cartel.

Mr. GORE. I believe counsel has a few questions.

Mr. ATKISSON. Thank you, Mr. Chairman.

Mr. Kvaven, you negotiated the Rio contract, did you not?

Mr. KVAVEN. Several others did. I participated in it.

Mr. ATKISSON. Who from Rio Algom participated in the negotiations?

Mr. KVAVEN. Mr. Albino was in and out. Mr. Lowell.

Mr. ATKISSON. Was Mr. Albino present at the meeting that took place the day after the memo to which we referred earlier today was written? That would be the February 1974 memo to Mr. Mullins.

Mr. KVAVEN. I cannot really recall but I believe that meeting was held at Chattanooga with Mr. Lowell and David Burrick.

Mr. ATKISSON. Mr. Albino was not present?

Mr. KVAVEN. That is correct.

Mr. ATKISSON. Is it your testimony that the cartel was not discussed in any way in that meeting?

Mr. KVAVEN. That is correct?

Mr. ATKISSON. I would like to point out for the record, Mr. Chairman, that Mr. Lowell and Mr. Albino both represented Rio Algom at policy Board meetings of the cartel. Mr. Albino, who is an American citizen, is currently in Canada and refusing to submit to the jurisdiction of the courts in this country.

While the matter is still pending in Utah, a Federal district court judge in all likelihood will start imposing fines of about $10,000 a day on the American subsidiary of Rio Algom's uranium mine there. It will be very interesting to see whether Mr. Albino ever appears.

Mr. GORE. This subcommittee is very interested in asking Mr. Albino some questions about these matters also.

Mr. ATKISSON. Mr. Gilleland, you refer on page 9 of your testimony to the fact that throughout the summer of 1973, you held discussions with potential suppliers in order to fashion a bidding process

which presumably would be acceptable to the industry; is that correct?

Mr. GILLELAND. Yes.

Mr. ATKISSON. Did you in those discussions with producers ask for their comments on how the invitation to bid would be structured?

Mr. GILLELAND. That was the purpose of the discussions.

Mr. ATKISSON. Did you receive comments?

Mr. GILLELAND. Yes.

Mr. ATKISSON. So there were not any surprises for the industry's domestic suppliers when the invitation for bids finally went out?

Mr. GILLELAND. No; I do not think there would be any surprises. I think there would be a situation where not all of them agreed with all the terms of the invitation. They would have known in substance what was going to be in the invitation.

Mr. ATKISSON. Had you in that process throughout the summer of 1973, received any comment adverse enough to give you any indication that these companies would refuse to bid and refuse to respond to your invitation of bid?

Mr. GILLELAND. I did not participate in those discussions. I think Mr. Kvaven may be able to give you more details.

Mr. KVAVEN. The potential foreign bidders did not like the fact that the embargo risk was placed upon them rather than on TVA. Most of them had indicated that they would not respond to this invitation unless TVA took the risk on the embargo, which we did not do on the invitation.

Mr. ATKISSON. Was there any indication to you, as there was in hearings before this subcommittee in June, that one of the reasons why suppliers might not be able to respond to your invitation was that you had a requirement that potential suppliers who bid not talk to each other about prices that they are to bid?

Mr. KVAVEN. I have no knowledge that that was the reason, no.

Mr. ATKISSON. You know Mr. L. T. Gregg, do you not, Mr. Kvaven?

Mr. KVAVEN. Yes; quite well.

Mr. ATKISSON. When did you first meet Mr. Gregg?

Mr. KVAVEN. Back in 1972.

Mr. ATKISSON. Do you recall where that was?

Mr. KVAVEN. No.

Mr. ATKISSON. Did Mr. Gregg ever approach you with an offer from Gulf to supply uranium to TVA?

Mr. KVAVEN. Yes.

Mr. ATKISSON. That was a nonsolicited offer, was it not?

Mr. KVAVEN. Correct?

Mr. ATKISSON. Was that just an oral approach? He came up and started talking about some supply that Gulf had and wanted to get rid of?

Mr. KVAVEN. Yes. The discussion, as I recall, took place in New Orleans at an AIF meeting.

Mr. ATKISSON. You said it was in 1972. Do you remember exactly when it was?

Mr. KVAVEN. That was March of 1974, I guess.

Mr. ATKISSON. March of 1974?

Mr. KVAVEN. Yes.

Mr. ATKISSON. Did Mr. Gregg talk to you in terms of world market prices?

Mr. KVAVEN. No. We were discussing $12.50 uranium at that point in time.

Mr. ATKISSON. A letter from Mr. Gregg predates that meeting?

Mr. KVAVEN. Yes.

Mr. ATKISSON. It evidently had reference to some sort of offer from Gulf. That was a different offer then from the one about which you are talking in New Orleans?

Mr. KVAVEN. Yes.

Mr. ATKISSON. Was that a solicited offer?

Mr. KVAVEN. I guess they were all solicited by the fact that we had had our invitation go out and everyone knew we were looking for uranium. We had approaches from most of the sellers one way or the other.

Mr. ATKISSON. At that time had Mr. Gregg brought up world market prices as a reference point for negotiations?

Mr. KVAVEN. To the best of my recollection—I would have to look at my files to be sure—I think their position was that they did not want to quote prices beyond 1985.

Mr. ATKISSON. What I am trying to establish is that you received a letter from Mr. Gregg suggesting that he did not have any cogent experience with respect to knowing what world market price was. Then he suggests a method for determining what world market price was. I gather that that was in response to a request from you for a better understanding of what the world market price was.

Mr. KVAVEN. Yes.

Mr. ATKISSON. So you had some doubts in your mind as to what it meant; is that correct?

Mr. KVAVEN. Well, the exact mechanism, as I have said before. There were d fferent approaches to this market price. Some people wanted floors but the floors were different.

For instance, our Rio floor is based entirely on Rio's cost. Others wanted a fixed floor expressed in dollars. South Africans with whom we have had discussions were even willing to put a ceiling in the market price of $40 at the time we had discussions with them.

Mr. GORE. That is a pretty high ceiling.

Mr. KVAVEN. Yes; pretty high. Again this is the evidence that I mentioned before. We had no evidence that there was an active cartel because the approaches were different. They were within certain constraints, I will grant you, but they were enough different so that we did not suspect that there was a complete collusion going on at that point in time.

Mr. GORE. The $12.50 price quoted by Gulf matched the Rio price and matched the three other offers that George White of Nuexco reported to you. They were all the same.

Mr. KVAVEN. But our Rio price in our contract with Rio was based on their costs.

Mr. GORE. It turned out to be that way. It turned out to be that that was the floor but the price negotiated in the original discussions was set at $12.50. That was $12.50. The Gulf offer was $12.50. The three other offers that George White reported were $12.50. That was the same price for uranium delivered that was fixed by the cartel in Johannesburg.

Mr. KVAVEN. When George White of Nuexco started publishing prices, every time he published a new price, that was the new quote that you got from everybody.

Mr. MAGUIRE. Mr. Chairman, excuse me.

If that is true, Mr. Kvaven, does that not lead to a suspicion?

Mr. KVAVEN. It leads to a suspicion that they all read Nuexco.

Mr. GORE. And they agreed not to undercut each other.

Mr. KVAVEN. Evidently.

Mr. MAGUIRE. You said just a moment ago you had no basis on which to suspect.

Mr. KVAVEN. If you were a producer and the sales manager for a uranium company and Nuexco is publishing that so and so got $40 and you came back home and explained to your management that you were only selling for $35, you would probably be fired.

Mr. GORE. If I could reclaim my time briefly, that conflicts with the way the free market system is supposed to operate. It may be that we have become so jaded that we just naturally assume that everybody is going to follow the leader and set the exact price and maximize their profit line without ever considering such a thing called competition.

It seems to me that if everybody is quoting the same price and nobody is offering to sell at a somewhat lower price in order to get customers, then there is no competition and something is wrong with the marketplace.

Mr. KVAVEN. That is right. It is a complete seller's market right now.

Mr. GORE. But it was a buyer's market before the producers refused to sell?

Mr. KVAVEN. Yes.

Mr. GORE. Is that what converted it to a seller's market?

Mr. KVAVEN. Conceivably, yes.

Mr. GORE. In your opinion, is that what converted it to a seller's market?

Mr. KVAVEN. I am sure it contributed to it.

Mr. GORE. Counsel?

Mr. ATKISSON. We referred to Nuexco and Mr. White. One of the memos we used this morning refers to a conversation with Mr. White. Another memo we used this morning refers to a meeting with Mr. Kibbe.

I am reminded of the movie "Butch Cassidy and the Sundance Kid" when they were being chased by the lawmen and kept looking over their shoulders and saying, "Who are those guys?"

Who are those guys? What is Nuexco? What role does Nuexco play?

I have a note on page 12 of your testimony that one contract you signed used Nuexco as the reference point for establishing price.

Who are those guys?

Mr. GILLELAND. This is the Nuclear Exchange Corp. You have one of their charts displayed here. This is an organization which was formed—I do not know all of their purposes, but they act as brokers for getting together buyers and sellers. Also, they serve as an intermediary for loans. If one owner has some excess uranium and another owner is short, they arrange for the short guy to borrow from the guy with excess. Nuexco has a fee for this service.

I guess it started out primarily as a broker service, as I understand it. They now publish a booklet to all of their members. In that booklet they have several different pieces of information, including the type of information which is explained on your chart called "Exchange Value."

Mr. ATKISSON. Is it fair to say that the exchange value as reported by Nuexco is today a common reference point for contracts of supply throughout the world?

Mr. GILLELAND. I do not know how widely it is used but I do know that in some circumstances there are a number of people who refer to the Nuexco exchange value. We do not think it represents what the market price of uranium ought to be.

Mr. ATKISSON. Are you aware that Nuexco has in at least one instance of which I know, and perhaps there are others, represented suppliers and had an agency relationship with uranium suppliers?

Mr. GILLELAND. Yes; I am quite sure of that.

Mr. ATKISSON. Doesn't this repose in a small company in Menlo Park, Calif., an enormous power? It is the single reporting service—I won't say it establishes the price, but it supports the price. It is difficult sometimes to tell whether the tail is wagging the dog or the other way around. Doesn't it in your opinion repose an enormous power in that small private entity?

Mr. GILLELAND. I think there is no question but that it exercises a large influence. As I say, the basis for their exchange value is something which I do not know all that goes into it. We have asked Nuexco a number of questions about what goes into the exchange value. I do not think it represents what the average market price of uranium is.

Mr. ATKISSON. Do both of you, Mr. Kvaven and Mr. Gilleland, know the two gentleman to who I referred personally?

Mr. GILLELAND. Yes.

Mr. KVAVEN. Yes.

Mr. ATKISSON. In your opinion, are they reliable in terms of their knowledge of market forces and what goes into them?

Mr. GILLELAND. Yes; I would say they are both knowledgeable.

Mr. ATKISSON. Is it fair to say that if either Mr. Kibbe or Mr. White in 1972 or 1974 approached you and told you there was a cartel operating that was setting floor prices—if they told you that, you would tend to believe them?

Mr. GILLELAND. In putting that in context, I think of what other knowledge I had. Again I would put that in the same context as these foreign government actions about which I had already read.

Mr. ATKISSON. That is not my question. My question is this. If Mr. Kibbe approached you and said, "Mr. Gilleland, there is a cartel operating and setting floor prices," would you believe him?

Mr. GILLELAND. If I could find out what the basis of his evidence was. "How do you know that? Is that something you read in the newspaper? Do you have some hard evidence? Could I see it?"

Mr. ATKISSON. Mr. Kvaven, in your conversation with Mr. White, with reference to the memorandum that we talked about this morning, would you do what Mr. Gilleland just said he would do and ask Mr. White what the basis of his opinion was that there was a club operating?

Mr. KVAVEN. His opinion was not greatly different from what was being bandied about in the trade press at that point in time.

Mr. ATKISSON. That was his opinion?

Mr. KVAVEN. Yes.

Mr. ATKISSON. Did you have any reason to doubt the veracity of his opinion?

Mr. KVAVEN. I had reason to doubt the effectiveness of any cartel that was in operation at a point in time because of the evidence that we had in hand that they were just not that cohesive.

Mr. ATKISSON. Are either of you personally familiar with Mr. Mazel?

Mr. KVAVEN. I am not.

Mr. GILLELAND. I am not.

Mr. ATKISSON. You have never met him?

Mr. GILLELAND. Not that I recall.

Mr. ATKISSON. Thank you, Mr. Chairman.

Mr. GORE. I want to just clarify one final point for the record.

We have identified and the evidence shows that these three companies were members of the cartel: Rio Algom, Uranerz, and Uranex.

I would ask any of you to confirm this information.

The TVA has contracted with Rio Algom for 17 million pounds, with Uranerz for 1.2 million pounds, and with Uranex—actually with Homestake, which is reselling uranium from Uranex—for 2.099 million pounds.

Is that information substantially correct?

Mr. KVAVEN. Yes.

Mr. GORE. So in all, TVA has purchased slightly in excess, or has contracted to purchase slightly in excess, of 20 million pounds of uranium from companies that are identified as members of the cartel?

Mr. KVAVEN. That is correct.

Mr. GORE. Of that amount, 1.2 million pounds has already been paid for. The balance will be paid for in coming years; is that correct?

Mr. KVAVEN. That is correct.

Mr. GORE. On behalf of the subcommittee I would like once again to thank all four of your, and particularly Chairman Wagner, for taking time out of your busy schedules to assist us in this inquiry.

I understand TVA's position in this matter. We encountered caution and reluctance on the part of many utilities. I think TVA is to be commended for coming forward on behalf of the consumers to supply information and to assist the subcommittee in the furtherance of this inquiry. Out of this inquiry we hope to demonstrate the need for stronger antitrust laws and to demonstrate the need for horizontal diverstiture so that in the future utilities will not be at the mercy of the uranium producers to the extent that they have to deal with the people who have been fixing prices.

You have certainly contributed to our effort. You have our thanks and appreciation.

The subcommittee will recess for 10 minutes and then we will proceed with the next witness, Mr. W. T. Robertson.

[Brief recess.]

Mr. GORE. The subcommittee will come to order.

We are pleased to welcome Mr. W. T. Robertson, executive vice president with the Mill Power Supply Co., which is a subsidiary of Duke Power. He is accompanied by Mr. Ray Jolly, associate general counsel for Duke Power.

Gentlemen, if you would stand and be sworn.

Mr. JOLLY. Mr. Chairman, I will not be testifying.

Mr. GORE. If counsel is not going to be testifying, Mr. Robertson, please stand and be sworn.

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

Mr. ROBERTSON. I do.

Mr. GORE. Thank you. Would you identify yourself to the reporter, please?

Mr. JOLLY. Mr. Chairman, before we begin, I have approached your counsel with a request. As you know, we are here under subpena. We would like to request, pursuant to the House rules, that we not be subjected to radio, TV, and still photography coverage. I have pointed out the sections of the rules to your counsel.

Mr. GORE. Mr. Jolly, rule 11F(12) refers to witnesses served with a subpena. You are correct. When Duke was asked to appear, Duke declined. You were served with a subpena, and you are appearing pursuant to that subpena. That section of the rules reads:

> No witness served with a subpena by the committee shall be required against his or her will to be photographed at any hearing or to give evidence or testimony while the broadcasting of that hearing by radio or television is being conducted. At the request of any such witness who does not wish to be subjected to radio, television, or still photography coverage, all lenses shall be covered and all microphones used for coverage turned off.

It says, "This subparagraph is supplementary," et cetera.

We have checked with the parliamentarian after being advised of your concern about this matter. I might say that, in my opinion, it does not serve much purpose. This inquiry, I think, is in the public domain. Reporters of other kinds are here. I think it is unfortunate that Duke would invoke this rule. But under the rules of the Congress you have that right. As chairman, I am constrained to rule in your favor.

As a result, I would respectfully request that photographers cap their lenses according to this rule and that any radio reporters turn off their microphones because of this request by Duke.

I think that this is most unfortunate. One of the first measures that I cosponsored in the Congress was to provide for full and complete radio/television coverage of all proceedings in the Congress. I think that that is in the public interest. If I have anything to say about this rule, it will be changed. However, as chairman of the subcommittee, I am constrained to follow the rules and rule in your favor on this point.

Mr. Robertson, if you wish to proceed with your statement, please do. I might say by way of introduction that Duke Power has purchased 20 million pounds from a member of the international uranium cartel. I notice, in reading over your statement, you do not address yourself to that subject. But please proceed with your statement anyway, and we will get into it on questioning. Or you may summarize your statement if you wish.

94-080 O - 77 - 27

TESTIMONY OF W. T. ROBERTSON, JR., EXECUTIVE VICE PRESIDENT, MILL POWER SUPPLY CO. (SUBSIDIARY OF DUKE POWER CO.), ACCOMPANIED BY R. A. JOLLY, ASSOCIATE GENERAL COUNSEL, DUKE POWER CO.

Mr. ROBERTSON. Thank you, Mr. Chairman.

My name is W. T. Robertson, Jr. I reside in Charlotte, N.C. I am employed as executive vice president of Mill Power Supply Co., which is a whollyowned subsidiary of and the fuels purchasing agent for Duke Power Co. I was manager of the Fuels Purchasing Department from 1967 until 1976 which was just prior to my being named executive vice president. As executive vice president of Mill Power Supply, I directly supervise the Fuels Purchasing Department.

With me today is R. A. Jolly, associate general counsel of Duke Power Co.; he is my attorney.

Duke Power Co., is an electric utility which serves the Piedmont sections of North and South Carolina, an area of approximately 20,000 square miles. Duke Power provides electric service to more than 1,200,000 customers and is among the 10 largest electric utilities in the United States.

We presently have in operation three nuclear units totaling approximately 2.6 million kW of capacity. These units are located in the northwestern corner of South Carolina and are called the Oconee Units. We have under construction two nuclear units in North Carolina, North of Charlotte, of approximately 2.2 million kW, which we call the McGuire Units. These units are scheduled for service in 1979 and 1981. Also, we have under construction two units in South Carolina south of Charlotte with a capacity of approximately 2.2 million kW. These are known as the Catawba Units and are scheduled for service in 1981–83. Additionally, we have planned and partially under construction six identical units; three to be located in South Carolina and three to be located in North Carolina. These units will have a combined capacity of approximately 7.6 million kW. These units are scheduled for service beginning in the mid-1980's and extending to 1990.

Since Duke initiated its nuclear program in the mid-1960's, I and my associates in the Fuels Purchasing Department have been actively engaged in seeking uranium supply. For the period of the present to about the mid-1980's, our contracts for uranium would take care of most of our uranium needs if these contracts are fully performed. At the present time, one of our major suppliers has defaulted on its contract and we are presently in litigation with that supplier.

That supplier is the General Atomic Co., a partnership composed of the Gulf Oil Co., and Scallop Nuclear, Inc. Scallop Nuclear is part of the Royal Dutch Shell group. This one contract covers about one-third of our uranium supply through about 1985. It is a contract that was entered into in 1973 at what we consider today to be very favorable prices. The contract is not a fixed-price contract, but provides for price escalation based on certain indices. Nevertheless, the contract price would not come close to the present spot market price of about $42 per pound. If we had to replace all of the uranium covered in the General Atomic Co., contract at prices presently pre-

vailing of about $42 per pound, our customers could be faced with additional fuel expenses in excess of $200 million.

We are doing everything within our power to enforce this contract. We have litigated with the General Atomic Co. in the U.S. district courts in New Mexico and North Carolina. We are presently in arbitration, a provision of the contract which the General Atomic Co., has resisted as shown by the attached court decision of U.S. District Judge James B. McMillan.

The General Atomic Co., has put forth various defenses and excuse for noncompliance, but I would say that their main defense is what the lawyers call "commercial impracticability." This, I am told, is a provision of the Uniform Commercial Code. The General Atomic Co., has claimed that the dramatic rise in price from about $10 a pound to about $40 a pound for uranium should relieve them of their contractual obligations. We are vigorously opposing this contention.

When we were first approached by counsel to the subcommittee about this hearing, we expressed our willingness to cooperate in any way to uncover the facts about an international uranium cartel and the extent of its effect on domestic prices of uranium. We have furnished the committee substantial information which was requested of us. However, we wish to express our very serious concerns about having to publicly testify about uranium matters because we feel that this might adversely affect the outcome of the litigation with the General Atomic Co.

Mr. Chairman, we want to assure you of our interest in this matter and of our desire to be of as much help as we possibly can. However, we would hope that any questions that you may have of us would take into account our precarious situation with the General Atomic Co. We have read in the newspapers that you have had representatives of the Gulf Oil Co., testify concerning their activities in the cartel. It would be ironic indeed if the Gulf Oil Co., would benefit financially from any inquiry this committee might make of us.

With that in mind, I will be happy to try to answer your questions.

Mr. GORE. Thank you, Mr. Robertson, for your appearance here under subpena. We will insert the attachment mentioned.

[The attachment referred to follows:]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division
C-C-76-173

FILED
CHARLOTTE, N. C.
SEP 9 1976
U. S. DISTRICT COURT
W. DIST. OF N. C.

GENERAL ATOMIC COMPANY, a partnership composed of Gulf Oil Corporation and Scallop Nuclear, Inc.,
Plaintiff,

-vs-

DUKE POWER COMPANY, a corporation,
Defendant.

ORDER

General Atomic Company, plaintiff, is a partnership composed of Gulf Oil Corporation, an oil company, and Scallop Nuclear, Inc. It styles itself on its stationery as "A Gulf and Royal Dutch Shell Company." General Atomic brought this action to obtain a declaration of rights under its November 7, 1973, contract by which it agreed to supply uranium to the defendant, Duke Power Company; it also moved for a stay of arbitration pending the conclusion of this action. Duke moved for a stay of this action pending arbitration. A hearing was conducted on Friday, August 13, 1976, on pending matters.

Duke, like other electric power companies, generates electric power, in part from the energy of falling water, but in the main by steam turbines. Most of the heat to produce the steam that turns the turbines comes from coal, but in recent years some of the heat is generated by nuclear reaction. Uranium, in one or more of its forms, is a fuel now used in some plants to generate such heat.

United Nuclear Corporation was a producer of uranium.

In 1970, United Nuclear made a contract with Duke Power Company to supply Duke with about six million pounds of uranium fuel in the years from 1971 to 1985, at prices to be computed on a somewhat sliding scale, but essentially in the neighborhood of $8.00 to $10.00 per pound. Deliveries were made under that agreement.

In June, 1971, Gulf and United Nuclear formed a new corporation, Gulf United Nuclear Fuels Corporation (GUNF). Gulf owned 57% and United Nuclear owned 43% of the GUNF stock. United Nuclear assigned the Duke uranium supply contract to GUNF, and Duke consented to the assignment only on condition that both Gulf Oil Corporation and United Nuclear guarantee that GUNF would perform its contract obligations. They did so guarantee.

In September, 1973, Gulf Oil broke up its joint venture with United Nuclear, bought out United Nuclear's interest in GUNF, and made a contract with United Nuclear (dated June 30, 1973) to purchase uranium from United Nuclear.

In November, 1973, Duke entered into the contract with GUNF for the purchase of uranium fuel out of which this dispute arises; this contract replaced the original 1970 contract with United Nuclear.

Immediately thereafter, Gulf Oil merged GUNF into Gulf as a division of Gulf and on January 1, 1974, assigned the Duke contract to General Atomic Company, the "Gulf Oil and Royal Dutch Shell Company" which is the plaintiff in this suit.

The contract contains an arbitration agreement apparently enforceable under North Carolina law and enforceable in this court.

United Nuclear Corporation was left with no direct duties to Duke, though it had been required by Duke to guarantee, and did guarantee, the obligations of General Atomic and Gulf to Duke under the uranium supply contract.

General Atomic Company made deliveries until the end of 1975, but on December 30, 1975, it defaulted and failed to deliver 325,000 pounds of uranium.

General Atomic contends that it is excused from performance of its agreement with Duke because (and to the extent that) United Nuclear Corporation has failed or may fail to deliver fuel to General Atomic.

Apparently the open market price has gone up from $8.00 or $9.00 a pound to $39.00 or $40.00 a pound. Duke has incurred losses already estimated at about $11,500,000.00 because it has already had to buy on the open market 325,000 pounds of uranium fuel at approximately $39.00 a pound which plaintiff had contracted to deliver for $9.00 a pound.

Duke's losses will amount to about $180,000,000 if plaintiff succeeds in its contentions and if the price of uranium remains at its present level.

Plaintiff claims that the arbitration agreement is not enforceable and that arbitration has not been properly requested. Plaintiff claims that it should be excused from performance because it contends that it was contemplated that United Nuclear Corporation would be the sole source of supply for its deliveries. It also suggests, if arbitration is to be allowed, that United Nuclear Corporation be made a party to the arbitration.

I find the arbitration agreement to be enforceable; and the defects in the call for arbitration to date, if any exist, are remediable.

Since both parties are seeking equitable relief, some minimal attention should be given to their probable chances of success on the merits.

General Atomic's claim that its deliveries of uranium were to be made only from fuel supplied by United Nuclear Corporation does not appear to be supported by the present record.

No portion of the contract supporting that claim has been called to the attention of the court.

In fact, the contract (Article XXX-D.) seems to point expressly in the opposite direction:

> "D. Gulf United may enter into subcontracts and purchase agreements with others in the performance of this Agreement. No contractual or employer-employee relationship between Purchaser and any such Gulf United subcontractor shall be created by virtue of this Agreement." (Emphasis added.)

The plaintiff's essential contract is (page 1) to "supply" fuel assemblies. In the face of the express provisions of Article XXX, and in the absence of contract provisions limiting plaintiff's sources to the original contracting supplier, United Nuclear Corporation, it would appear that the plaintiff has an uphill battle to persuade a trier of fact that it should be excused from performance simply because United Nuclear, one source of supply, has stopped making deliveries. Unless such persuasive evidence is developed, it appears that Gulf, a big operator in oil, has speculated big and lost big in uranium.

Such considerations are for the arbitrator and are relevant here only as they bear upon decision of the equitable questions before the court.

As to the request for a delay because United Nuclear Corporation is not a party defendant, two points should be noted:

(a) United Nuclear, as a guarantor only of the 1973 contract in suit, would not be an improper party, but it is certainly not a necessary party to a determination of the rights of General Atomic and Duke under the arbitration agreement.

(b) A state court in New Mexico has entered an order, binding upon General Atomic, the plaintiff herein, enjoining plaintiff from litigating in any other court, or arbitrating, its claims against United Nuclear pending decision by the New Mexico state court. Despite that court order, General Atomic suggests that the court should bring United Nuclear into the arbitration proceedings on its own motion, and in any event should not permit arbitration of Duke's claim until United Nuclear has been brought into the arbitration proceedings. The one would be a violation of the letter and

the other the spirit of the New Mexico court order. Moreover, I am unwilling to accept the suggestion that the New Mexico courts will not give General Atomic a fair hearing because United Nuclear, apparently a publicly held corporation, digs uranium in New Mexico. This court must and will proceed upon the premise that the New Mexico court will decide the case on its merits without regard to where the uranium is dug.

IT IS THEREFORE ORDERED:

1. That the plaintiff's motion to stay arbitration is denied.

2. That defendant's motion to stay this action and all proceedings herein until an arbitration shall have been had in accordance with the terms of the Agreement between the parties is allowed.

This 9 day of September, 1976.

/s/ James B. McMillan

James B. McMillan
United States District Judge

Certified to be a true and correct copy of the original.
U. S. District Court
J. Toliver Davis, Clerk
Western Dist. of Okla.
By [signature] Deputy Clerk
Date 9-9-76

Mr. GORE. I assure you that this subcommittee is anxious not to prejudice your litigation in any way.

In evaluating the concern which you have expressed about the possibility of prejudicing that litigation, I think it is important to keep in mind exactly what your concern is. You have alluded to it, but let me phrase it clearly. A subsidiary of Gulf agreed to supply you, Duke Power, with uranium at a fixed price. They are now refusing to supply you with that uranium. They are saying that it is impossible for them to supply it because of the uranium cartel.

I personally do not understand how a company which actively participated in the cartel, had a member on the governing board of the cartel, proposed policies and price schedules to the cartel, could then say the effects of the cartel make it impossible for us to fulfill our contract.

So, in evaluating the concern which you have expressed, I think that it is important to point out those facts and to show that it seems to me to be awfully squeamish and overly cautious. Nevertheless, we will proceed with some caution because you do have so much at stake. Your reluctance, as I have said earlier, is shared by almost every utility that we have contacted. Utilities are afraid to offend the suppliers that they have. They are afraid to jeopardize litigation that is in process. They are timid in general, it seems to me.

I think that one of the outcomes of this series of hearings ought to be changes in the law that allow utilities to bargain with fuel suppliers on a more equal basis so that you don't have to be quite so timid.

With all of that as prolog, let me ask you about the contract that we are interested in here. Mr. Jolly, I see you reaching for the microphone. Could you stand and be sworn if you wish to make a statement to the subcommittee?

Mr. JOLLY. No, sir.

You characterized the excuses that the General Atomic Co., was making as just being the cartel. Our only point would be that there are a myriad of defenses, in fact, that they are raising.

Mr. GORE. What we want you to testify about is the cartel.

Mr. JOLLY. Yes, sir.

Mr. GORE. Are you reluctant for Duke Power to testify about the cartel?

Mr. JOLLY. We are not reluctant at all for you to find out anything you can about the cartel. We support any investigation that you can make of the cartel.

Our only point was just that one matter.

Our reluctance to be here is not because you are probing the cartel.

Mr. GORE. OK, fine. We are interested in your dealings with the cartel. We will proceed with the air cleared in that manner to a discussion about the contract that Duke has with Rio Algom.

Mr. MAGUIRE. Mr. Chairman, may I be recognized for a clarification?

Mr. GORE. Yes.

Mr. MAGUIRE. I would like to clarify this matter of what is and is not to be developed by way of questions and answers before the subcommittee.

I think the Duke Power Co., is to be commended for initiating litigation. This is something that is notably absent from the record with respect to TVA's handling of somewhat similar matters. I do believe that Duke Power is to be commended for initiating litigation which is designed to result in the enforcement of contract terms and also in the protection of those who ultimately consume the product.

At the same time, I would want the record to show, Mr. Chairman, that this committee considers the matter before us to be a very grave one and that we intend to ask the questions which we believe must be asked under the circumstances to clarify the issues that are before us.

If any caution is going to be exercised in asking those questions and in responding to them, it is my judgment that that caution should be exercised only by the witnesses as their views of the matter dictate. As for the members of this subcommittee, we will ask and pursue the questions where they lead.

Thank you, Mr. Chairman.

Mr. GORE. Let me make one comment there for the purposes of the record. I believe that TVA has initiated some legal proceedings of a kind not dissimilar to the matter under discussion earlier. Neither TVA nor Duke has yet initiated proceedings against the cartel. I hope that such proceedings are forthcoming.

When I referred to proceeding with caution, I think that it is entirely proper for the subcommittee to pursue its questioning with a sensitivity to the impact that the proceedings might have on the consumers in North Carolina. But certainly the duty of the subcommittee to uncover the truth and to put the facts on the record is of paramount importance. The facts are important to develop a legislative history that will enable the Congress to devise stronger antitrust laws and to take such other action that will enable utilities to bargain on a more even basis with fuel suppliers.

I wanted to ask you about the Rio contract, Mr. Robertson. It has been said by some that the domestic market was insulated from the operations of the cartel because no domestic utilities purchased foreign uranium during the period in question. Is it correct that Duke Power contracted for 20 million pounds of uranium from Rio Algom?

Mr. ROBERTSON. Duke Power contracted for 20 million pounds of uranium with Rio Algom Canada in September, 1974 for delivery over the period 1981–90.

Mr. GORE. The record developed at a previous hearing establishes that Rio was a member of the cartel. The existence of the cartel, the formulation of the cartel, the operation of the cartel has been the subject of detailed hearings prior to this one. Our purpose here is to delineate the impact of the cartel on the domestic market.

You have just testified that, like TVA, you, as a representative of Duke Power, purchased 20 million pounds of uranium from a member of the cartel during the period the cartel was active. What was the price term in that contract?

Mr. ROBERTSON. Our contract with Rio Algom has a minimum pricing arrangement which is based upon a cost of production. That is the minimum price—or a price that is based upon a put and call procedure that takes place 2 years prior to the delivery year; subject to not being

able to get together on a put and call arrangement or to arrive at an agreed price, it will be put to an expert. In the absence of the expert's ability, for any reason, to come up with a price, it would go to arbitration.

Mr. GORE. The put and call arrangement that you describe is one that I am not familiar with. How closely does it approximate the world market price?

Mr. ROBERTSON. I have no way of determining how closely it would.

Mr. GORE. How does it operate? How does the put and call arrangement operate?

Mr. ROBERTSON. By the end of February of the pricing year, which precedes the delivery year by 2 years, Rio Would make a call price on the uranium for the specific delivery year. If we accept that, that becomes the price for that year.

However, we have until the end of March of that same year to put a put cost.

Those two prices are obviously negotiated. We are to arrive at the settlement price by the end of May of that year. In the absence of reaching a settlement price, the price would be put for settlement to the expert. He is supposed get a settlement price by the end of September of that year for the appropriate delivery year.

In the absence of that—as I said earlier—it can go to arbitration. Meanwhile, they have to deliver the uranium. The delivery would be either on the basis of some average of put and calls that had existed or on their minimum production arrangement.

Mr. GORE. At the time Duke entered into this contract, were you aware that the embargo was going to be lifted imminently?

Mr. ROBERTSON. We entered into this contract officially on, I believe, September 4, 1974. About the end of 1973, there was activity concerning the potential lifting of the embargo. One of our concerns about the contract was the fact that the embargo could be a real problem. We wanted the supplier to take the risk of the embargo not being lifted. They would not. In the final contract, we take the risk of the embargo; but we do have some provisions whereby, if we cannot utilize it in the United States, we could be able to sell it elsewhere and they would also attempt to help sell it elsewhere in the world.

The embargo was lifted slightly after this contract was officially entered into, as I recall.

Mr. GORE. One month afterwards; and one month before the contract was entered into, the official announcement was made that the embargo would be lifted. So, it would appear to me that you took a reasonable risk on behalf of the consumers, who would pay the ultimate cost.

Mr. ROBERTSON. Yes.

Mr. Chairman, that is the way we always try to structure our operation: taking the minimum possible risk we can.

Mr. GORE. This kind of clause in a contract is referred to as a force majeure clause. You took the risk of paying for the uranium in the event that ERDA reversed itself and did not lift the embargo. Is that correct?

Mr. ROBERTSON. This is not a force majeure clause as such. It is just a provision of the contract. But we do pay for it; yes, sir.

[Witness consults with counsel Jolly.]

Mr. ROBERTSON. I am advised that it is also in the force majeure clause—both places.

Mr. GORE. Who negotiated this contract for Rio?

Mr. ROBERTSON. The contract was essentially negotiated by Mr. Alan Lowell and Mr. Dave Muir.

Mr. GORE. Who negotiated for Duke?

Mr. ROBERTSON. I was the lead negotiator. We had other members of our staff, including our treasurer. We had also a consulting geologist. We had our manager of fuel utilization. Of course, we had attorneys.

Mr. GORE. Were you aware at the time that Rio was a member of the cartel?

Mr. ROBERTSON. No.

Mr. GORE. If you had that awareness, would you have gone through with the contract anyway?

Mr. ROBERTSON. Chairman Gore, I think that is a matter of speculation which I just at this moment cannot answer.

Mr. GORE. If you had known that they were a member of the cartel, would you have given the information to the Justice Department?

Mr. ROBERTSON. We certainly would have alerted our management. What our company would have done, of course, is a matter of speculation.

Mr. GORE. I hope that that speculation can come to a conclusion in the wake of these hearings. I hope that utilities around the country can adopt a policy of informing the Justice Department of suspected price-fixing activity when they encounter such evidence. I would hope that Duke and other utilities would develop firm policies to assist in the enforcement of the antitrust laws.

Mr. ROBERTSON. Mr. Chairman, I think we have a record of doing just that.

Mr. GORE. I might note that, in the wake of the *Illinois Brick* decision by the Supreme Court, ultimate consumers no longer have the ability to sue under the antitrust laws for damages. Utilities, as with other kinds of wholesalers, simply pass through any costs that they incur as a result of price fixing. In the wake of the *Illinois Brick* decision, it is even more important that the original purchaser be diligent in pursuing its rights under the antitrust laws, lest there be no enforcement of the antitrust laws at all.

Mr. ROBERTSON. Yes; Mr. Chairman. I think, as you noted in your opening comments, Duke has certainly pursued every avenue that we have in making sure that our contracts are enforced and that we get the price which we think is proper.

Mr. GORE. Did you attempt to buy uranium from domestic suppliers prior to your decision to contract with Rio?

Mr. ROBERTSON. We are constantly in the marketplace, watching what is going on. This particular contract was not entered into as the result of our inquiry in the domestic nor the foreign market.

Mr. GORE. So, your experience in that regard differs from the experience of TVA. You did not send out a massive bid request and get no response and, in frustration, turn to the foreign market.

Mr. ROBERTSON. That is correct.

Mr. GORE. Mr. Maguire, do you have any question?

Mr. MAGUIRE. Yes, Mr. Chairman.

I think we established in the questioning of TVA earlier that there were a variety of facts or possible facts which came to the attention of various TVA people at various times which led them to have some suspicion but no incontrovertible evidence of the existence of a cartel of private companies that was affecting price of uranium sales inside the United States.

A moment ago you answered the chairman's question by simply saying no, that you knew of no cartel.

Did you not have the same indications from the trade press, Nucleonics Week, or the Nuexco publication and from conversations that went on within the industry which TVA personnel earlier acknowledged? Did you not have some indications through either of those written or oral sources that there might be something amiss with respect to the competitive model?

Mr. ROBERTSON. I had the same access to the normal press that everyone has.

You might be interested, in that regard. I think maybe this will answer your question better than pursuing it along other lines. On September 28, 1972, I was appointed to the Technical Advisory Committee of the National Power Survey. At this time the Federal Power Commission had intended to publish another National Power Survey, I believe, in 1974. We were starting to work on it at that period.

The last publication had been in 1970.

As a member of that Technical Advisory Committee on Fuels, I was subsequently chairman of a task force on fuels availability and was appointed to that on December 7, 1972. Out of that task force, we developed a task force report on fuels availability which we made to the Technical Advisory Committee on Fuels of the Federal Power Commission of the National Power Survey.

My task force presented that to the Technical Advisory Committee on July 25, 1973. Subsequently, part of that report went into the Federal Power Commission, National Power Survey, the report of the Technical Advisory Committee on Fuel. That report was dated September, 1974.

I would be very pleased to read to you what was included in the final report in the area that you are questioning, which was identical as it had appeared in the task force report.

Mr. MAGUIRE. Are you going to read that?

Mr. ROBERTSON. Yes.

Mr. MAGUIRE. Please do.

Mr. ROBERTSON. This is in the section on uranium——

Mr. MAGUIRE. The date on this is 1974?

Mr. ROBERTSON. The date on this is 1974.

Mr. MAGUIRE. What is the precise date?

Mr. ROBRETSON. It is just dated September 1974:

Australia, with 92,000 tons; Canada, with 236,000 tons; and South Africa, with 300,000 tons of uranium ore reserves are the principal possible foreign sources for supplementing U.S. uranium reserves. The most promising foreign source from a security and reliability standpoint is Canada because of geographical location and historical relations.

South Africa and Australia are also very attractive, due to their substantial reserve position and limited internal requirements. The cost of production is higher in Canada with the deep mine depths than South Africa, where uranium is a byproduct of gold production, or Australia, where the ore grade is substantially higher.

The majority of world exploration activity is presently focused on Australia. The availability of uranium from foreign sources depends as much or more on the attitude of the respective foreign governments as it does on the United States demand. Indications of the recent nationalisic attitude of certain foreign governments should raise at least limited concern as to the future availability and cost of foreign uranium on the world market.

There appears to be little reason to believe that a UPEC—Uranium Producing and Exporting Countries—could not be formed in the same fashion as OPEC—Oil Producing and Exporting Countries.

Those would represent my feelings, summations of the situation as existed in 1974.

Mr. MAGUIRE. The phraseology was interesting, Mr. Robertson; it was conditional. That is, I believe you said, in quoting, there is no reason why such a cartel could not be formed.

Does that suggest that you did not know at that time that such a cartel had in fact been formed?

Mr. ROBERTSON. That is correct.

Mr. MAGUIRE. You did not know?

Mr. ROBERTSON. I did not know.

Mr. MAGUIRE. You had no suspicion that such a cartel might have been formed, based on the reading which you say you did and the discussions that you regularly had with industry persons involved in the purchase of uranium?

Mr. ROBERTSON. Well, the very fact that this is worded as you say certainly, I think, raises suspicion that it could be.

Mr. MAGUIRE. That was not the question.

The question was: Did you not have some indication that there might have been, in fact, a cartel already formed?

Mr. ROBERTSON. As you indicated earlier, of course, I had access to the various trade publications which had lots of, or certainly some, references to a possibility of uranium governmental cartels being formed.

Mr. MAGUIRE. Did you have any idea that there might be American companies involved?

Mr. ROBERTSON. No.

Mr. MAGUIRE. Or through their subsidiaries in that cartel?

Mr. ROBERTSON. No.

Mr. MAGUIRE. When you came to negotiate the Rio contract, were any other approaches to pricing explored by you with the Rio representatives other than the one you described a few moments ago to the committee?

Mr. ROBERTSON. Yes; we explored all sorts of pricing. Of course, being a professional procurement man, I obviously would like to buy everything on a fixed-price basis. But I think you well appreciate that, when dealing with something that far into the future, that is a little bit difficult for the seller to do. In that, I have to agree that it is difficult to tie things down in today's economy into the future on fixed prices.

Mr. MAGUIRE. Was any approach other than a world market price or a modified put and call world market price approach seriously dis-

cussed? Or was that all that really got seriously discussed as a result of the attitude of the supplier?

Mr. ROBERTSON. The serious discussions were around the negotiated price.

Mr. MAGUIRE. Would I be right in thinking that this put and call approach—if I phrase it correctly—is very similar to the world market price approach that was described in some of the documents introduced earlier today in that you pretty much had to agree to a periodic adjustment of whatever the price was, depending on world price factors at later points?

Mr. ROBERTSON. I do not know. There were a number of factors that have to be considered.

Or course, as you recall, we do have the expert if you do not get together. And, of course, the overriding situation here is that the host government, in the final analysis, as we have seen, of course, with Canada, controls the price. They will not let it be exported unless the price is agreeable with them.

This was certainly of concern.

Mr. MAGUIRE. So, this put and call approach is pretty similar, is it not, to the description in the memorandum we had earlier from Mr. Gregg and Mr. Kvaven of TVA?

Mr. ROBERTSON. I am sorry. I did not read that. I do not know what that was.

Mr. MAGUIRE. Perhaps we can do two things here, Mr. Chairman. Perhaps we can introduce into the record whatever appropriate portions of the study of the National Power Survey for the FPC might be appropriate. Obviously, we will not want the entire document included in the record——

Mr. ROBERTSON. I would say that there are some very interesting other things in there regarding fuel; it might be of interest to you.

Mr. MAGUIRE. Fine. But perhaps the committee could, at a later stage, make a judgment as to what should be included in the record. I would like the record to be held open for what we believe should be included in the record at this point.

Perhaps we can also furnish the document in question to Mr. Robertson for him to peruse at his leisure and then respond to my question.

Mr. GORE. Without objection, the record will be held open. We will receive the material for consideration and will insert those portions the subcommittee deems appropriate. We will insert your later response to the question after you have had an opportunity to examine the pricing mechanism suggested by Mr. Gregg of Gulf to Mr. Kvaven of TVA.

[The following statement was received for the record:]

I was asked if the pricing under Duke's contract with Rio Algom Mines Limited (Canada) was similar to any of the pricing methods mentioned by Mr. L. T. Gregg (Gulf Minerals Canada Limited) in a letter to Mr. Erik Kvaven (TVA) dated May 24, 1973, which was introduced at the hearing. I have now had an opportunity to read this letter and it appears to me that the method numbered 5 in that letter and discussed on pages 1 and 2 of that letter is similar to the pricing method in Duke's Rio Contract.

I was asked to supply and am enclosing herewith a copy of both the Task Force Report on Fuels Availability dated July 25, 1973 and the Report of the Technical Advisory Committee on Fuel dated September, 1974. The information which I read in my testimony before the Subcommittee can be found on page 14 of the Nuclear Section of the Task Force Report and on pages 167 and 168 of the Technical Advisory Committee Report.

Mr. MAGUIRE. Thank you, Mr. Chairman.

Mr. GORE. Mr. Atkisson?

Mr. ATKISSON. Mr. Chairman, may I also request for the record that Duke Power supply the subcommittee, for insertion in the record, that portion of the contract with Rio Algom covering pricing?

Mr. GORE. Without objection, the record will be held open at this point for inclusion of that material.

[See appendix D, p. 679.]

Mr. GORE. Let me make a brief comment, Mr. Robertson, about your report dated September 1974 and stress again that there is all the difference in the world between the actions of foreign governments and the actions of private companies. Nations formulate policies for the exploitation of natural resources within their boundaries. While the United States may be upset about some of those policies, the actions available to the United States and private entities such as utilities within the United States are limited in that regard in a way that those actions are not limited with respect to private companies.

Private companies, which have assets here in the United States, which have subsidiaries here in the United States, and which, in one instance, are based here in the United States, are vulnerable to the antitrust laws and are vulnerable to the other laws of this Nation and are a fit subject for inquiry by this subcommittee.

I would like now to recognize Mr. John Atkisson, counsel to the subcommittee, for a few questions.

Mr. ATKISSON. Mr. Robertson, does Duke Power have a contract currently, or has it in the last few years, with Homestake?

Mr. ROBERTSON. We have made a spot purchase of some uranium from Homestake.

Mr. ATKISSON. Is the uranium covered in that purchase from a foreign source?

Mr. ROBERTSON. There was some uranium at their option in the total quantity that was from a foreign source.

Mr. ATKISSON. And that foreign source was Uranex of France; was it not?

Mr. ROBERTSON. I do not know. It could have been.

Mr. GORE. Could you research your records to determine whether or not it was Uranex. Once again, we will hold the record open for the completion of your answer.

Mr. ROBERTSON. Yes.

[The following statement was received for the record:]

I was asked to try to determine if Uranex was the source of the foreign uranium delivered to us pursuant to Duke's contract with Homestake dated September 27, 1976. Based on my telephone conversation of August 17, 1977, with Homestake, it is my understanding that the source of this uranium was Uranex.

Mr. GORE. That is an extremely significant question. The response will be very interesting because it would establish, in the event it is Uranex, yet another instance of dealings between domestic utilities and the foreign cartel during the period the cartel was very active.

Mr. ROBERTSON. Let me make it very clear that they were fulfilling a quantity of materials in which they asked could they deliver *x*

amount of it from a foreign source. It so happens that in 1977 and 1978—of course, it began in 1977—the embargo did start to lift on a percentage basis. We were able to, under that criteria, use some foreign material in that period.

I want to make it clear that we were not seeking foreign material.

Mr. GORE. I understand.

TVA's contract with Homestake was similar in that they were reselling uranium purchased elsewhere. Homestake purchased uranium from Uranex and resold it to TVA under a contract, the terms of which allowed Homestake to escalate the price to reflect the price they were charged by Uranex.

That is my understanding of that contract.

Was your contract with Homestake written in a similar fashion?

Mr. ROBERTSON. I'm sorry?

Mr. GORE. Did the price that Homestake charged you reflect the price that they had to pay for the uranium in the first instance? And did it include a condition that allowed them to escalate that price if they had to pay more to get it?

Mr. ROBERTSON. No.

Mr. GORE. It did not.

Mr. ROBERTSON. No.

Mr. GORE. Mr. Robertson and Mr. Jolly, we very much appreciate your appearance here today. You have further filled in the gaps about the impact of this cartel on the domestic market by describing for us in somewhat more detail yet another contract that was entered into by a domestic utility with a member of the cartel.

We appreciate your appearance here today. We wish to thank you very much for appearing.

Mr. ROBERTSON. Thank you.

Mr. JOLLY. Thank you.

Mr. GORE. Our next witness will be Mr. David C. Thomas, Assistant Director for Strategy of the Division of Uranium Resources and Enrichment with ERDA. He is accompanied by Mr. John A. Patterson, Chief of the Supply Evaluation Branch, Division of Uranium Resources and Enrichment, also with ERDA.

Gentlemen, please stand and be sworn.

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

Mr. THOMAS. I do.

Mr. PATTERSON. I do.

Mr. GORE. Thank you. Please identify yourselves to the reporter for the record please.

TESTIMONY OF DAVID C. THOMAS, ASSISTANT DIRECTOR FOR STRATEGIC PLANNING, DIVISION OF URANIUM RESOURCES AND ENRICHMENT, ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, ACCOMPANIED BY JOHN A. PATTERSON, CHIEF, SUPPLY EVALUATION BRANCH, DIVISION OF URANIUM RESOURCES AND ENRICHMENT, ERDA

Mr. THOMAS. Thank you, Mr. Chairman.

My name is David C. Thomas. I am Assistant Director for Strategic Planning, Division of Uranium Resources and Enrichment, U.S.

Energy Research and Development Administration, Washington, D.C.

Mr. PATTERSON. My name is John A. Patterson. I am Chief of the Supply Evaluation Branch, also in the Division of Uranium Resources and Enrichment, in ERDA.

Mr. THOMAS. Mr. Chairman, I am pleased to have the opportunity to appear before this subcommittee and discuss the Government's uranium enrichment policies and their possible impact on uranium supply and demand. Specifically, I will discuss: The tails assay needed for enrichment services transactions; the policy on the enrichment of foreign uranium for use in domestic nuclear power reactors; and ERDA's uranium enrichment services contracts. I will limit my discussion to those three subjects.

TRANSACTION TAILS ASSAY

First of all, in talking about the transaction tails assay, in order to better understand some of the terminology, I would like to discuss three of the more important terms used in uranium enrichment.

There are two isotopes of uranium: uranium-235—often called U^{235}—and uranium-238—often called U^{238}. Natural uranium contains about 0.7 percent U^{235} and about 99.3 percent U^{238}. Uranium containing about 3 percent U^{235} is required to fuel the type of reactor used in the United States and many countries throughout the world. Thus, a uranium enrichment plant is needed to increase the concentration of U^{235}.

In chart 1, I present a schematic representation of a uranium enrichment plant's operations. Natural uranium is fed to the plant as shown by the "fed" stream. The plant separates the uranium into two streams, a product stream that is enriched in U^{235}—that is, contains more U^{235} than the natural uranium feed stream—and a "tails" stream that is depleted in U^{235}—that is, contains less U^{235} than the feed stream. The effort involved in enriching the U^{235} content is measured in terms of "separative work."

The effort or separative work required depends on the amount of feed and the amount and assays of the product and tails streams; it is, by definition, quantified in terms of separative work units (SWU's).

Chart 2 provides some examples of the use of the term "SWU." If, for example, one wanted to obtain 1 kilogram of 3 percent U^{235} enriched uranium out of the ERDA plants today, 3.8 SWU of separative work effort would be required. If the desired enrichment assay were 93 percent U^{235}, 215.6 SWU's would be required to produce the 1 kilogram. Also, reactor requirements can be expressed in SWU's. For example, a nuclear power reactor that generates 1,000 electrical magawatts requires about 100,000 SWU's per year to sustain its operations.

The production capacity of a uranium enrichment plant is also expressed in SWU's.

As you know, ERDA has three enrichment plants: One at Portsmouth, Ohio; one at Paducah, Ky.; and one close to here, at Oak Ridge, Tenn. These plants comprise what we call the ERDA gaseous diffusion plant complex.

The ERDA gaseous diffusion plant complex, prior to any improvements, had the capacity of producing 17.2 million SWU's per year

when operated at the full power level of 6,100 megawatts. When the improvement and uprating programs now underway are completed, the plants will be capabale of producing 27.4 million SWU's per year with a power input of 7,400 megawatts. With the completion of the Portsmouth Gas Centrifuge Enrichment Plant in 1988, ERDA's capacity will increase to about 36 million SWU per year.

Mr. GORE. If I can interrupt you there, it has not been finally determined that that is going to be the location of the new centrifuge plant. The executive branch has proposed that, but I believe that there will be an opportunity for review of that decision; will there not?

Mr. THOMAS. Well, in our minds. Portsmouth is going to be the site where we are going to build the centrifuge plant.

Mr. GORE. Well, in the minds of some of the rest of us, Oak Ridge would be a much better site for the location of the gaseous centrifuge plant.

Please proceed with your statement. This is not a point directly at issue in these hearings, but I did not want to let that pass by without a comemnt.

Mr. THOMAS. Thank you.

It should be noted that the existence of that fourth plant which is very important to all of the tails assays which I am going to discuss in a few minutes.

Mr. GORE. We will insert into the record at this point, without objection, the charts to which you refer.

[The charts referred to follows:]

CHART 1

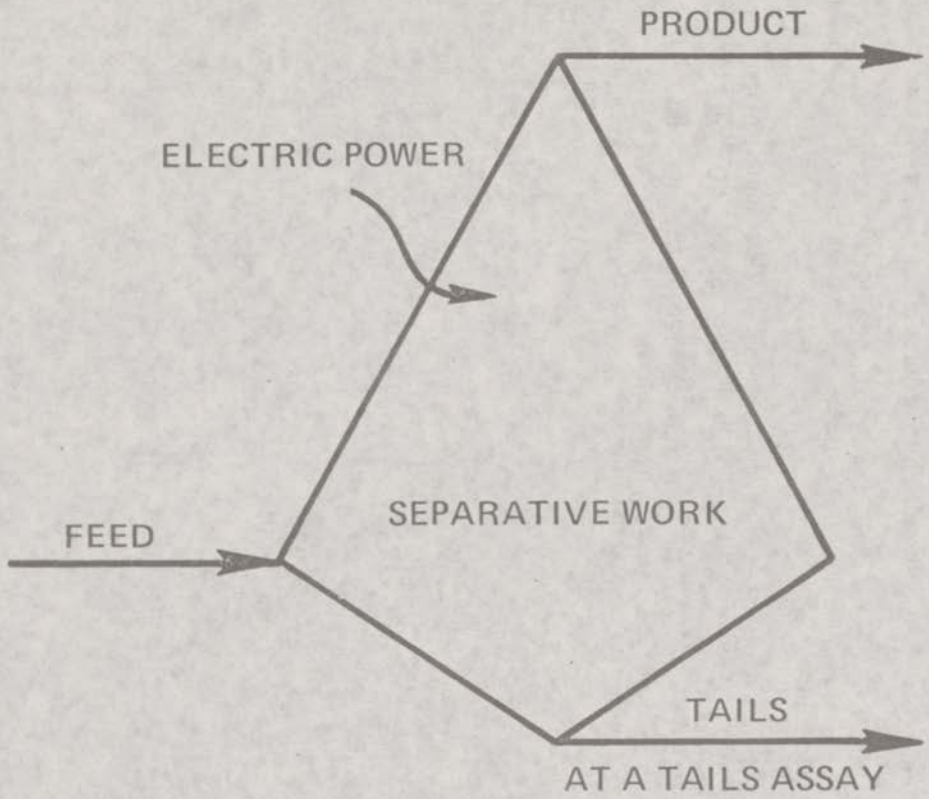

PRODUCT
ELECTRIC POWER
SEPARATIVE WORK
FEED
TAILS
AT A TAILS ASSAY

CHART 2

SWU EXAMPLES

1. TO PRODUCE ONE KILOGRAM OF ENRICHED URANIUM FROM NATURAL URANIUM (WHICH CONTAINS 0.7% U-235) REQUIRES

	ONE KILOGRAM OF 3% U-235	ONE KILOGRAM OF 93% U-235
SWU REQUIRED AT CURRENT OPERATION	3.8	215.6

2. A 1000 MWe NUCLEAR POWER REACTOR REQUIRES ABOUT 100,000 SWU PER YEAR TO SUSTAIN ITS OPERATION

3. EXISTING PLANT CAPACITY (PRIOR TO IMPROVEMENT & UPRATING) IS 17.2 MILLION SWU

   THE PLANTS WILL PRODUCE 27.4 MILLION SWU WHEN THEY ARE FULLY IMPROVED & UPRATED

   WITH THE PORTSMOUTH GAS CENTRIFUGE ENRICHMENT PLANT, THE TOTAL CAPACITY OF ERDA PLANTS WILL TOTAL ABOUT 36 MILLION SWU

CHART 3

ENRICHMENT PLANT TAILS ASSAY

- TAILS ASSAY IS THE CONCENTRATION OF U-235 IN THE DEPLETED STREAM FROM AN ENRICHMENT PLANT
- TAILS ASSAY DETERMINES THE RELATIVE AMOUNT OF URANIUM TO BE FED TO AN ENRICHMENT PLANT AND THE SEPARATIVE WORK REQUIRED TO PRODUCE A SPECIFIED AMOUNT OF ENRICHED URANIUM
- TO PRODUCE ONE KILOGRAM OF 3% U-235 ENRICHED URANIUM

	TAILS ASSAY		
	0.20%	0.25%	0.30%
NATURAL URANIUM, KILOGRAMS	5.5	6.0	6.6
SEPARATIVE WORK, SWU's	4.3	3.8	3.4

Mr. THOMAS. Chart 3 provides more details on the tails assay. This assay is the U^{235} concentration in the tails or depleted stream of an enrichment plant. The significance of the tails assay is that, when fixed, it determines the amount of feed and separative work needed to produce a given amount of enriched uranium at a specified enrichment level. For example, to produce 1 kilogram of 3 percent U^{235} enriched uranium requires 5.5 kilograms of natural uranium and 4.3 SWU's if the tails assay is 0.2 percent.

If the tails assay were 0.3 perecnt U^{235}, approximately 20 percent more natural uranium feed would be required to produce the same amount of 3 percent U^{235} product; whereas the separative work required would be about 20 percent less. In effect, the tails assay determines the balance between the natural uranium feed and the separate work required.

Finally, with respect to tails assay, two kinds of tails assays are commonly referred to: an operating tails assay and a transaction tails assay. The operating tails assay is the assay at which the enrichment plants actually operate. While under the current mode of operation the operating tails assay is 0.25 percent U^{235}, this is not the tails assay currently specified in our contracts with enrichment customers. We have specified a "transaction tails assay" for these contracts which is used to calculate how much natural uranium the enrichment service customers must supply and how much separative work must be purchased.

The transaction tails assay has been set at 0.2 percent U^{235} for 7 years; that is, since January 1, 1968. ERDA plans to maintain the 0.2 percent U^{235} transaction tails assay until at least the beginning of fiscal year 1981. That is, it will have remained then at 0.2 percent for over 13 years.

Recalling that a higher tails assay requires more natural uranium feed, the ERDA enrichment plants are able to operate at a higher tails assay than the transaction tails assay because ERDA has stockpiles of natural uranium obtained originally for military purposes. ERDA has determined that it is advantageous to feed the ERDA-owned natural uranium to the enrichment plants.

ERDA—soon to be DOE—and its predecessor, the AEC, has from time to time issued statements regarding possible future transaction tails assays. In summarizing these statements, I have extracted only that portion of the information relevant to the statements I am making today. That is, there was a lot of other information presented at many of those hearings. I have tried to boil the information down as much as I could to what I am talking about today.

Mr. Chairman, I wonder whether it would be appropriate for me to run through very quickly the nuclear fuel cycle for you. It is not in my testimony. There is a blackboard here.

It may help to clear up some of the jargon that I am about to go through and why so many tails assays were mentioned in past Government statements.

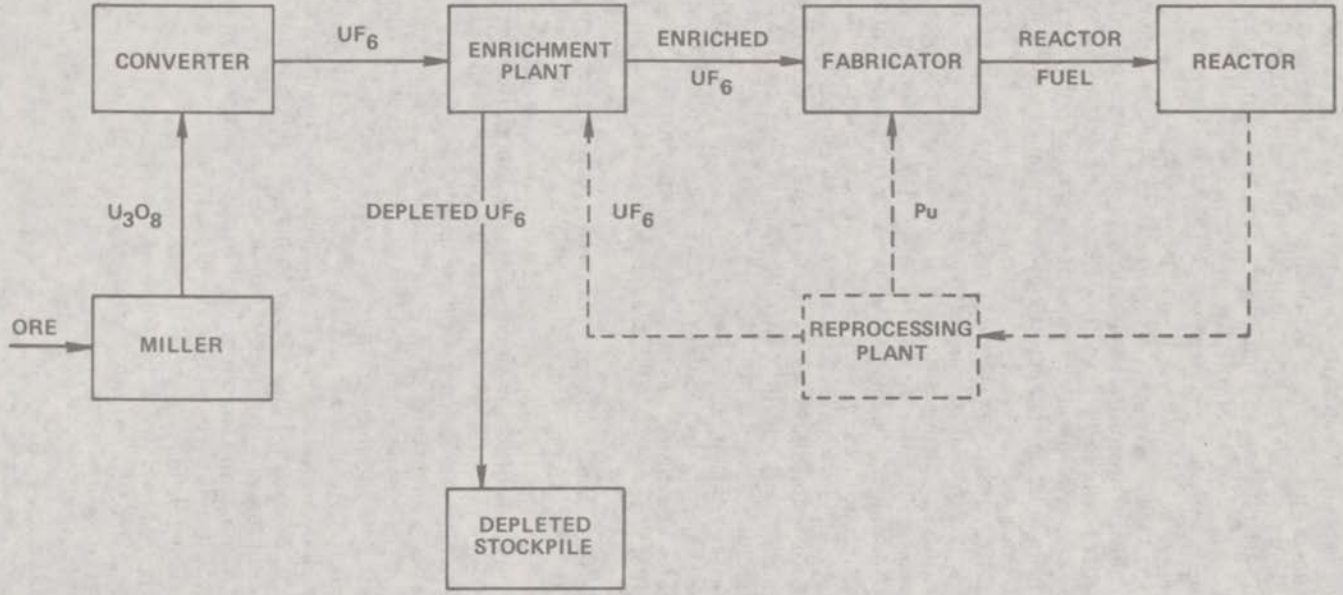
Mr. GORE. I think that might be very useful and certainly will be enlightening.

[Witness sketches on blackboard.]

[See chart 4 which is similar to the figure sketched on blackboard.]

CHART 4

Nuclear Fuel Cycle



Mr. THOMAS. Uranium ore is sent to a mill. Coming out of the mill is U_3O_8. It is sometimes called uranium concentrate and sometimes called yellowcake. The uranium is sent to a converter. There are two converters in the United States: Allied Chemical and Kerr-McGee.

The converter converts uranium to uranium hexachloride, which has the chemical form UF_6. It is the only common gaseous form of uranium, which is what is needed at enrichment plants.

Mr. GORE. So, that is the first step. It is converted into a gaseous form after it is mined and milled.

Mr. THOMAS. Right.

Up until this point, the customer has complete responsibility to do this. By "customers," we are talking about utilities. They have to obtain the uranium from the miners and millers. They go and get the conversion services done from the converters. They then deliver it to us as UF_6.

Mr. THOMAS. We then take the UF_6, the natural UF_6, and split it into two streams: an enriched stream and a depleted stream.

The enriched stream is then sent to a fabricator where it is fabricated into fuel, then on to a reactor——

Mr. GORE. Now, by "fabricated into a fuel," you mean put into a ceramic form into little pellets so it can be put into fuel rods; correct?

Mr. THOMAS. Right.

They take the enriched UF_6, cenvert it to uranium dioxide, which has the chemical form UO_2, compact it into pellets about the size of a small piece of chalk, slip that inside of zirconium tubing, gather those tubes into bundles, weld them into precise shapes and forms, and then that forms the fuel.

Mr. GORE. By "enriched," you mean it has a higher percentage of the lighter isotope, U^{235}?

Mr. THOMAS. That is right—about 3 percent. It comes in here [indicating on blackboard] at about 0.7 percent and goes out at about 3 percent.

Mr. GORE. What happens to the other stream, the leftovers?

Mr. THOMAS. The customer, at the time he takes the enriched stream, has the opportunity, if he wants it, to take the depleted stream. Most customers do not. Depleted uranium has essentially no value today. So, this depleted uranium stays with ERDA; we have large stockpiles of the depleted uranium being stored at all of our plants.

The enriched uranium is put into a reactor. Heat is generated and produces the electricity. Following that, fuel is discharged and, at the time being, is put into storage pools.

The point here is that, depending on what we do with the tails assay here determines the number of reactors we can serve. As we raise the tails assay, more enriched uranium is produced. Therefore, we can serve more customers over here. Of course, if we raise the tails assay, that requires more natural uranium to be brought out of the mines and mills and to be converted.

So, as we raise tails assay in order to supply more customers, more U_3O_8 must be procured.

Something that was considered up until this year was plutonium recycle. I refer to it in my testimony as the use of plutonium as fuel.

As indicated by the dashed lines, the spent fuel would be sent to a chemical processing plant. The chemical processing plant would dissolve the fuel and produce two product streams.

The uranium stream would be sent back to ERDA for further enrichment. A plutonium stream would have been sent to the fabricator. The point here is that plutonium is a fuel, like enriched uranium. It would have taken the place of some of this enriched uranium. Therefore, if there is a certain amount of enrichment capacity which is able to produce a given amount of enriched uranium, if there were plutonium recycle, less enriched uranium would have been needed. Therefore, we could have reduced our tails assay, and less natural uranium would have been required from the miners and millers.

Plutonium recycle could have reduced the amount of U_3O_8 required by about 43 percent. So, it has a dramatic and profound effect on what the requirements are for natural uranium.

In summary, both the amount of enrichment capacity and plutonium recycle have a significant effect on natural uranium requirements.

Mr. GORE. Now, the reprocessing that you hypothecate there is the same step that President Carter has announced that the United States will not go to. Is that correct?

Mr. THOMAS. Precisely.

But, in all the prior testimony I am going to review here, that was not known. In fact, early on it was quite certain that there would be plutonium recycle and that a reprocessing plant that it would be operated.

As my testimony unfolds, you will see the tails assay discussions that we had as an uncertainty the amount of new enrichment capacity and the use of plutonium recycle.

Mr. GORE. I do not want to put you on the spot; but, as a matter of personal curiosity, I wonder if you are as certain about that decision being ratified as you are about the location of the centrifuge plant at Portsmouth?

Mr. THOMAS. Well, sir, the President has said that there will not be plutonium recycle in this country.

Our plans are proceeding on the basis that there will not be plutonium recycle.

This is, of course, a matter that is still open. Congress is considering this. It is tied up with things like the breeder reactor, which Congress is still considering.

However, our planning is based now on the assumption that there will not be plutonium recycle and that we will have another enrichment plant at Portsmouth.

Mr. GORE. Please proceed.

Mr. THOMAS. Thank you.

The statements regarding the transaction tails assay were as follows—and, Mr. Chairman, I started in 1971 simply for convenience; I did not go back into the 1960's for any statements we might have had on transaction tails assay——

On March 23, 1971, before the Joint Committee on Atomic Energy—that is, the JCAE—the AEC testified that, beginning about July 1, 1973, is planned to increase the transaction tails assay. To assist industry planning, the AEC suggested the use of a transaction tails assay of approximately 0.25 percent U^{235}.

A press announcement was issued on May 7, 1971, which also suggested that industry use a projected level of 0.25 percent U^{235} as a tentative figure for planning purposes.

On March 7, 1972, before the JCAE, the AEC said that, rather than dispose of some of AEC's natural uranium on the commercial market, which would have been in competition with private industry, the AEC would operate its enrichment plants at a somewhat higher tails assay than the transaction tails assay. Since additional natural uranium feed would be required by the enrichment plants, this would result in the AEC using natural uranium from its stockpile, as I mentioned before. This mode of operation is often called split tails. The AEC said the transaction tails assay would remain at 0.2 percent U^{235}. Although no specific date was given on how long the transaction tails assay would remain at 0.2 percent U^{235}, it was implied that it would not change until the AEC natural uranium stockpile was used completely; graphs shown at the hearing indicated this would be in fiscal year 1982.

On July 31, 1973, before the JCAE, the AEC confirmed that the transaction tails assay would remain at 0.2 percent U^{235}. The AEC also discussed its enrichment services contracting approach with the JCAE, since the AEC enrichment capacity was about to be fully committed. The AEC noted that future AEC enrichment plant operations were planned on the basis of a 0.3 percent tails assay.

With that tails assay and with complete use of plutonium as fuel in the nuclear power reactors, the AEC expected that it could contract to support 382,000 megawatts of nuclear power. The AEC also said that, with a tails assay of 0.34 percent U^{235}, 415,000 megawatts could be supported with complete use of plutonium as fuel. Referring to chart 4, as we raise the tails assay, we can produce more enriched uranium and serve more reactors, but it requires more feed. However, if operation at the 0.34 percent U^{235} tails assay would have been required, it was considered to be only a temporary measure. That is, the 0.34 percent U^{235} tails assay might have been used for a very short period in the 1980's while new enrichment capacity was being brought on line.

On June 25, 1974, before the JCAE, the AEC discussed transaction tails assays associated with supporting 350,000 megawatts of nuclear power. The AEC said that this level could be supported at a tails assay of 0.3 percent U^{235}. The slight reduction from the 382,000 megawatts mentioned in the July 31, 1973, hearing to the 350,000 megawatts was due to a lower expectation of the use of plutonium as fuel in nuclear power reactors; that is, information from reactor operators indicated that some of them were not planning to use plutonium as fuel in their reactors.

The AEC also presented three possible plans for operating its gaseous diffusion plants at the 0.3 percent transaction tails assay in the future. These plans resulted in different projections of an AEC-owned enriched uranium stockpile. The AEC was considering different stockpile sizes in order to cover contingency situations at AEC enrichment plants and to "backstop" production from new enrichment capacity should they encounter delays in their production.

Let me say something briefly about the AEC enriched uranium stockpile. A number of years ago, the AEC determined it would be

advantageous to produce a stockpile of enriched uranium. The AEC realized a time would come when the demand for enrichment services would be greater than the supply from the enrichment plants. Therefore, the AEC entered into long-term contracts with those firms who supplied the electric power to operate the Government's plants.

Extra electric power was purchased early on which produced extra separative work. Part of the AEC natural uranium stockile was used to produce the enriched uranium stockpile.

Recalling what I said previously about split tails operation, the earlier the AEC raised the transaction tails assay, the less AEC feed would have been used to supply utility customers' needs. Therefore, the AEC presented three possible plans for increasing the transaction tails assay.

The three possible plans were: One, transact at 0.2 percent until June 30, 1976, and then increase to 0.3 percent U^{235} on July 1, 1976 and remain at that tails assay; two, transact at 0.2 percent U^{235} until June 30, 1976, then increase to 0.275 percent on July 1, 1976, and further increase to 0.3 percent on July 1, 1981; and three, transact at 0.2 percent U^{235} until June 30, 1981, and then increase to 0.3 percent on July 1, 1981.

Further, the AEC said it appeared that it might be feasible to increase the transaction tails assay to 0.275 percent U^{235} beginning in fiscal year 1977. That is, it appeared that the natural uranium industry could supply enough natural uranium by that date to support this tails assay.

On August 6, 1974, before the Joint Committee, the AEC projected that a future tails assay of 0.3 percent U^{235} could serve 290,000 megawatts without using plutonium as fuel in nuclear power reactors or could serve 350,000 megawatts using plutonium as fuel. If there were no use of plutonium, then private industry—which was expected at that time to build and operate future enrichment plants—would have served those contracts above the 290,000 megawatts.

However, on August 6—that same day—the AEC had requests for contracts covering 364,000 megawatts. Therefore, the AEC decided to increase its firm contract commitment by about 10 percent; that it, from 290,000 to 320,000 megawatts. If there were no additional enrichment plants, the AEC would have needed to increase the tails assay to 0.36 percent U^{235} in the mid-1980's to serve the 320,000 megawatts.

That contracts from 320,000 megawatts to 364,000 megawatts—that is 44,000 megawatts—were signed on a conditional basis. That is, they would be terminated if a finding permitting use of plutonium as fuel in power reactors did not occur by a specific date. If there were use of plutonium in nuclear power reactors, but no additional enrichment plants, than a tails assay of about 0.33 percent U^{235} in the mid-1980's would have been required to support the 364,000 megawatts.

The AEC pointed out that either a regulatory finding permitting the use of plutonium as fuel in nuclear power reactors or adequate commitments to new enrichment capacity would make increases in future transaction tails assay above the 0.3 percent U^{235} level completely unnecessary.

This is what I mentioned earlier: the AEC had to talk about all these possible situations. However, at that time, either the use of plu-

tonium as fuel in power reactors or new enrichment capacity was considered very likely.

The AEC also said that an alternative seriously being considered involved increasing the transaction tails assay at an early date.

On January 6, 1975, a Federal Register notice was issued—40 F.R. 1117—in which the AEC announced proposed revisions to the transaction assay. The AEC said its planning contemplated an increase in the transaction tails assay of 0.275 percent U^{235} effective July 1, 1976, and to 0.3 percent U^{235} effective July 1, 1981. Industry comments were requested by March 7, 1975.

The comments received from the nuclear industry indicated that a 0.275-percent U^{235} transaction tails assay beginning in July 1976 was just too high. The industry noted that the required production capacity to provide the uranium might not be available and that the price to provide the uranium might be excessive. It was industry's opinion that, if the transaction tails assay needed to be increased, it should be done gradually.

In the January 6 notice, the AEC also asked for the industry's comments on what the ultimate long-range transaction tails assay should be based. The AEC said that, with the establishment of adequate new domestic enrichment capacity, there would be the opportunity to reduce the planned 0.3-percent U^{235} transaction tails assay. The industry response, from both uranium producers as well as utilities, recommended a transaction tails assay in the range from 0.2 to 0.25 percent.

Prior to the comments being received from industry, a uranium enrichment conference was held in Oak Ridge, Tenn., on February 13 and 14, 1975. The purpose of the conference was to provide industry information regarding the January 6 Federal Register notice. Various plans were presented for operating the ERDA enrichment plants. The base plan assumed the transaction tails assay would increase to 0.275 percent U^{235} on July 1, 1976, and further to 0.3 percent U^{235} on July 1, 1981.

Two alternate plans were also discussed which were tied to the conditions discussed with the JCAE on August 6, 1974. One plan assumed the July 1, 1981, increase would have been to 0.36 percent U^{235}; this assumed that, without the use of plutonium fuel, 320,000 megawatts would be supplied by AEC-owned enrichment plants. The other plan assumed an increase of 0.33 percent U^{235} on July 1, 1981; this alternate plan assumed that, with use of plutonium fueling, 364,000 megawatts would be supplied.

On May 5, 1975, a Federal Register notice was issued—40 F.R. 19525—that rescinded the proposed transaction tails assay increase to 0.275 percent U^{235}. The notice said the 0.2 percent U^{235} transaction tails assay would continue in effect until at least September 30, 1977.

Mr. GORE. If I could interrupt you there.

What you are saying then is that in January of 1975, ERDA published an official notice saying that they were thinking about increasing the tails assay.

Mr. THOMAS. Yes.

Mr. GORE. Five months later you published another notice saying that you were not going to do it after all.

Mr. THOMAS. That is right.

Mr. GORE. The tails assay was never increased; correct?

Mr. THOMAS. That is right.

Mr. GORE. Your statement is very good, and it is important to have it on the record. The reason is that those who attempt to say that the cartel had no impact have to explain the 700-percent price increase by attributing it to other factors.

One of the principal scapegoats has been the policies of the U.S. Government. For example, Mr. McAfee, the chairman of the board of Gulf, has said in testimony a few months ago before this subcommittee:

> The present supply of and demand for uranium, as well as its price, is, to a large measure, the result of many different government policies which did not always achieve the goals which the government intended.

In the past, others have singled out the tails assay question as one of those decisions which is somehow responsible for the 700-percent increase in the price of uranium. Yet, what you are telling us is that decision was never made. You notified the industry that that decision was proposed. Yet 5 months later, you rescinded even that notice; and the decision was, in fact, never made.

Let me ask you at this point, before you proceed with your very excellent statement—and I think it is valuable to have a discussion of this whole matter in detail in the record so that those who read the record will have ERDA's position on it in detail.

Do you believe that this announcement, that your decision was being considered, had a dramatic effect on the demand for uranium by utilities?

Mr. THOMAS. I do not believe so, sir.

Mr. GORE. The date on it is very significant. The first announcement that you were even considering it came in the Federal Register of January 6, 1975. That was well after the dates of the contracts that we are investigating here in this hearing.

Please proceed with your statement.

Mr. THOMAS. On June 19, 1975, ERDA issued a press announcement that, among other things, said that ERDA was planning to increase the transaction tails assay in a stepwise fashion: to 0.25 percent U^{235} October 1, 1977, to 0.275 percent U^{235} on October 1, 1979, and further to 0.3 percent U^{235} on October 1, 1981.

On October 7 and 8, 1975, a uranium industry seminar was held in Grand Junction, Colo. Natural requirements were presented which were based on increasing the transaction tails assay to 0.25 percent U^{235} on October 1, 1977, and further to 0.275 percent U^{235} on October 1, 1979. Tow alternate cases were also presented for the transaction tails assay beginning on October 1, 1981.

One case assumed use of plutonium as fuel in nuclear power reactors and resulted in a transaction tails assay of 0.29 percent. Now, there is a different tails assay from those that have been mentioned previously.

What happened was that we started out with some 364,000 megawatts. From August 1974 until October 1975, some of the contracts were terminated. In October 1975, we held contracts covering 329,000 megawatts. Since we did not have as much enriched uranium to produce, we could discuss a somewhat lower tails assay. So, we started talking about a tails assay of 0.29 percent.

The other case assumed no use of plutonium and resulted in a transaction tails assay of 0.35 percent U^{235}. This case assumed that the conditional contracts were supplied by new enrichment capacity.

In October 1975, we held conditional contracts covering, not 44,000 megawatts, but only 14,000 megawatts.

The need for additional new enrichment capacity to hedge against possible shortages in uranium supply was also discussed. In particular, the need for the Nuclear Fuel Assurance Act was discussed, which was being considered by Congress at that time. However, it was pointed out that ERDA would be authorized to proceed with backup contingency measures to build a new enrichment plant if industry efforts faltered.

On November 11, 1975, a uranium enrichment conference was held in Oak Ridge, Tenn. The possibility was discussed of a 0.29 percent U^{235} transaction tails assay beginning on October 1, 1981, or, alternatively, 0.37 percent U^{235} transaction tails assay. The range in transaction tails assay was dependent on the extent to which plutonium was used as fuel in nuclear power reactors. With moderate use of plutonium as fuel, the 0.29 percent U^{235} tails assay would have been required Without use of plutonium fuel, the 0.37 percent U^{235} would have been required.

The reason for the 0.37 percent U^{235} being different from the 0.35 percent was, for this conference, we presumed that the conditional contracts would be served by ERDA.

However, it was pointed out at the conference that at the 0.37 percent U^{235} transaction tails assay it would be difficult to obtain the necessary natural uranium; this transaction tails assay could be reduced if additional enrichment capacity were available.

On October 19 and 20, 1976, a uranium industry seminar was held in Grand Junction, Colo. Before the seminar, Congress had appropriated funds for ERDA to begin construction of an 8.75 million SWU per year uranium enrichment plant at its Portsmouth, Ohio facility. With this additional capacity, the enrichment plants would have needed to transact at tails assays of about 0.2 percent U^{235} with use of plutonium or at about 0.25 percent without the use of plutonium.

At this point in time, we had 323,000 megawatts. Therefore, we could talk about even lower tails assays.

Natural uranium requirements were, therefore, presented for two cases: One that maintained the 0.2 percent U^{235} transaction tails assay indefinitely and one that increased the transaction tails assay to 0.25 percent on October 1, 1978.

Since ERDA must provide 540 days notice of a change in transaction tails assay and ERDA would only change the transaction tails assay at the beginning of a fiscal year, October 1, 1978, was the earliest date the ERDA would change the transaction tails assay. Thus, the two cases formed the likely lower and likely upper bound of uranium requirements.

Finally, on April 25, 1977, at an Atomic Industrial Forum conference in Kansas City, Mo., ERDA said it planned to continue the current 0.25 percent U^{235} transaction tails assay until at least October 1, 1980, and that subsequent transaction tails assays would be no greater than 0.25 percent U^{235}.

The relaxation in date on which the transaction tails assay will be increased is due to reduced needs for the amount of enriched uranium contained in ERDA's stockpile.

The above variations in proposed transaction tails assays were due primarily to uncertainties regarding, one, the extent to which plutonium would be used as fuel in nuclear power reactors and, two, whether new uranium enrichment capacity would be available.

Until at least mid-1976, it appeared that reprocessing and fabrication facilities would be built to permit the use of plutonium as fuel in nuclear power reactors. Moreover, it appeared that the Nuclear Regulatory Commission would grant generic approval of plutonium fueling in the nuclear power reactors. Indeed, on August 5, 1974, the day before the various options regarding transaction tails assay were discussed with the JCAE, a draft environmental impact statement on the use of plutonium fueling was issued for public comment.

However, as the uncertainty regarding plutonium use became greater, the commitment for additional uranium enrichment capacity became more certain; the Nuclear Fuel Assurance Act always contained the provision for a "hedge plan" which would have allowed ERDA to construct the additional enrichment capacity. Therefore, careful consideration of all the variables that could have led to a tails assay greater than 0.3 percent U^{235} should have resulted in the conclusion that there was low probability for such tails assays. However, the possibility of tails assays as high as 0.37 percent U^{235} had to be discussed in order to present all possible situations to the nuclear industry.

The AEC—and later ERDA—discussed these variables so that the nuclear industry would be informed of the latest thinking inside of the AEC. The AEC wanted to be open and forthcoming with its planning. However, it should be stressed that since 1968 the transaction tails assay has remained at 0.2 percent U^{235}. The various potential transaction tails assays were presented for planning purposes. However, even the planned increases to a transaction tails assay of 0.3 percent U^{235} would only have increased the natural uranium requirements for an individual reactor operator by 20 percent. When compared against the increasing future requirements for natural uranium—due to the increasing number of nuclear power reactors—the 20-percent increase due to a possible transaction tails assay increase should not have had a substantial effect on the natural uranium prices; it was expected that the 0.3 percent U^{235} transaction tails assay would not be effective until the 1980's.

FOREIGN URANIUM

Section 161v of the Atomic Energy Act of 1954, as amended, states that the Government, to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer uranium enrichment services for uranium of foreign origin intended for use in a domestic nuclear power reactor.

On October 13, 1971, the AEC requested public comment on proposed uranium supply policies relating to the disposal of excess natural uranium and use of foreign uranium in domestic nuclear

reactors. In this announcement the AEC indicated that, in recognition of the soft market for uranium which was expected to continue for several years, the enrichment of foreign uranium for domestic nuclear power reactors should be deferred until the latter part of the present decade, the 1970's. It was further indicated that the proportion of foreign natural uranium initially would be limited, but would be increased in subsequent years, until all restrictions had been removed.

On November 27, 1973, a Federal Register notice was published—38 F.R. 32595—which presented for comment a plan to relax gradually and eventually to remove the restrictions on the enrichment of foreign uranium intended for use in domestic nuclear power reactors. It was proposed that, beginning in 1977, up to 10 percent of the uranium could be of foreign origin.

The amount would be increased to 15 percent in 1978, 20 percent in 1979, 30 percent in 1980, 40 percent in 1981, 60 percent in 1982, and 80 percent in 1983. Starting in 1984, there would have been no restriction on enrichment of foreign uranium for domestic use.

After consideration of the comments received, on October 25, 1974, a Federal Register notice was published—39 F.R. 38016—which adopted the previously announced schedule for removal of restrictions. The plan also involved programs to assure development of adequate domestic supply of natural uranium and monitoring of dependence on foreign suppliers.

URANIUM ENRICHMENT CONTRACTING

ERDA holds two basic kinds of long-term enrichment services contracts: a requirements contract and a fixed-commitment contract. The requirements contract was the original kind of enrichment services contract offered by the AEC. Under this contract, the Government is obliged to supply enrichment services usually over a 30-year period, up to a specified limit. However, a customer is not required to firm up the quantity of material and the desired amount of uranium enrichment services until 180 days before the date the enriched uranium product is to be delivered to the customers.

In a hearing before the JCAE on March 7, 1972, the AEC said it was reviewing the requirements contract with the possibility of, in the future, signing ironclad contracts with utilities. The contract would have committeed the utilities to enrichment services for a longer period of time. This was being done so the AEC would be able better to estimate future demands on the uranium enrichment plants.

On December 8, 1972, a Federal Register notice was published—37 F.R. 26145—in which the AEC announced it would not enter into contracts for uranium enrichment services until further notice. The AEC said it was reviewing its long-term enrichment services contracts, with the intent to move toward contracts that would be more firm and businesslike.

On May 9, 1973, a Federal Register notice was published—38 F.R. 12180—that announced the new criteria for providing uranium enrichment services. These criteria led to the terms and conditions contained in the fixed-commitment contract. The actual contract was available on September 11, 1973, and a notice was published in the

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Federal Register—38. F.R. 24937. The first contract was executed in November of 1973. Under the fixed-commitment contract, a customer is required to provide a schedule of the first 10 years of uranium enrichment needs. The quantities of enrichment services specified in this schedule may not be reduced or delayed without incurring certain economic penalties.

Enrichment services after the initial 10-year period are agreed to on a rolling 10-year basis. On July 2, 1974, the AEC determined it had reached the limit of the capability of its enrichment plants to supply enrichment services since it had requirements for supplying the 364,000 megawatts of nuclear power, which I mentioned earlier. Accordingly, the AEC announced a temporary suspension of entering into enrichment servces contracts. Then, on August 6, 1974, the AEC announced it would not sign additional contracts beyond those requested at that time against the planned capacity of the AEC enrichment plants.

On January 15, 1975, the AEC issued a press announcement in which it offered to modify the separative work delivery schedules in the fixed-commitment contracts. However, the offer stipulated that the deliveries of natural uranium the customers had to make had to remain on the original schedule, as there was a projected need for natural uranium at the enrichment plants and it was desirable to stabilize nautral uranium industry capable of meeting larger future needs.

On June 19, 1975, ERDA issued a press release that announced terms for broader enrichment services contract adjustments. Among other terms, a modified natural uranium delivery schedule was presented. As seen on table 1, the new schedule was as follows:

For fiscal years 1976–77, the portion of natural uranium associated with original schedule required under this option was 100 percent. For fiscal year 1978–80, it was 50 percent. For fiscal years 1981–83, it was 25 percent.

TABLE 1.—*Portion of natural uranium associated with original schedule required under this option*

Year of original enrichment services:	Percent
1976–77	100
1978–80	50
1981–83	25

In commenting on this modified natural uranium delivery schedule, the Nuclear Exchange Corporation said "the relative uranium price stability during the summer of 1975 was, no doubt, in some measure a result of the reduction in demand," compared to the previous contract schedules.

The above schedule was established to assure maintenance of a near-term market for the uranium industry which had been plagued in the past by slippages of delivery schedules. This had caused disruption in mine and mill planning, loss of cash flow, and consequent financial problems for the producers.

OBSERVATIONS

In summary, regarding the possible effect on the rise in natural uranium prices due to ERDA's actions, I would observe the following:

First, the AEC's—and later ERDA's—statements on future possible transaction tails assays should have led industry to conclude that 0.3

percent U^{235} was the likely limit, at least the statements made through the latter part of 1976. Transaction tails assays above 0.3 percent U^{235} were discussed so that all possible situations were presented. It should have been reasonable for industry to conclude that necessary actions would be taken to limit the transaction tails assay to 0.3 percent U^{235}.

Indeed, the January 6, 1975, Federal Register notice indicated a lower transaction tails assay and a lessening demand of the supply of natural uranium.

Second, the AEC policy on enrichment of foreign uranium for domestic use should have had a stabilizing effect on the natural uranium market. The October 1971 announcement indicated a gradually increasing schedule of foreign natural uranium would be put into effect in the latter part of the 1970's. The November 1973 Federal Register notice presented such a schedule. ERDA has not revised the schedule, nor does it intend to revise the schedule in the future. It, thus, forms a firm foundation for industry planning.

Third, I do not believe the fixed-commitment contract had a marked effect on the natural uranium price. For example, in 1973—the year the fixed-commitment contract was introduced—utilities tried to produce 150,000 tons of natural uranium concentrate. However, only about one-third of that amount was actually procured. That activity certainly caused an increase in the price of uranium.

It should be noted, however, that only about 15 percent of the 150,000 tons was for fixed-commitment contracts. Requirement contract procurement comprised about 85 percent of the 150,000 tons.

Thank you, Mr. Chairman.

Mr. GORE. Thank you, Mr. Thomas.

It is a very thoughtful statement that you have made. It includes a lot of detail which will be extremely valuable for the record of this hearing.

As I stated before, it is important to label a strawman as a strawman. To attempt to explain the 700-percent increase in the price of uranium by saying it was caused by the policies of ERDA—as some have done—is to set up a strawman.

You have said basically three things here today which are directly relevant to this hearing. First, the tails assay proposal by ERDA had little, if any, effect on the market for uranium. Indeed, the proposal was not even announced until after most of the contracts under discussion were signed. The decision was never made. The proposal was rescinded 5 months after it was made. It it your conclusion that it had no effect.

Second, the embargo decisions acted to stabilize the market, in your opinion. The record of your testimony indicates that, as early as 1971 there were indications that the embargo would be lifted. In 1973, those indications were firmed up. In 1974, the announcement was made.

Finally, you say that the fixed-commitment contracts had no marked effect on the market either. You say, "I do not believe that it had a marked effect."

TVA has testified that it had absolutely no effect on their demand for uranium. TVA expressed the opinion earlier that the first and most important commitment to buy uranium is made when a utility

decides to build a nuclear reactor; they have to have assurances of a supply to produce electricity and to amortize the cost of that reactor. As a result, the enrichment contract requirements had little, if any, effect on—TVA said no effect—the demand for uranium.

So, for those who would attempt to blame the 700-percent increase on the government policies, I think a reading of this record would cetrainly give them second thoughts. Just yesterday, another statement was made that escalations of uranium prices can clearly be attributed to other factors. Some of the factors pointed to, by way of a quote, is the decision by the U.S. Government on its uranium policy.

I think your testimony amply demonstrates that that is not the case.

I recognize Mr. Maguire for any questions.

Mr. MAGUIRE. Mr. Chairman, I have no questions at this point.

Mr. GORE. I recognize counsel for questions.

Mr. ATKISSON. Thank you, Mr. Chairman.

By the way, Mr. Patterson, do you agree with the testimony that has just been given?

Mr. PATTERSON. Yes, I do.

Mr. ATKISSON. The requirement to supply a schedule under the fixed-commitment contract policy of ERDA was a requirement for only that; was it not? It was just to supply a schedule and not the uranium itself?

Mr. THOMAS. That is right. The contract holders supply us with a schedule. The schedule says that on a certain schedule they will take enrichment services from us. They also then, of course, have to deliver natural uranium feed to us.

Mr. ATKISSON. I understand that. But, if I were a utility and I was facing this policy, I would not have to satisfy you in advance that I had in hand enough uranium to honor that commitment.

Mr. THOMAS. No. The AEC—at that time—and now ERDA does not require that at all.

Mr. ATKISSON. Indeed—I presume at least— it would be expected that utilities would not have had that uranium in hand and would be expected to go out in the marketplace and satisfy their needs when the requirement to deliver the uranium came up.

Mr. THOMAS. That would certainly be a matter for the utility. TVA had one policy; other utilities might have other policies.

Mr. ATKISSON. You used phraseology earlier in your statement about "serving" power requirements of TVA. In fact, your arrangement with TVA for power is roughly akin to a take-or-pay contract; is it not?

Mr. THOMAS. Yes, sir. We have contracts with them that, within limits, obliges us to take power from them if it is available.

Mr. ATKISSON. You are required to take a minimum amount of power; are you not?

Mr. THOMAS. That is right.

Mr. ATKISSON. If you do not take it, you pay TVA anyway.

Mr. THOMAS. That is right—a demand charge.

Mr. ATKISSON. In other words, some of your policies are in response to an obligation that ERDA has entered into with TVA. You have to consume that power whether you like it or not. Isn't that correct?

Mr. THOMAS. Yes, sir.

Mr. ATKISSON. What order of magnitude are we talking about, by the way? How much power does ERDA consume from TVA? Can you give us an example and bring it down to terms that we might understand?

Mr. THOMAS. Our power bill is approaching $1 billion a year.

Mr. ATKISSON. $1 billion a year.

Mr. GORE. Rates are going up, too; aren't they?

Mr. THOMAS. Yes, sir.

Mr. GORE. Let me ask you one final question.

You noted in your testimony that, when you proposed the lifting of the embargo, you asked for comments from the uranium producers?

Mr. THOMAS. Yes, sir.

Mr. GORE. What kind of comments did you receive?

Mr. PATTERSON. We received a wide spectrum of comments from producers and buyers as well. There were a number of points of view expressed. I think the most complete set of comments we received were in response to the 1973 announcement, where we had a specific proposed schedule for the removal of restrictions.

A number of producers felt that there should be some limitation on the percentage we would allow or that there should be a deferral on the date at which we would initially allow use of foreign uranium. But, generally, the objections to removal at that point in time were less vocal than they had been in earlier years.

We were starting to see agreement among some producers that this would be a schedule that they could live with. They were happy that we were at least letting them know specifically how we were going to remove the restrictions such that they would know how they would have to compete with foreign uranium.

Mr. GORE. From your perception then, the domestic producers were opposed to the removal of the embargo prior to 1973. But, in the comments they supplied you in response to the 1973 proposal, you noticed a shift in their attitude toward the embargo in that, for the first time, they evidenced a willingness to see the embargo lifted if it were lifted on a gradual basis.

Is that correct?

Mr. PATTERSON. Yes, in general terms, that is right; although there were some producers who were not concerned about foreign uranium in the beginning. The comments that we received on the first announcement, in effect, indicated that they were not concerned about competition from foreign uranium and that they could compete.

The thrust of the industry attitude was: Don't remove the restrictions. There was a gradual changing of industry thought during this time period such that the comments of the 1973 announcement were certainly much less opposed to removal of restrictions than they had been before.

Mr. GORE. By any chance, did you attend the Oak Brook meeting of th Atomic Industrial Forum in 1973?

Mr. PATTERSON. Yes, I did.

Mr. GORE. Did you attend the San Diego meeting?

Mr. PATTERSON. No.

Mr. GORE. Were you aware of the San Diego meeting in Febrauary 1973?

Mr. PATTERSON. No.

Mr. GORE. We are attempting to establish if anyone was aware of it other than the domestic uranium producers. We simply do not have the evidence on that, but we are pursuing it. It was a planning session in preparation for the Oak Brook meeting.

During the San Diego meeting, the question of the embargo was discussed. I am told that at Oak Brook the embargo was a subject of discussion quite frequently. Does that correspond with your recollection of the Oak Brook meeting?

Mr. PATTERSON. Yes. The Oak Brook meeting and most other meetings of the Atomic Industrial Forum usually had a meeting of the Mining and Milling Committee. This would be a private meeting just for the members of the committee. It would be essentially uranium producers, domestic and foreign. This would not have been a public part of the proceedings, and I would not have attended.

Mr. GORE. Did you happen to see the letter from Mr. Mazell that was entered into the record of the hearing at an earlier point?

Mr. PATTERSON. Yes, I did.

Mr. GORE. In that letter, he, who represented a foreign producer, indicated that he did not have any interest nor did the other foreign producers in selling at low prices. Really, they were interested in seeing a very gradual lifting of the embargo. Does that surprise you that they would take that attitude?

Mr. PATTERSON. This attitude was expressed in a letter from Rio Tinto. They were one of the commenters on our proposed policy. As I mentioned, others seemed to feel that the policy we were proposing—of gradual removal—was a workable approach. So, we were getting support for that.

Mr. GORE. Well, it would seem to maximize their profit and would prevent any competition, or would severely limit any competition.

Mr. PATTERSON. It would have, in effect, kept them out of the U.S. market for a longer period of time. Some people had been proposing that we take the restrictions off earlier. In fact, the uranium buyers generally were calling for the immediate or more rapid removal of foreign restrictions so they could have more access to foreign uranium.

But our concept was a phased withdrawal of the embargo as requirements grew worldwide and as domestic capability grew.

Mr. GORE. It concerns me, as one Member of Congress, that uranium producers were having private discussions, without any attorneys or intermediaries present, about their approach to the embargo. It concerns me that a foreign producer was writing a domestic producer to suggest a collective approach to a pricing mechanism in contracts and a collective approach to the lifting of the embargo.

It raises the question, it seems to me, about how they viewed that embargo. It raises the question of why the domestic producers withdrew their objections to the lifting of the embargo. Specifically it raises the question of whether or not the removal of their objections to the lifting of the embargo was connected to the assurances given by at least one foreign producer that they had no intention of setting com-

petitive prices, but rather were interested in maximizing the profits of both the foreign producers and the domestic producers.

I am wondering if that could be a quid pro quo.

Mr. PATTERSON. I have seen no evidence of that. I heard before, during the last few months—I guess your hearings in the Gulf case—that this point came out. But I have seen no evidence on my own that there was a tie-in between these things.

Mr. GORE. I would submit that the Mazell letter could be construed as evidence of that quid pro quo, if one interpreted that way.

Why do you think the domestic producers withdrew their objection to the embargo?

Mr. PATTERSON. I think they at that point did not see as much threat from foreign uranium. The Australian picture was not as bad as had been previously thought. In late 1972, it looked like——

Mr. GORE. What do you mean, "as bad"?

Mr. PATTERSON. Well, in late 1972, it was expected that Australian uranium was going to come in and be very cheap uranium.

Mr. GORE. Right, but that situation clouded up, and their uranium was held off the market.

Mr. PATTERSON. That is right.

So, they were less concerned about the competition from Australian uranium. It was clear that they were not going to be given a green light to produce as much uranium or that they were going to sell it at very low prices.

At the same time, there was a sharp growth in foreign requirements for uranium such that there would be foreign demand for that uranium. There would be less excess to come into the U.S. marketplace.

At the same time, the U.S. market had grown considerably so that they were assured that, compared to the industry capacity and requirements, they would have assurance of a larger piece of the market.

Mr. GORE. And a cartel was formed to control the foreign market, set the price, and in that way prevent competition from foreign producers in the domestic market.

Mr. PATTERSON. Well, that part I cannot vouch for.

Mr. GORE. Because you don't have personal knowledge of it?

Mr. PATTERSON. Yes.

Mr. GORE. I will yield to Mr. Maguire for any questions.

Mr. MAGUIRE. I have no questions, Mr. Chairman.

Mr. GORE. Thank you both very much for appearing today and helping us in this inquiry.

We will go now to Mr. Hugh B. Millraney, who is manager of the Caney Fork Electric Cooperative in McMinnville, and a member of the board of directors of the Tennessee Valley Public Power Association and a personal friend.

Please stand and be sworn, Mr. Millraney.

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

Mr. MILLRANEY. I do.

Mr. GORE. As a formality, will you please identify yourself to the reporter?

TESTIMONY OF HUGH B. MILLRANEY, MANAGER, CANEY FORK ELECTRIC COOPERATIVE, McMINNVILLE, TENN., AND MEMBER OF BOARD OF DIRECTORS, TENNESSEE VALLEY PUBLIC POWER ASSOCIATION

Mr. MILLRANEY. Thank you, Mr. Chairman.

My name is Hugh B. Millraney. I am manager of Caney Fork Electric Cooperative, which is a rural electric system headquartered in McMinnville, Tenn., and serving about 17,500 homes, businesses, and industries in the surrounding area.

I am also a member of the board of directors of the Tennessee Valley Public Power Association, a regional organization of the 110 municipal power systems and 50 rural electric cooperatives that purchase their entire wholesale power from the Tennessee Valley Authority.

These consumer-owned electric systems purchase electric power at wholesale from the Tennessee Valley Authority and deliver that electricity at retail to more than 2½ million valley homes, farms, businesses, and industries.

I am here to speak in behalf of the interests of these 2½ million electric consumers, whose rising electric rates in the past half dozen years have been due primarily to sharp increases in the price that our power supplier, TVA, has had to pay for fuel to operate electric generating plants.

We wish to commend the House Interstate and Foreign Commerce Committee and its Subcommittee on Oversight and Investigations for their exploration of the impact of the uranium cartel arrangements on the price and supply of foreign and domestic uranium. We commend you, Congressman Gore, for the leadership role you have taken in this matter. We are particularly pleased that you have taken the time to bring this congressional committee hearing to the Tennessee Valley, where the people use large quantities of electricity, and are directly affected by the price of energy.

We have seen TVA's average price of coal burned shoot up from $4.73 a ton in 1970 to $18.72 in 1976. This is a quadrupling of price in just 6 years. So, when we read of uranium prices skyrocketing from $6 to $41 per pound in just 3 years, it definitely has a familiar ring to it.

In both cases, there is an obvious question as to whether these spectacular upward swings in prices were reflective of increases in production and other costs, or were the result of controlled supply and price.

This subcommittee should, we feel, thoroughly explore questions such as this in order to clarify, for the public record, whether electric consumers in the Tennessee Valley are paying through their electric bills for excessive uranium prices charged to TVA today and in the future.

In the fiscal year ended June 30, 1976, the 160 consumer-owned electric systems in the Tennessee Valley purchased more than 66 billion kilowatt-hours of electricity from TVA, or more electricity than sold in 1975 by such giant private power companies as Commonwealth Edison Co., Pacific Gas & Electric Co., Consolidated Edison Co., Duke Power Co., or Southern California Edison Co.

These 160 distributors of TVA power paid more than $1 billion to TVA in fiscal year 1976 for wholesale power supply. This is a sharp increase from the $737 million paid in fiscal year 1975 for wholesale power. Ten years ago, in 1966, the consumer-owned electric systems in the valley paid TVA only $159 million for wholesale power supply. This is an indication of the rapid growth in TVA's wholesale rates.

I cite these figures to emphasize the importance of these hearings to the electric consumers of the Tennessee Valley.

TVA provides the wholesale power supply for these 160 municipal and rural cooperative electric systems that retail TVA-produced electricity to more than 2,500,000 consumers in parts of seven States. TVA is the only source of wholesale power supply for this region. Therefore, anything that affects the price or supply of TVA power directly affects the quality and price of the electric service that our local utilities offer to our customers.

Our locally owned utility systems deliver the electricity to the homes, businesses, and industries in our service areas. We are the ones who come face to face with the homeowner or renter or low-income person or industrial user who demands to know why the rates have been rising so sharply.

The electricity we buy at wholesale from TVA represents more than 75 cents out of every dollar of our total expenses. That is, of every 4 cents our consumers pay at retail for electric service, about 3 cents goes to TVA for wholesale power.

In 1970, the region's average home power bill represented 2.1 percent of the median family income; in 1976, electricity bills were taking 3.1 percent of median family income. In 1970, a home user of electricity on the R–2 rate in the valley paid $12.24 for 1,000 kilowatt-hours of electricity; in January 1977, that amount of electricity cost nearly twice that much—$23.47.

We think electricity in the Tennessee Valley area is still a bargain. Our rates still rank among the lowest in the Nation.

But we do not want our consumers to have to pay, through their electric bills, for uranium or other fuel prices that are the result of anticompetitive practices—whether it be coal, or uranium, or oil.

A few years ago, the Tennessee Valley Public Power Association, joined by the American Public Power Association and the National Rural Electric Cooperative Association, had a study made of the possible anticompetitive aspects of coal pricing. That study arose out of the uprecedented spurt in coal prices in the early 1970's—to levels that seemed unjustified by known factors of productions and other costs. The study indicated that known costs involved in mining and delivering coal did not adequately explain the steep climb in coal prices at that time, and that the price rise must be due to other factors. We asked the Justice Department to examine the matter in more detail, but they did not do so.

The present situation with uranium prices seems to include many of the same factors. I hope that, one, the Tennessee Valley Authority will fully investigate the anticompetitive aspects of this matter and, two, the Congress will examine this matter fully and will consider it in

relation to its current consideration of bills concerning horizontal divestiture of companies engaged in production of oil, gas, uranium, coal, and other energy sources.

Recent studies indicate that 24 oil and gas companies control about 44 percent of leased coal reserves in the Nation and that oil companies control 51 percent of the country's uranium reserves and 62 percent of the domestic uranium milling capacity. If the United States is to be more dependent on coal and uranium in the generation of electricity, as President Carter has urged, these statistics indicate a significant ownership of coal and uranium reserves by the oil and gas companies. In the Tennessee Valley, coal and uranium fuel most of TVA's power supply, and will continue to do so for many years.

The price of energy is too important in the daily lives of the people of this region to be left in the control of a few giant energy companies. I do not have the facts about the impact of the uranium cartel on the price of electricity in the valley. You will, of course, look to TVA officials for information on this matter. Our concern is for the consumer, who pays the bill. We want to keep this electric bill as low as possible, given the realities of today's costs of producing and distributing electric power. We do not want that consumer to pay for excessive costs that stem from anticompetitive practices.

Mr. Chairman, on behalf of the Tennessee Valley Public Power Association, and the 2½ million electric consumers in the Tennessee Valley, I thank you for this opportunity to appear before your subcommittee; and I commend you for your vigorous pursuit of the facts in this very important matter.

Mr. GORE. Thank you, Mr. Millraney. It is an excellent statement.

I think most consumers in the Tennessee Valley recognize quite clearly that it is not the fault of the distributors that the bills have been going up so rapidly. I would agree with you that horizontal divestiture is a good idea. It is a controversial subject; but, in my opinion, oil companies should not be allowed to exploit competing sources of energy such as coal, uranium, solar energy, geothermal, or any other sources of energy.

It is true that they do have enormous supplies of capital. But, if we allow it, we run the danger of missing the natural competition between different sources of energy that would give the public the benefit of the lowest priced power available. So, I would agree with you there.

I would also say that an objective of these hearings is to strengthen the antitrust laws so that we can prevent a future uranium cartel, to prevent activities like this occurring in the future.

In the course of this investigation, we ran across one memorandum describing the contact by the cartel of a German company which was invited to joint the cartel. This company said, "We had better not join because the German antitrust laws are too tough." Well, I would like to see American's antitrust laws be so tough that an American company which considered joining the cartel would think twice about it and that any company with assets in the United States would think twice about joining any cartel.

I would hope that the record that you have assisted us in developing here during this hearing will provide evidence that will embolden the Congress to strengthen the antitrust laws and give people the tools they need to enforce the prohibitions against anticompetitive practices.

I have one question. Would you favor seeing TVA institute an antitrust action against this cartel in an effort to recover any damages suffered due to the cartel's price-fixing activities?

Mr. MILLRANEY. Yes, I would.

Mr. GORE. Mr. Maguire, do you have any questions?

Mr. MAGUIRE. I have no further questions, Mr. Chairman.

I thank the witness for his testimony. I thank you, Mr. Chairman, for allowing me to participate in today's hearing.

Mr. GORE. Does counsel have questions?

Mr. ATKISSON. No, Mr. Chairman.

Mr. GORE. Mr. Millraney, thank you again for appearing.

That concludes the hearing today. The subcommittee will pursue this matter in a later hearing later this year in Washington. This is one of a series.

Again, our thanks to all the witnesses who participated today.

The hearing is adjourned.

[Whereupon, at 3:40 p.m., the hearing was adjourned.]

APPENDIX A

CONFIDENTIAL

FILE NOTE

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Extract

CANADIAN URANIUM PRODUCERS MEETING

OTTAWA, FEBRUARY 15, 1972

On February 14, Mr. Gordon M. MacNabb, Assistant Deputy Minister, Energy, Mines and Resources, Ottawa telephoned to advise me that Mr. Jack Austin, his Deputy Minister, had called a meeting of the Canadian uranium producers for 3:00 P.M. on Wednesday, February 16. The purpose of this meeting was to review the results of the simultaneous discussions which were held in Paris on February 7 and 8 between governments at one level, and producers at another.

The objective of these meetings in Paris 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 through to the end of 1977, in an orderly fashion. If general agreement on a formula was possible those involved were to examine alternative methods of implementation. The Canadian participation at these exploratory meetings had the full sanction of the Cabinet.

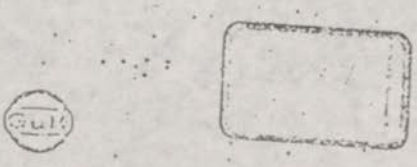
The companies represented at the Paris meetings were:

Canada	Uranium Canada Ltd.	(Crown Corporation)
	Eldorado Nuclear Ltd.	(Crown Corporation)
	Denison Mines Ltd.	
	Rio Algom Mines Ltd.	(RTZ)
France	Uranex	
South Africa	Nufcor	

Mr. MacNabb went on to state that they would also like to discuss a Canadian position and strategy for the forthcoming meetings of "specialists" representing the uranium-producing companies from Canada, France, South Africa.

Mr. MacNabb stated, "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

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that might be agreed upon to allocate demand and establish floor prices.

On February 15, I received a telephone call from Mr. Austin during which he also issued a very strong invitation for Gulf Minerals to attend the meeting scheduled for the next day. He gave as a reason, the benefits of making known our commitments under the agreement between Gulf Minerals Canada Limited and Uranerz Canada Limited, and the clarification of the status of the Rabbit Lake production with respect to Canada's overall supply during the 1972-77 period. I explained that we had some serious concern about being represented at a meeting which would discuss what was, in effect, prorationing. Mr. Austin assured me that these were exploratory meetings, held with the full knowledge and approval of the Canadian government. He also went on to point out that because our Rabbit Lake project represented a significant percentage of the Canadian supply picture, Gulf Minerals Canada Limited would be acting irresponsibly if it chose to ignore the discussions. Mr. Austin emphasized that the meeting in Ottawa was exploratory and there was no intention to discuss binding agreements with respect to prices or markets.

The verbal invitation to attend the meeting in Ottawa on February 16 was discussed with W. Z. Estey, R. K. Allen and S. A. Zagnoli in a conference telephone conversation on February 15. It was agreed that, under the circumstances, Gulf Minerals should be represented at the forthcoming meeting by W. Z. Estey and myself. Mr. Allen later discussed the matter further with Irwin W. Coleman who also agreed that Gulf Minerals should be represented at the meeting in Ottawa.

The meeting took place as scheduled at 3:00 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 Ltd.
G. M. MacNabb	Assistant Deputy Minister (Energy), Energy, Mines and Resources Vice-President, Uranium Canada Ltd.
M. H. Gilchrist	President, Eldorado Nuclear Ltd.
J. Kostuik	President, Denison Mines Ltd.
N. O'Brien	Director of Engineering, Denison Mines Ltd.
G. R. Albino	Executive Vice-President, Rio Algom Mines Ltd.
A. F. Lowell	Vice-President - Marketing, Rio Algom Mines Ltd.
N. M. Ediger	Manager, Gulf Minerals Canada Limited
W. Z. Estey	Counsel, Gulf Minerals Canada Limited

In addition, there were two representatives from the Department of Industry, Trade and Commerce, and two from the Department of Consumer and Corporate Affairs.

The following agenda was proposed by Mr. Austin.

1. Discussion of minimum pricing concept arising out of Paris meeting (including consideration of financing, commissions, etc.).
2. Review of supply/demand situation for the six period 1972-1977.
3. Proposals for market allocation arising out of the Paris meeting and the effect on Canadian producers.
4. Implications of the proposed Competition Act and the existing Combines Investigation Act.
5. Posture for the "specialists" meeting in Paris, February 21 and 22.
6. Attendance at the above meeting.

As the meeting did not follow the order of the proposed agenda, I will report on it in the sequence which actually took place.

Supply/Demand

Mr. MacNabb began the discussion by stating that there was general agreement at the meetings between governments and the meetings between producers in Paris, that there was a need for measures which would assure an orderly market place and prices during the next six years, so as to provide an incentive for the exploration effort that will be required to define the reserves necessary to meet the requirements of the 1980's.

He went on to state that although everyone in attendance had their own supply/demand estimates, it was generally agreed that, at the present time, 26,000 tons of U_3O_8 demand remained uncommitted for deliveries through to the end of 1977. Approximately half of this uncommitted tonnage is expected to be spoken for by mid-1972. Although it was more difficult to agree on the supply available to fill this demand, it was generally agreed that it exceeded demand by at least four times, and possibly up to 160,000 tons. It was further estimated that for the period through to the end of 1980, there was at least 120,000 tons of available stockpile and existing uncommitted productive capacity to supply a potential market of 75,000 tons. The Paris group also felt that if the United States and other captive markets were excluded, the supply would equal demand in 1982 or '83. If the United States market was opened to foreign uranium, the supply and demand would reach a balance in the 1978 to '80 period. A serious shortage was predicted thereafter, if exploration continued to decline. (In

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Gulf

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1969 the Atomic Energy Control Board issued over 70 uranium exploration permits; in 1970 this number declined to 15; in 1971 only two companies in Canada held permits.)

Mr. MacNabb stated that in the discussions of supply/demand it was assumed that the Rabbit Lake production was uncommitted. I objected to this.

Status of Rabbit Lake Production

Mr. Austin invited me to describe the nature of our agreement with Uranerz with respect to Rabbit Lake production and the status of our project. I responded by stating that under an agreement arrived at in 1969, and finally documented in 1970, Uranerz Canada Limited, principally owned by Rheinbraun, a wholly-owned subsidiary of RWE, had an obligation to take all of Gulf's share of production that was put to them, for the life of the project, in addition to their own share. Further, they had a more specific obligation to take the first 3,000 tons of Gulf's share during the first three years at a guaranteed floor price. I also informed the meeting that we expected to begin production early in 1975 at the rate of approximately 2,000 tons per year. All present accepted Gulf's description of the agreements with respect to the Rabbit Lake project and regarded the production starting in 1975 as committed. Denison and Rio Algom agreed that Rabbit Lake production could properly be left out of any discussions of allocation formulae.

Floor Price

Mr. MacNabb stated that there was a consensus among the groups in Paris that the U_3O_8 floor price should be $6.25/lb. in 1972 with escalation of 25 cents per year for European markets and $6.55/lb. in 1972 for the Japanese market because of special commissions, etc. Although higher floor prices had been discussed and were still being considered, it was felt that $6.25 was sufficient to provide an incentive for further exploration and keep incremental production from the United States out of the world market.

It was further agreed that 8% should be used as the interest factor for discounting any future sales.

Market Allocation

Mr. MacNabb reported that there was no consensus in regard to a market allocation formula and this will be the principal topic for further discussions. The producers did, however, agree that allocations would not be shared. (It seems to me that although it is desireable, this will complicate any allocation formula and the ability to enforce it.) Mr. MacNabb cited two possibilities of allocating uncommitted demand through to the end of 1977, that were discussed in Paris.

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Gulf

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1.	25%	Rufcor
	25%	Uranex
	25%	Canada
	25%	New production
2.	50%	Existing uncommitted capacity
	30%	Existing stockpiles
	20%	New production

A permanent secretariat to act as an agency for administering any machinery which might be agreed to was also discussed, but only in the most general and preliminary terms.

Official Position of Canadian Government

Mr. Austin stated that the Paris meetings arose out of bilateral discussions that had taken place 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. The Cabinet has sanctioned participation by the Department of Energy, Mines and Resources and the two Crown corporations in any exploratory discussions concerned with a working mechanism to allocate demand and establish a floor price, in the period 1972-77. The Cabinet also took no exception to discussions among Canadian producers with respect to export markets. (The representative from the Department of Corporate Affairs commented on this matter and took a rather narrower view.)

The Cabinet did not approve of any consideration of Commodity Agreements, nor did they wish to contemplate a Uranium Marketing Board, or any other legislative means of imposing restrictions on the ability of producers to market outside of Canada.

Mr. Austin went on to state that he hoped the meeting of "specialists" on February 21 and 22 would arrive at a formula which could be explored further at a more senior level of meetings in Paris on March 12 and 13.

The remainder of the meeting was concerned with the implications of the Combines Investigation Act, under which any agreement to control exports which has the effect of reducing the volume exported, is illegal (volume is specifically mentioned, not value). Any agreement which has an effect on the domestic price as a result of fixing an export price is also illegal.

Mr. Estey advised all present of Gulf's concern about the implications of these discussions with respect to both Canadian and United States anti-trust legislation. He went on to emphasize that Gulf's attendance at

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Gulf

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the meeting was in response to a strong invitation from the Department of Energy, Mines and Resources to provide information with respect to Rabbit Lake, and we had no intention of entering into discussions intended to allocate export markets or set prices.

Subsequent to the meeting, Mr. Estey spoke to both Mr. Austin and Mr. MacNabb privately with respect to Gulf's attendance at the forthcoming meetings in Paris. They specifically recommended against Gulf's seeking an invitation and it was agreed that Gulf would not participate. However, Mr. MacNabb did agree to keep us informed.

It was interesting that both Rio Algom and Denison complained that they had attended the meetings in Paris and Ottawa under the assumption that all present were competent to reach binding agreement and that there were no legal impediments which would prevent the Canadian producers from reaching a business agreement and abiding by it.

Attendance at Specialists' Meeting February 21 and 22

The Canadian producers will be represented by the following -

Uranium Canada Ltd.	G. M. MacNabb
Eldorado Nuclear Ltd.	John Burger, V.P. - Marketing
Denison Mines Ltd.	N. O'Brien, Director - Engineering M. J. de Bastiani, V.P. - Uranium Operations
Rio Algom Mines Ltd.	A. F. Lowell, V.P. - Marketing

The meeting adjourned at 5:00 P.M.

N. H. Ediger

/gm

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Gulf

FROM D. Hunter DH AT IN REPLY REFER TO

TO C. A. Rolander, Jr. AT DATE February 18, 1972

SUBJECT International Uranium Marketing

I have reviewed the attached summary of the recent discussions of international uranium marketing which Mr. Zagnoli is participating in with Mr. Hoffman. He suggests that you take his copy and return it to him for filing after your discussion in Pittsburgh.

Within this same vein there is a meeting which Mason Foster has set up with Sir Edwin McAlpine and the Managing Director of R.T.Z. for the 25th in London. This would be after the next Paris meeting between the world uranium producers. Mason has asked us to attend but in light of our imprecise knowledge of the discussions currently going on we will not attend. It is also interesting to note that Herb was in Europe at the time of the earlier producer meetings and we are fortunate that he was not asked to comment on the situation. It is, of course, impossible to develop a consolidated Gulf position with only part of the information available in the international market.

attach.

INTERNAL CORRESPONDENCE
GULF OIL

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DRAFT

FROM T. T. Gregg AT

IN REPLY REFER TO

TO H. E. Hoffman AT DATE Feb. 17, 1972

SUBJECT Summary of Developments in International Uranium Meetings

1. Background

a. On 12/8/71 Mr. N. H. Ediger, Manager, Gulf Minerals Canada Ltd., met with Mr. Austin and Mr. MacNabb of the Canadian Government at their request in Ottawa. Among other topics, meetings of uranium producing nations were discussed. The following is excerpted from Mr. Ediger's memo of this meeting.

"Canada is holding discussions with both the producer and consumer nations with respect to agreeing on a world floor price for U_3O_8. Canada and Australia agree that the floor price should cover operating costs plus capital recovery at a reasonable rate of interest, together with an additional amount which would provide an incentive for high risk exploration. It is Canada's view that $6.00 per pound U_3O_8 is the least amount that will accomplish this. Additional talks between the producer nations will be held in 1972."

"Mr. Austin also referred to conversations held between Canada and West Germany with regard to the long term price and supply situation. Although no agreements have been reached, I was given the impression that the West German Government was anxious to co-operate in establishing security of supply and an orderly long term price structure."

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File -2- February 17, 1972

"Mr. Austin then went on to query me about Gulf's agreement with Uranerz. He stated that he was pleased to see that the first 6 million pounds of Gulf's share of production would be sold at prices in excess of $6 per pound. He then asked whether UCL would sell their share of production for a like amount and whether their notification price would be equal to the price schedule set out in Appendix C. I replied by saying that there was no such provision in the Agreement (this he knew), and that it was likely that UCL would sell their share at something close to the world price. I then asked what the Government's reaction would be to a price of $5 per pound. Mr. Austin responded by stating that if application was made on the day of the meeting for an export permit for the offshore sale of yellowcake at prices less than $6 per pound, the application would be turned down and no permit would be granted. He went on to say that even if the yellowcake were exported at $6 per pound or more and then resold at a discount, the permit would be revoked. In other words, the AECB will be concerned not only with the price and relationship of the parties involved in the initial sale but also with the final disposition and terms thereof. Thus, if the Canadian company, Uranerz Canada Limited sells their share of production to Uranerz Bonn for $6 per pound and pays taxes and royalties accordingly, and then Uranerz Bonn sells it for $5 per pound, the export permit would be revoked."

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File -3- February 17, 1972

"I told Mr. Austin and Mr. MacNabb that we expected UCL to give us their notification price and quantity sometime between January 1, 1972 and July 1, 1972 and that Gulf were naturally anxious to obtain the highest possible price as our royalty was affected. Mr. Austin then asked about Gulf's overall rights and our thoughts about exercising them. I pointed out that we did not have any alternative market at the moment and, therefore, would not overcall unless the price was so low that we could afford to stockpile. We agreed that this was not likely to happen."

CELES received a copy of Mr. Ediger's memo of this meeting some time in early February 1972.

b. On February 9 Mr. Ediger sent copies to Dr. A. R. Matheson of articles from the Toronto Globe & Mail of Feb. 4 and Feb. 8 that reported on "secret meetings" in Paris of representatives from both government and private industry from the major uranium producing countries - Canada, Australia, France, and the Republic of South Africa. Copies of these newspaper-clippings are attached.

c. These meetings were also briefly reported in the Feb. 11 issue of Mining Journal (London) copy attached. It should be noted that this report claims that the meetings were sponsored by Canada.

d. On Feb. 15, Mr. D. Hunter received further information in Washington on these talks from two sources: a representative of Suzitono Shoji, who represents NUFCOR in Japan, and Mr. Peter Crooks of the Australian Embassy through Mr. H. K. Carey of the Gulf Washington office.

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File -4- February 17, 1972

f. Current Status

On Feb. 15, I called Mr. Ediger in Toronto and obtained the following information:

a. On Feb. 11, Mr. Ediger was given a confidential briefing by Mr. MacNabb and Mr. Runnels of the Canadian government on the results of the Paris meetings.

There were two sets of meetings - the producers and the governments. Results of the producers meetings are not known except it is believed that they generally went along with the recommendations of the government meetings.

The government meetings resulted in a statement or white paper or etc. to the effect that

- "as national proprietors of a non-renewable resource we have an obligation to create an orderly market place in which our industrial groups can expand operations and make an adequate profit" and so on and so forth.

- a floor price of $6.25/lb. U_3O_8 be established "for discussions" (? significance) for 1972, with annual increases of $0.25/lb. through 1977. From 1978 on, the industry world-wide should be healthy and not require floor prices.

- excluding the U.S., uncommitted demand 1972-77 was estimated at 25000 tons and uncommitted supply (stockpiles plus available production capacity) at 163,000 tons. Thus a formula must be developed to ratify these.

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File -5- February 17, 1972

- Rabbit Lake was categorized as 100% uncommitted, with the UEB/UCL share put into the 25,000 ton category and the Gulf share into the 163,000 ton category.

- the above points were unanimously agreed to by the participants.

b. During this discussion with Mr. MacNabb and Mr. Kennels, Mr. Ediger was given a copy of a draft document entitled "Proposed Uranium Mining Control Act." This proposed act by the Canadian government looks, in Mr. Ediger's words, "rough". Mr. Ediger is to provide comments on it.

c. A meeting of Canadian producers and the government was scheduled in Ottawa on Feb. 16 for two purposes:

1) to receive a formal briefing on the results of the Paris talks.

2) to plot Canadian strategy for the next round of talks in Paris on Feb. 22-24. Gulf has not been invited to these talks because CXL is only a potential producer.

In Mr. Ediger's view "The Club", notably Denison and RTZ, is playing a game in which they hope to a) keep Gulf, as "the new boys on the block", away from the poker table, and b) block the Australians from starting production. (Note: In my view this latter will be quite difficult, as some really big money - Shell, Standard of Jersey, Anglo American, and Getty - is rapidly entering the Australian uranium picture. LTCJ

d. When informed of all of the above, Mr. Zagnoli's initial reaction was rather violent, and he suggested Rabbit Lake be either stopped or slowed down. He and Mr. Allen met in Toronto with Mr. Ediger the evening of

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Feb. 15 to plot Gulf strategy for the Ottawa meeting the next day, and they all went to Ottawa. Mr. Ediger suggested that they would probably take the tack that Gulf's first 3000 tons was definitely committed to UEB/UCL.

On Feb. 16, I talked to Mr. Steve Hooney at GNEC and gave him our best estimate of foreign uncommitted demand, 1972-85, and foreign stockpiles. (He had called me the day before and requested this information in conjunction with the situation discussed above). Mr. Hooney was pessimistic about how the outcome of the Ottawa and Paris talks might affect Gulf's operations at Rabbit Lake. He said that Mr. Zamoli would decide what to do about Rabbit Lake when he returned from Ottawa.

FILE NOTE

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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. H. 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 583 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, 583 Booth Street, Ottawa. In attendance were:

J. Austin	Deputy Minister, Energy, Mines and Resources President, Uranium Canada Limited
G. H. 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.

J. A. Mullin	Legal Counsel, Denison Mines Ltd.
G. R. Albino	Executive Vice President, Rio Algom Mines Ltd.
A. F. Lowell	Vice President - Marketing, Rio Algom Mines Ltd.
R. Sherriff	Legal Counsel, Rio Algom Mines Ltd.
K. Kegel	Vice President - Marketing and Production, UCL
G. Glattes	Legal Counsel, UCL
N. Phillips	Legal Counsel, UCL
N. H. Ediger	Manager, Gulf Minerals Canada Limited
R. K. Allen	Legal Counsel, Gulf Minerals Canada Limited
W. Z. Estey	Legal Counsel, Gulf Minerals Canada Limited

Mr. J. Austin opened the meeting by giving background leading to the Telex direction for each producer to appear. He pointed out that as a result o prior meetings in Paris, all world producers, other than Canadian, were in agre ment as to allocations. The last meeting in Paris terminated with the directio that the Canadian producers determine if they could get their house in order to present a unified position; otherwise, further meetings in Paris would serve no useful purpose. Mr. Austin further stated that the Government of Canada had a c tinct concern as to uranium prices and that such concern had led to the positive interest in furthering discussions in Paris.

The purpose of the meeting, according to Mr. Austin, was to decide whether or not the Canadian producers could reach such an understanding that his office could advise the other world producers that a further meeting in Paris

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.

4 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

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. Phillips 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. X

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.

-8-

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 1,000 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 would 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

SPECIALLY

CONFIDENTIAL

April 12, 1972

Mr. Merle E. Minks:

Re: Proposed International Arrangement - Uranium.

As you will see by the attached file, there is in the making an agreement among producers of uranium in France (from mines in Equatorial Africa), Canada, South Africa, and Australia. (I am not sure the Australians are participating.)

I have been informed that the producers, other than those in Canada, are not only ready, but anxious to proceed. Apparently, the producers in Canada are ready to proceed except that our Rabbit Lake joint venture with the Germans has not at this point agreed to do anything. We are being pressured by the Canada government representatives to get in line and join in the agreement.

The proposed agreement will set minimum prices at which uranium will be sold in the world markets (ex. U. S.), and also set quotas on production through 1977. It seems evident that the supply will exceed the demand during this period but after 1977 the demand will equal or exceed the supply.

There is serious question as to whether Gulf can be a party to such an agreement, both under the Canada Combines Law and the United States antitrust laws.

There is also a serious question whether our participation will render the Rabbit Lake project uneconomical. Based on present discussions production at Rabbit Lake would be cut from the projected 6,190 tons during this period to 4,650 tons. There has been a suggestion that since some of the Rabbit Lake production will be sold by the Germans in the form of UF_6 rather than yellow cake (U_3O_8), our quota might be raised to 5,350 tons, but at the present time this is not clear. Mr. Zagnoli is now studying the economics of the Rabbit Lake Project under the proposed quota to determine if the project would be viable under such circumstances. If found affirmatively we then must assess the antitrust risk.

Mr. W. Z. Estey has told me he felt the risk under Canada law to be minimal if the program as now contemplated is

carried out. This program is as follows:

1. A meeting will be held in Paris, on April 20 or 21, attended by the producers of the countries involved at which time an agreement in principle will be sought. The major issue will, of course, be allocation of quotas to each producer.

2. After an agreement in principle has been reached in Paris, the agreement will be presented to the Cabinet in Ottawa for approval and a declaration that it is in the interest of Canada and represents the policy of the Canada government.

3. After approval by the Cabinet and pursuant to such approval each of the Canada producers will be directed by the proper government official to enter into and participate in the agreement.

4. Actually prior to such direction an opinion will be rendered by the Minister of Justice of Canada which will prevent any action being taken under Canada law against participants in the agreement, at least as long as the present government is in power.

I agree with Mr. Estey as far as Canada law is concerned. The United States law is, of course, another thing. On the whole, if the economics of the project are found to be satisfactory under the proposed agreement, I am of the opinion that we have little choice in the matter. If the plan outlined above is fully implemented, I hardly think the Department of Justice would take action against us. Such action, if taken, would necessarily involve the other Canada producers, as well as producers in the other countries. The international political implications of Department of Justice action under these circumstances should give us some insulation. Gulf Minerals Canada, Limited, is a Canada company operating in Canada and subject to the jurisdiction of the Canada government. It must obey the laws, policy and directives of that government, or get out.

Another problem involved which has not been resolved so far as I know is that the legal counsel for our German partners have advised that such an agreement would be a per se violation of the German antitrust laws, for which stiff penalties are provide

Messrs. Allen, Estey and Ediger impressed upon me that a decision as to our course of action must be made in time to advise the Canada government and the others participating whether we will attend the Paris meeting on April 20/21. This advice should be given as far in advance of the meeting as possible. Of course there is no point in our attending the meeting unless we have decided to go along.

Irwin W. Coleman

Irwin W. Coleman

IWC:cc

cc: Mr. E. B. Walker
Mr. Roy D. Jackson, Jr.
Mr. Roger K. Allen
Mr. Herbert E. Hoffman

94-080 679

FILE MEMORANDUM

SPECIALLY CONFIDENTIAL

Re: Proposed International Arrangement - Uranium

Summary of Telephone Conversation With Messrs. Zagnoli and Allen From Cologne, Germany - April 18, 1972

1. No substantial progress has been made with our German partners. Negotiations with Germans will resume Wednesday morning, April 19, and continue until noon.

2. Meeting is scheduled at Canadian Embassy in Paris on Wednesday evening, April 19, prior to the scheduled meeting of uranium producers on Thursday, April 20.

3. The Germans indicate that, if they and Gulf were unable to reach agreement, or if the joint venture was unable to reach agreement with other producers, they would be willing to sell Canadian uranium interests to a Canadian Crown company. The Germans indicate the German antitrust laws may prohibit their participation in any arrangement.

4. The proposed arrangements require Gulf to assume more risk, without corresponding benefits, whereas Germans would benefit substantially with minimum risk.

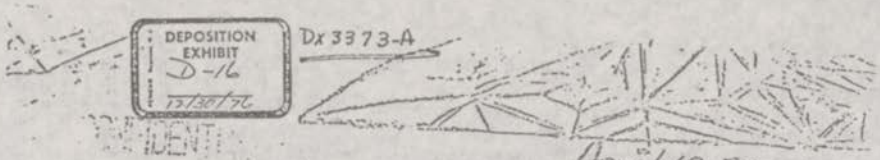
5. Possible Break Points:

(a) Australian producer may not participate;

(b) All participation in any discussion by Gulf conditioned upon subsequent clearance by U.S. authorities; and

(c) Gulf's requirement to produce minimum of 5,300 tons of uranium through 1977.

April 19, 1972 M.E.M.



April 19, 1972
Canadian Embassy
Paris

April 20
Meeting Commissariat à la Energie Atomique
29 Rue de la Federation
90?

21
34

1390 T is not forthcoming from others then deal is over — meeting Dixon

Australian question and Westin?

Australian —

Germans make big pt of human legal problems

German say 2150. not change to 2050 for

Will Carlin Government intervene to free producers to restrain production?

Martin — not sure

McNabb Free Us Public Interest Trial Will Carlin would not require UCL — Bar Assn too juries?

2050
2500
4500
9050 — 950

Allows entrance exit from 77
historic — End in 77

26 —
5 :
130
78
9100

CONFIDENTIAL

DEPOSITION EXHIBIT
D-3
12/20/76

FILE NOTE

APRIL 19, 1972, PARIS MEETING OF CANADIAN PRODUCERS

Dr. O. J. C. Runnals advised Mr. Ediger on April 17, 1972, that Mr. Austin would like to convene a meeting of Canadian producers at 8:00 p.m. on April 19, 1972, at the Canadian Embassy, 35 Avenue Montaigne, Paris, France. Pursuant to such request, Messrs. Zagnoli, Estey, Ediger and Allen were at the Canadian Embassy at 8:00 p.m., but it developed that the meeting had been postponed until 9:00 p.m. The following producers were represented:

Uranium Canada Limited
Eldorado Nuclear Limited
Denison Mines Limited
Rio Algom Mines Limited
Uranerz Canada Limited

Mr. Austin opened the meeting by again stressing that the Cabinet had determined it was in the best interest of Canada to pursue the arrangement and, accordingly, all Canadian producers had been requested to make every effort to adhere to the terms of such arrangement. He then requested Gulf and UCL to inform the group of the attitude of the Rabbit Lake producers.

Mr. Ediger first advised the group that Gulf had determined that an Australian company, Western Mining, was actively soliciting orders in Europe and had informed others that the Australian Government would not compel it to join the arrangement. As Gulf had been advised that Western Mining would have a producing capacity of 2000 tons by 1977, it desired clarification concerning whether or not all Australian producers had agreed to adhere to the arrangement. Mr. Gilchrist of Eldorado stated that the extent of Western Mining's ore body had not yet been fully defined, but that based on proven reserves to date, a productive capability of 2000 tons did not surprise him. He further stated that Australian productive capacity had been estimated at 6000 to 8000 tons, which figures included Western Mining's estimated productive capacity. It was further stated that the Australian Government had advised that it would adhere to the policy of the arrangement, but would not force producers to join. It was indicated that further clarification of Australian position would be sought.

Mr. Ediger then advised that Gulf was attending the Paris meeting as directed by Minister MacDonald, but that its position was as follows:

1. Any adherence by Gulf to an arrangement agreed upon by other world producers would be contingent upon Gulf first obtaining from the U. S. Department of Justice, an expression that such adherence would not result in a violation of U. S. anti-trust laws.

2. Gulf was not willing to accept a sales allocation for Rabbit Lake of less than 5350 tons for the period ending in 1977.

3. As U. S. markets might open after 1977, Gulf would not be willing to extend the terms of the arrangement beyond 1977.

4. Assuming satisfaction of the first three points, Gulf must further advise the group that its participation would require adjustments to its agreement with UCL and that, as yet, it and UCL had not reached any agreement as to the necessary adjustments.

Following Mr. Ediger's enumeration of the foregoing points, the discussion at this time centered around the first point - U. S. anti-trust laws. Mr. Austin pointed out that Gulf was a Canadian producer and, as such, it was subject to Canadian law. Mr. Ediger requested that I comment on Gulf's position under U. S. anti-trust laws. I did so by stressing that if the arrangment included U. S. producers, it would be a clear violation of the Sherman Act with civil and criminal penalties. I agreed that the fact that the U. S. would be excluded from the arrangement and that foreign uranium is presently excluded from U. S. markets probably lessened the risk of a violation, but that in our opinion, it did not remove the possibility that Gulf's participation would be determined to be a violation. I further pointed out that Gulf management was unwilling to take such a risk and, consequently, any participation by Gulf in the arrangement was conditioned upon receiving an expression from the U. S. Department of Justice satisfactory to Gulf. In attempting to evaluate the possibility of receiving a favorable expression, I did refer to the pending legislation before the U. S. Senate to lessen the thrust of anti-trust laws in the area of foreign trade and the Department of Justice's memorandum in opposition thereto. Such memorandum asserts that no legislation is needed and, accordingly, this is the basis of Gulf's expectation that such a ruling may be obtainable. I further stressed that, although we would proceed diligently to obtain an expression from the Department of Justice, I could not predict when the same would be forthcoming.

Mr. Austin then called on UCL and Mr. Kegel reported that it agreed with Gulf concerning the minimum sales allocation of 5350 tons for Rabbit Lake and that the term of the arrangement should not extend beyond 1977. Dr. Justen (UCL's German attorney) stated that under German

law, UCL was also faced with a serious anti trust problem. He further advised that UCL would also attempt to obtain some type of clearance from the German Government but, based on the preliminary draft of the rules of the arrangment, he was extremely doubtful that a favorable ruling could be obtained for an arrangement in the form set forth in the draft. He pointed out that under German law, the government could seize the proceeds of any sale pursuant to an arrangment in violation of the anti trust laws. Mr. Austin observed that the sale could take place outside of Germany so that the funds would not be available for seizure. Dr. Justen countered with the observation that in such event, the product would be available for seizure. Mr. Mac Nabb, at this point, suggested that possibly Rabbit Lake could be left out of the arrangement insofar as sales allocations were concerned, but implied that production would be controlled. Mr. Austin dismissed this suggestion as not being practical.

Mr. Austin then called upon statements from other Canadian producers. Mr. Kostuik delivered quite a tirade against the "so-called" Canadian producers constituting Rabbit Lake and, in particular, Gulf. He referred to the great sacrifices being made by the other producers to serve the best interest of Canada, while Gulf and UCL were taking an inflexible position which served only their own self interest. Gulf, in his view, being the largest company represented was in a better position to weather the temporary economic setbacks which were necessary to serve Canada's interest. He referred to his resentment of being lectured to by Mr. Kegel in Ottawa as a so-called Canadian producer. He ended his "flag-waving" tirade with a threat that if Gulf did not cooperate, he would exert all of his influence to the end that Gulf would not receive favorable treatment in the foreign ownership legislation now being drafted. Mr. Zagnoli responded to Mr. Kostuik's remarks in a polite but firm manner by stating that Gulf's long involvement in Canada spoke for itself in defining Gulf's true character as a corporate citizen of Canada.

Mr. Gilchrist made a point to defend UCL's position as both a producer and consumer (RWE) under German anti trust laws, while also deploring a situation where Canada's fate was being dictated by foreign law. Mr. Albino advocated extending the period beyond 1977, but Mr. Kostuik refused to concur.

Mr. Kegel did inform the group that UCL had made a sale of 100 tons to a German utility with the result that the Rabbit Lake uncommitted tonnage could be reduced from 2150 tons to 2050 tons. Mr. Austin was selected as spokesman for the Canadian producers and directed to request an allocation of 9050 tons as Canada's share of the uncommitted market through the end of 1977. Such total allocation was arrived at as follows:

4500 Tons - Denison-Canada Spanish Sale
2050 Tons - Rabbit Lake
2500 Tons - Rio Algom, Denison, Eldorado
9050 Tons

The meeting adjourned at approximately 10:00 p.m.

R. K. Allen

RKA:pt
4/27/72

U-12 SC
Dx 3467

IAL CORRESPONDENCE
TO

SPECIALLY
CONFIDENTIAL

IN REPLY REFER TO

Roy D. Jackson, Jr. AT

Mr. I. W. Coleman AT Pittsburgh

DATE April 28, 1972

CT Proposed Uranium Cartel
Draft White Paper

A very rough draft of the white paper on the uranium cartel is attached.

In general it seems to me that the paper should be as short and plainly worded as possible.

You will note that the primary conclusions reached are that the antitrust laws of the United States are not violated because of the absence of economic impact of the proposed cartel arrangement on the trade or commerce of the United States and that effectively Gulf is being compelled to participate by the Canadian Government.

Roy D. Jackson, Jr.

Roy D. Jackson, Jr.

RDJ/jo
enclosure

cc: Mr. M. W. Ramsey/w.enc.

U-12 SC
Dr. 3458

SPECIALLY
CONFIDENTIAL

Roy D. Jackson, Jr.

Mr. I. W. Coleman

Pittsburgh

April 28, 1972

Proposed Uranium Cartel

Wen Ramsey and I visited yesterday afternoon with Mr. Zagnoli. The salient points of our discussion were these:

(1) Although the Australians have caused delay by attempting to negotiate a more favorable arrangement for Australian producers, it is Mr. Zagnoli's view that the necessary cartel agreements will be made in time for approval at the next scheduled meeting the latter part of May and that the proposed Secretariat description will also be revised. He visualizes the arrangements taking the form of an agreement among producers, with no governmental signatories.

(2) Gulf has unresolved problems with the Germans but the way in which these are resolved and the cartel is finally agreed upon will still leave the Rabbit Lake project economically viable for Gulf.

(3) Mr. Zagnoli remains of the definite opinion that failure on Gulf's part to submit to coercive pressure being applied by the Canadian Government respecting Gulf's participation would almost certainly result in severe adverse economic consequences for Gulf, including a material deterioration of Gulf's relations with the Canadian Government.

(4) Mr. Zagnoli is of the view that both the fact of a cartel agreement and the substantive content of that agreement are sufficiently definite to signify Gulf's proceeding as rapidly as possible to make

whatever Washington contacts are thought advisable. I told Mr. Zagnoli that the single most critical point was the thoroughness and correctness of Gulf's economic evaluation of the cartel on the trade and commerce of the United States. In view of my scheduled absence from the office next week I recommended that Wen Ramsey go over to Denver during the week to reach final agreement with our Denver personnel on the form and substance of the draft economic impact statement worked out here in Pittsburgh the latter part of last week. I also assured Mr. Zagnoli that Irwin and I would do whatever was necessary to stay close to the facts and participate in any significant discussions leading to a prompt Washington submission.

(5) I also told Mr. Zagnoli that if the economic impact study worked out in Pittsburgh last week retained its validity after further review and discussions in Denver next week, it would likely be my recommendation to yourself and Merle that we shape our white paper essentially as an information document rather than one seeking any sort of specific approval from the Department of Justice. This would be done in the expectation that, unless some significant adverse comment were made known to us within a relatively short period of time, we would be prepared to take the position that no unreasonable risk of antitrust violation would be involved in Gulf's participating in the cartel as presently outlined for the basic reason that the predictable impact of the cartel on the trade or commerce of the United States would be minimal.

(6) I also informed Mr. Zagnoli that in addition to the discussions last week with Wen Ramsey and the work Wen did in preparing the drafts I would give you

Monday morning, we have attended preliminary discussions with an outstanding Washington antitrust firm. I said that I thought the next step when I had all of our material together would be a discussion of the legal aspects with you and Merle following which the necessary Executive clearances would be sought. As far as the Washington meetings are concerned I said we are thinking in terms of reviewing the matter not only with outside antitrust counsel but also with Claude Wild to arrive at an agreed course of action both as to whom we contacted and how we made the contacts. I noted the likelihood that personal contacts would be made at a high level in each of the concerned departments of the Government, with a copy of the white paper being left for further study and comment. I said no determination had been made but that probably we would be making presentations to the Department of Justice, the ASC and the Departments of Defense, State, Treasury and Commerce - all of this in addition to proper discussions with the Canadian Embassy in Washington so that the Canadian Government could exert its influence through its normal channels to the American Government.

Roy D. Jackson, Jr.

RDJ/jo

enclosure

cc: Mr. M. E. Minks
Mr. M. W. Ramsey

V-12 SC

Dr 3459

SPECIALLY

CONFIDENTIAL

Pittsburgh, Pa.
May 1, 1972

Mr. Merle E. Minks:

Re: International Arrangement - Uranium.

Mr. Roger Allen called me from Denver today and advised that following your suggestion, Mr. W. J. Estey had talked with Beverly Matthews and brought him up to date as to what had transpired, with particular reference to action taken by the Canadian Cabinet, and to the directive we had received from the Minister, Energy, Mines and Resources, pursuant to the action of the Cabinet. Mr. Matthews stated that he had not received this information during his conversation with Mr. E. B. Walker. In view of these circumstances Mr. Matthews readily agreed that everything had been done at the government level which could be expected and that no meaningful action could be taken by the Saskatchewan Provincial Government.

Mr. Estey is preparing a memorandum concerning the application of the Canadian Combines Act and has promised to give Mr. Matthews a copy of it.

Irwin W. Coleman

Irwin W. Coleman

IWC:dc

COPY

MEMORANDUM

CLASSIFICATION SECRET

TO A: Department of Energy, Mines and Resources.

Mr. J. Austin

YOUR FILE No. Votre dossier

OUR FILE No. Notre dossier

FROM De: O.J.C. Runnalls

DATE: May 1, 1972.

SUBJECT Sujet: Meeting of International Uranium Producers in Paris April 20 - 21, 1972

a) General Session, April 20, a.m.

A meeting of international uranium producers was held in the headquarters building of the French Commissariat à l'Énergie Atomique at 31 rue de la Fédération, Paris, beginning at 10:30 a.m. on April 20, 1972. 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. The following individuals were in attendance at the meeting:

P. Taranger	Uranex
M. Houdaille	Uranex
B. Goldschmidt	French C.E.A.
J. Shilling	Nufcor
R. Worroll	Nufcor
R. Wright	RTZ
L.C. Mazel	RTZ
J. MacMillan	Rossing and Palabora
J.S. Proud	Electrolytic Zinc Co. of Australasia
G.R.A. Mayers	EZ Company
G.B. Lean	Peko - Wallsend
J. Austin	UCAN
G.M. MacNabb	UCAN
J. Kostuik	Denison
M. de Bastiani	Denison
G.R. Albino	Rio Algom
A.F. Lowell	Rio Algom
W.M. Gilchrist	Eldorado Nuclear

N.M. Ediger	Gulf Minerals
W.Z. Estey	Gulf Minerals
K.E. Kegel	UCL
N. Phillips	Counsel for UCL
O.J.C. Runnalls	UCAN

Mr. Taranger as leader of the host delegation opened the meeting by welcoming the various groups to Paris. He reviewed briefly the events leading up to the meeting, and suggested that Mr. Austin might wish to make a statement in view of his telegram from Canada agreeing to the meeting but indicating that some additional allotment would be required by Canada.

Mr. Austin summarized for the Canadian group, pointing out that they had met on the previous evening to review their position, and at that time Mr. Austin had been asked to act as Chairman for the Canadians at the present meeting. He indicated that there were six entities involved in the Canadian delegation including UCAN, Eldorado Nuclear, Denison, Rio Algom, Gulf and UCL. With such a conglomerate it was difficult to achieve the same type of independent cohesion that other groups might exhibit. Furthermore, there were some areas of commercial and legal conflict stemming from extra-national laws. Nevertheless, the Canadian government was interested in supporting an arrangement which would set floor prices and market allocations. In fact, the Minister of Energy, Mines and Resources had communicated to each of the entities involved the Government's view that it considered an arrangement to be in the national interest.

Mr. Austin said that it might be necessary to outline during the ensuing discussions some of the legal limits on the Canadian position. He added that at the mid-March Paris meeting the Canadian delegation did not have all of the

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pertinent information on the role that might be played by Gulf - UCL. He reminded the group about the early concept that only existing producers should participate in an arrangement. As a consequence, Gulf - UCL had not taken part in earlier meetings. However, they were here to speak for themselves at the present meeting.

Mr. Austin summarized the Canadian position by saying that only a spread of about 5% stood between an agreement or no agreement so far as the Canadians were concerned. In other words, if the Canadian allocation could be increased by some 5% of the available market between 1972 and 1977 he said the Canadians were willing to support an arrangement.

Mr. MacNabb then set out the following figures as an aid to the meeting in understanding the Canadian requests:

Position on March 14		Position on April 20	
Spanish contract	4,500 tons	Spanish contract	4,500
Gulf - UCL uncommitted amount	2,300	Gulf - UCL uncommitted production	2,050
Producers' offer	1,300	Existing producers' minimum requirement	2,500
Total	8,100 tons	Total	9,050

Hence there was a requirement to increase the allocation to Canada by 950 tons. Mr. MacNabb went on to explain that in earlier meetings it had been assumed that the Gulf - UCL production rate would be 2,000 tons per year. Assuming that production began in the second quarter of 1975, then the total production during the period 1975 - 77 would have been 5,500 tons, and of this amount 3,200 was committed already to RWE in Germany, leaving a balance uncommitted of 2,300 tons. Recent information from Gulf - UCL, however, had indicated that their work plan was based on the assumption that production beginning in the second quarter of 1975 would be

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2,250 tons per year, leading to a total production during 1975 - 77 of 6,190 tons. After recent discussions together Gulf and UCL had decided that they could reduce the total amount of uranium delivered to market in 1975-77 by 840 tons to 5,350. This assumed that 3,200 tons would be considered as a firm commitment to RWE and an additional 100 tons firm to the Gundremmingen reactor. This meant that the uncommitted Gulf - UCL production during the period would decrease by 250 tons over the figure mentioned in the March 14 meetings, to 2,050.

Mr. Taranger thanked Mr. MacNabb for the concise account of the Canadian requirement, and suggested that each group present should put forward its present position to determine if there were any significant changes since the March 14 meeting. Then, speaking for Uranex, Mr. Taranger said that at the earlier meeting the French position was that they would have 10,000 tons stockpiled and 17,000 tons produced during the period 1972 to 1977, for a total of 27,000 tons. They had earlier requested an allotment of 6,000 tons. In the interim, Niger officials had written to French authorities to obtain an additional production commitment of uranium from the Niger properties of 1,000 tons per year beginning in 1974. The French had grudgingly agreed to do this but would try to delay bringing the production in by one year on technical grounds. Nevertheless they could foresee that an additional 3,000 tons over what had earlier been predicted would now be produced up to the end of 1977. Hence the French uranium available would grow to 30,000 tons. Nonetheless the Uranex request would remain at a 6,000 ton allotment.

Mr. Shilling, speaking for the South African producers, said that their figure of 6,500 tons had not changed from that discussed at the mid-March meeting. They did wonder, however, if it might not be wise to consider

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extending the arrangement until the end of 1980. Mr. Austin suggested that the extension of the term should be considered as a separate issue once the 1972 - 77 allocation had been discussed.

Mr. MacMillan said that Rossing would have to produce 1,000 tons as an absolute minimum during the 1972 - 77 period.

Mr. Proud then outlined the Australian position which he described as quite a complex one. During the two year period 1976 - 77 the total production committed and planned amounted to 8,655 tons of which 1105 were already sold, leaving a requirement for an allocation of 7,550 tons. According to Mr. Proud, this was higher than their earlier request for new producers of 4,000 tons plus an additional amount of 1,200 for Mary Kathleen Uranium.

Mr. Taranger reminded Mr. Proud that at the conclusion of the previous meeting, the understanding had been that there would be 3,400 tons allocated to new Australian producers, 1,000 to MKU, and 1,000 to Rossing plus Palabora, making a total of 5,400 for the so-called Group "D" producers. Now, the new requirements seemed to be as follows:

Canada	9050
Uranex	6000
Nufcor	6500
Rossing plus Palabora	1000
MKU	1000
New Australian producers	7550
	31,100 tons.

In other words, the requests had grown so that they exceeded the available market of 26,000 tons by some 20%. If the excess had been about 5%, something might have been done to accommodate each group, but in Mr. Taranger's view, 20% was

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too large an excess to be resolved. He went on to say that the major problem seemed to have arisen with the desires of the new producers. Mr. Taranger said that Nufcor and Uranex were prepared to sell less than one-third of what they could produce, and both organizations knew by experience that even with a price of less than $5 per lb, only one-third of their production could possibly be sold. No matter how low the price were to drop, only 50% of the total French production could be sold at the outside. Mr. Taranger suggested that new producers had not suffered enough as yet to realize the serious nature of the uranium marketing problems. He had the feeling that new producers were convinced that they could sell uranium at $7 per lb and could obtain contracts for say 90% of their production. The actual problem was to work out a method for selling only half or even less of the available production with a prospect of having a higher cash flow than if a much higher production was sold. Mr. Taranger concluded by saying that under the circumstances he was not able to see a solution to the establishment of a mutually satisfactory arrangement.

Mr. Proud said that it must be understood that since Australia had no base load at present, it could not take ny other position than the one he had outlined. Mr. Austin mentioned that he felt somewhat crushed by the turn of events. The Canadians had worked hard to establish a coherent position which would be in line with other producers' demands. Furthermore, the Canadian group had assumed that the allocations made at the March 14 meeting would essentially stand. If it had been known that there was to be such a dramatic increase in the Australian requirement, it would not have been possible to agree collectively to have called the present meeting. Mr. Shilling said that he could understand why the Australians were not concerned by prices, in light of the nature of their deposits. He was more concerned about the Canadian view on

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price. Mr. Austin responded that if there was to be no arrangement the Canadian government would certainly be in the market with its stockpiles. Mr. Shilling said he was not referring to stockpiles but rather to producers, such as Gulf - UCL. Mr. Ediger replied that Gulf and UCL had made an arrangement in 1969 and would continue to be in the market at the best prices that could be obtained. Their hope was that some profit potential could be retained.

Mr. Albino said that he dreaded the situation developing where there would be no agreement. If it did not happen, however, Rio Algom would compete in the market-place. Mr. Gilchrist's view was that it would not be advisable for a nation's uranium resources to be sold at less than $5 per lb. If that situation were to develop, his advice to Eldorado's Board would be to close operations. Mr. Kostuik stated that in earlier discussions among the Canadian group he had been disappointed at the increase in the Gulf - UCL production estimates. Now he was shocked to see that such great effort on the part of all the producers appeared to have been wasted. Nevertheless, if forced to, Denison would compete on the market, since they had substantial stockpiles themselves and might be forced to dispose of them on a present-worth basis. If competition from other producers, notably the Australians had to be met, Denison would certainly do so. Mr. Shilling felt that there was little more to say, since if new producers wanted to break into the market, it would not be possible to prevent their attempting to do so. He added that the situation could deteriorate rapidly into a price war.

Mr. Proud said that there might even be other new producers to take account of in Australia. Mr. Austin remarked that Mr. Proud seemed to be assuming that every producer in Australia who could produce would do so, to which Mr. Proud replied that the start-up of new production would be staggered.

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Mr. Gilchrist commented that there was no doubt in his mind that Australia could produce uranium more cheaply than anyone else at present. He wondered if there was any possibility that any of the new producers could postpone their production for say two years. Mr. Kegel replied that Gulf - UCL had already delayed their projected start-up date from 1974 to 1975. Mr. Ediger added that they had already made a substantial investment in the Rabbit Lake project and in addition, the Province of Saskatchewan had spent a large sum on a road to the properties. The situation therefore was probably even worse than that for an existing plant.

Mr. Wright remarked that the meeting had reached the stage where it would gladden the hearts of all utility executives. Australia could see the possibility of sales at $4 per lb and with a free enterprise country they would join the fray and suffer with the rest. It was a tragedy in his view, because so many of the existing producers had contracts at much higher prices, and with the continuing decline in uranium prices, old customers were coming back to renegotiate established contracts. Mr. Shilling indicated in South Africa, a plant costing $16 million had been standing still for 18 months waiting for the outcome of this particular meeting.

Mr. Taranger said that he could understand the position being expressed by Mr. Proud because the French had been in that very same position a few years previously. However, France had made a mistake in creating new production which exceeded the market capacity. Today there was proof of this mistake in the size of their stockpiles and over-production. When a firm makes such a mistake it has to pay, and France was paying. He was convinced that any new producer entering the market would be making the same wrong decisions as France had done earlier, and in his experience he had never seen that a wrong decision led to the making

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of money. He hoped that new firms would be guided by the painful experience of existing producers.

Mr. Gilchrist said that the issue facing the group was to decide between order with some pain or the development of complete chaos in the industry. It was therefore quite appropriate that words of caution should be directed to the new producers. Mr. Taranger added that it had been the French view in the beginning of the uranium marketing talks that new producers should be excluded. Once an arrangement had been reached, then it would have been possible to bring in new producers at a later date. He was not surprised, therefore, at the turn of events. Mr. Austin responded that the Australian marketing initiatives clearly illustrated why they should have been involved from the beginning in all discussions.

Mr. Shilling asked if each producer in Australia was soliciting orders on an individual basis. Mr. Proud replied that so far as he knew, all five producers were doing just that. Dr. Mayers interjected that his figures indicated that planned Australian production totalled about 10,500 tons per year. Mr. Houdaille suggested that to be consistent with what other producers were presently accepting, the Australians should be willing to produce at only one-third of the capacity mentioned. Mr. Taranger speculated that if no arrangement could be reached, perhaps there could be some agreement on a price increase, but, he added, he was afraid that it would be difficult to hold the price because a minimum amount of return would be needed to pay workers' salaries, interest charges, etc.

Dr. Mayers said that from his company's experience in the zinc business in Australia, the rationalization of the zinc industry which had occurred after the formation of the Zinc Institute had shown benefits to both producer and consumer, and the same hope might be held for a uranium agreement. However, in his view, insufficient account had been taken up to now of the Australian potential production

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and the strong back-up position provided by its recently discovered large reserves. For example, just the previous week, Peko - EZ had announced an increase in its reserves to 80,000 tons U_3O_8, confirming its future strength in the world uranium market. There must be a means created to enable new producers to enter the market in an orderly fashion. To him, the sharing of an uncommitted market seemed an unrealistic approach. Rather, Australia should receive a just portion of the total market, and perhaps in order to achieve it, a uniform production cut for existing producers of 20% would be a sensible approach.

Mr. Taranger remarked that the only thing wrong with Dr. Mayers' argument was that he didn't have the right order of magnitude in mind. He went on to say that from the French standpoint, the present worth of their substantial stockpiles was $3 per lb or less when compared with a possible sale at $6 in ten years time. No production anywhere, in Mr. Taranger's view, could compete with uranium to be marketed at $3 per lb. Dr. Mayers' response was that no minimum price level could be maintained without providing some market for the new producers.

Mr. Wright interjected that in the case of zinc, once the Zinc Institute had been formed the price had been brought down for the benefit of the consumers as a first step in eliminating the wide fluctuations in price and demand that had been experienced earlier. It seemed to him that in the case of uranium it was difficult to initiate an agreement while at the same time trying to hold the price up when there was a 100,000 ton overhang of uncommitted production capacity plus stockpiles up to 1977. He felt it would be wise under these conditions for new producers to delay their entry into the market by at least a year or two. Mr. MacMillan said that if one were to pursue the Australian argument of

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production based on reserves, Rossing could talk of an annual production rate of 10,000 tons from their vast deposit.

Mr. Lean then read a communication from Western Mining Corporation in which several points were put forward as follows:-

1) Western Mining supported the principle of a marketing arrangement;

2) It would be less confusing if all of RTZ's production was considered as a single entity;

3) The proposed French share of the market appeared out of line with reserves and present production rates;

4) Australia should insist on a minimum production allotment which was related to their planned capacity;

5) Western Mining would insist on an appreciable fraction of an Australian allotment. 1,000 tons per year would be too low; 2,000 tons per year would be closer;

6) $4 per lb U_3O_8 was a possible selling price for Western production.

Mr. Lean then went on to outline the Peko - Wallsend position. His company would be prepared to make some form of concession even into the early '80's in order to avoid precipitating a fight for markets at $3 per lb over the next two or three years. Such a battle would leave a legacy that could persist for the following decade. There must surely be some formula that could be taken back to the Australian producers in order to attempt to get some kind of agreement from them. He conceded that the Western Mining Company people were the "big boat rockers" although they were

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responsible people. He was hopeful that they could be talked into some concessions. Mr. Lean suggested then that it might be desirable for the meeting to continue in the absence of the Australians so that some proposal could be evolved.

Mr. Taranger was hesitant to agree to a continuation of further meetings, pointing out that there was a danger of proliferation of attendance. So far the French had succeeded in excluding representatives from Gabon and Niger but it was not certain that this position could be preserved. Furthermore, it might be necessary in future to include representatives from A.G.I.P. Nucléare and Urangesellschaft. There would be a worsening situation in his view as the meeting enlarged and as new problems undoubtedly emerged at each new meeting. As the host country up to now France had been interested in talking, but from now on they were not sure that Uranex could control and speak for the French group. Mr. Lean agreed, saying that credibility would be lost if there were any further meetings. Mr. Shilling added that Nufcor was not prepared to go any further if there was no prospect of resolution.

The meeting was then adjourned for lunch.

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b) Canadian Caucus, April 20, p.m.

Before resuming the general session after lunch, there were several small caucus sessions first. At the Canadian caucus Mr. Austin asked for views of what had transpired at lunch time. The general consensus was that the Australians were likely to reduce their demands of the morning by a substantial amount, although there had been several comments expressed by RTZ and Nufcor representatives that the Canadians also should reduce their demands. Mr. Ediger felt that strategically it would be desirable for

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Canada to make a gesture in reducing its request. Mr. Kegel added that UCL could not afford to be responsible for "blowing up" a possible arrangement. Mr. Albino agreed that a gesture should be made, particularly in light of the fact that he felt that Rossing might make a further concession even though they had already made a $10 million capital investment. The Australians who were present in Paris carried considerable weight, in his view, and it would help them in winning later Australian producer approval if the other producers were to make a concession in their earlier demands.

Mr. MacNabb reviewed the situation, pointing out that the Australians had asked for a 4,150 ton increase over that of the mid-March meeting, and the Canadians an increase of 950 tons, for a total of 5,100 tons. Perhaps this could be subdivided by approximate reductions as follows:

2,000 to Australia
1,000 to Rossing
1,000 to Canada

and 1,000 to be shared between France and South Africa. He went on to say that if the overall Canadian demand were to drop by 1,000 tons to 8,050 this would represent 31% of a 26,000 ton uncommitted market. On the other hand, if the market estimate was optimistic by say 5,000 tons, then 31% of 21,000 tons would represent a 6,500 ton allocation, only enough to cover the Spanish contract plus the uncommitted Gulf - UCL production; i.e. there would be no allotment available for any of the existing producers.

Mr. Gilchrist said that he sensed that the Australians, French and South Africans all wanted an agreement, and he thought the Canadians did also. The question was, what was the Canadian group prepared to do in order to move closer to agreement? It was generally agreed that when the main meeting resumed, it would be good strategy to let the Australians speak first. Mr. Austin asked, however, for a directive from the group as to what position should be taken on the allocations that had been requested. Should he stand fast on the earlier 950 ton requested increase? Should he drop back to 500, or

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even to zero? What would be the preference of the group? Mr. Lowell said that a 500-ton increase should be the minimum demand. Mr. Kostuik asked if it was possible to obtain any further concessions from the Gulf - UCL group. Gulf and UCL said that they would be willing to share a 500 ton cut on a ratio of 2050:2500 with existing producers. Before the discussion could continue further, all the foreign producers with the exception of the Australians re-entered the room to continue the meeting.

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c) General Session (minus Australians), April 20, a.m.

Mr. Austin opened the discussion with the enlarged group by asking what were the new positions that had been established during the caucus meetings. He said that from Canada's point of view, the group was prepared to be flexible and wondered about the views of Uranex and Nufcor particularly. Mr. Taranger said that he would like to make the suggestion that the 1972 - 77 uncommitted market be subdivided as follows:

Canada	35%
Nufcor	25
Uranex	23
Balance (Group "D")	17
Total	100%

The major difficulty with this proposal was that the amount available for the "D" group was only about half that demanded at the morning meeting. If the complete gap was to be filled, it was an impossible task, in Mr. Taranger's view. However, perhaps if each of the first three groups could cut 1% to bring the Group "D" to 20, that might be an acceptable proportion. Hence, Mr. Taranger's modified suggestion was that production should be allocated as follows:

Canada	34%
Nufcor	24
Uranex	22
Group "D"	20

Each group should be given a fortnight to agree to the suggested allocation. If a single negative reply was received then there would be no agreement.

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Mr. Austin said that assuming a 26,000 ton potential market, the tonnages available under Mr. Taranger's proposed formula would be as follows:

Canada	8,840 tons
Nufcor	6,240
Uranex	5,720
Group "D"	5,200
Total	26,000 tons.

Mr. Shilling cautioned that he would have to obtain agreement for such a revised figure from the Nufcor group and also from his government, but he was prepared to secure a "yes" or "no" answer within ten days and communicate it by telex. Mr. MacMillan said that Rossing was prepared to lower its request from 1,000 tons to 500. Mr. Wright added that MKU would be willing to do the same, so that the amount left for new Australian producers would be 4,200 tons.

In order that the allocation for the new Australian producers would be even more attractive, some further juggling of the numbers took place during the next few minutes of discussion. Finally there emerged the following table in which the demands from the morning meeting are compared with the proposal that the meeting was now prepared to put before the Australians:

Producer	Before (A.M.)	After (P.M.)
Canada	9,050 tons	8,700 tons
Nufcor	6,500	6,160
Uranex	6,000	5,640
Rossing	1,000	500
MKU	1,000	500
New Australians	7,550	4,500
	31,100	26,000

Mr. Taranger suggested there might be another approach possible, that is to offer the new Australian producers between 4,000 and 4,500 tons and split the remainder as follows:

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Canada	40%
Nufcor	29
Uranex	27
Rossing + MKU	4

addition, existing producers could warranty the new stralians that if more than the above percentages were ken, then the existing producers would buy enough from stralia to assure that their allocation was met.

Mr. Wright thought that the only solution to the stralian problem would be for them to put off production til 1977. Unfortunately however, the Australians were t prepared to do this until they had an assurance of future oduction. Mr. Shilling indicated that the Australians uld have a problem on price if they were to attempt to pply all of their allocation in the year 1977. If they re to have some deliveries in 1976 he thought they must rrow from the Australian government and not from members the group.

Mr. Taranger had some second thoughts about guaranteeg a tonnage to Australia since he felt the rest of the oup would run a substantial risk in the event that the ,000 ton estimate of market potential was too optimistic. might be better therefore to use percentages, with the oviso that if the market turned out as anticipated, a nnage figure would be guaranteed. Otherwise all rticipants including Australia should decrease their mand. Just before the Australians re-entered the meeting, . Goldschmidt summarized the situation by setting out the llowing table of proposed allocations during the period 72 - 77:

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Producer	Allocation	
	%	Tons U_3O_8
Canada	33.5	8,710
Nufcor	23.75	6,180
France	21.75	5,650
Rossing	2.0	520
MKU	2.0	520
Australia	17.0	4,420
Total	100 %	26,000 tons

d) General Session, April 20, p.m.

Dr. Goldschmidt described to the Australians the sacrifices that had been made on their behalf since the morning meeting by referring to the above table. Mr. Proud responded by asking about the period after 1977, with particular reference to the years 1978 to 1980. Dr. Goldschmidt replied that only a sliding 5-year plan had been discussed in detail. Mr. Houdaille suggested that if a contract extended beyond 1977 then the situation should be an open one. Mr. Proud pleaded that he needed some guidance to take back to Australian producers as to what might happen after 1977. Mr. Shilling said that all the meeting was telling him was what to do up to 1977. Mr. Kostuik stated that Denison did not want to look beyond 1977 at present, but this could be considered at a later date. Mr. Austin then added that the Canadian government was not anxious to crystallize any arrangement beyond 1977.

Mr. Proud said that he would do his best to try to sell the 4,420 tons Australian allotment to new producers there but it would be extremely difficult without having some view of the future beyond 1977. Both Mr. Wright and Mr. Albino then suggested that perhaps some thought could be given to the post-1977 period. Mr. Lowell reminded the

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group that it had been agreed at an earlier meeting that no fixed prices would be quoted after 1977.

Mr. Taranger's view was that they had reached the point where there was a last chance to obtain an agreement. He suggested that the allocations quoted should be presented to Boards, governments, etc. and within two or three weeks a "yes" or "no" answer should be obtained. 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. He asked the Australians if there was any further information that was required in addition to the numbers provided in the tables.

Mr. Proud suggested that it would be helpful to him if some idea of the possible subdivision of the uncommitted tonnage up to 1980 could be outlined, even informally. Mr. Taranger thought Mr. Proud's question would be a difficult one to answer at this stage. Mr. Proud said that he would try therefore to obtain agreement from the Australian producers, however difficult it might be. Would it be reasonable, he asked, to assume that there would be open competition beyond 1977? This brought a general negative response.

Mr. Gilchrist suggested that perhaps some consideration should be given to the period beyond 1977, even though it was not simple, in order to try to help Mr. Proud. Mr. Wright's view was that he did not see how Mr. Proud could go back to Australia without having some "feel" as to what might happen in the future. Mr. Austin asked what was meant by a "feel". Was it just a bull session that was desired without any commitment being given? Would that give any help? The Canadian group might say that the Australian percentage would probably increase whereas the Canadian curve might be flat or slightly declining. Mr. Austin suggested that perhaps the various delegations might wish to give some thought to the matter and meet again the following morning in a more refreshed condition. As a result the meeting adjourned at 5:30 p.m.

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e) Canadian Caucus, April 21, a.m.

A Canadian caucus meeting was held in the 12th Floor Conference Room of the C.E.A. headquarters building on April 21 at 9:00 a.m. Those in attendance were Messrs. Austin, MacNabb, Gilchrist, Kostuik, de Bastiani, Albino, Lowell, Ediger, Estey, Kegel, Glattes (counsel for UCL), and Runnalls.

Mr. Austin opened the meeting by asking for views on the validity of the Australian request for information extending beyond 1977 and also about the term of the agreement. He personally had grave doubts as to the wisdom of going beyond 1977. Nevertheless, in order to achieve agreement it might be necessary to look further into the future. He 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. He saw a definite requirement for an agreement and an apparent desire on all sides to try to arrange for one. Otherwise, the meetings would have been concluded on the previous day. Perhaps the answer was to indulge in the exercise without making any commitments for 1978 - 80. There seemed to be developing a clear indication that a uranium producers' group could serve a useful purpose for perhaps longer than 20 years, somewhat like the Zinc Institute.

Mr. Austin then indicated that the Australians had visited him during the previous evening to discuss what might be done to develop the makings of an arrangement. He said that Western Mining and Peko - Wallsend were prepared to delay initiating production until 1977 if there was an

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opportunity of reaching agreement. They would need to know in much more detail by 1975 what would happen in the international group after 1977. If Mr. Proud could have some indication now, however, of what might be in mind, it would be very much easier for him to get agreement from all Australian producers.

Mr. Austin suggested that in his view allocations based on reserves or traditional markets could not be accepted. One level which seemed easier to measure was capacity plus existing stockpiles. Mr. Albino asked where unused capacity fitted in such a scheme. Mr. Austin suggested that anything in actual operation by January 1978 might be considered.

Mr. MacNabb then put some figures on the blackboard as an aid to obtaining some idea as to what allocations might result from a consideration of uncommitted production capacity plus a fraction of existing stockpiles. First of all he quoted some numbers which had been presented at an earlier meeting of uranium producers in Paris, February 21 - 23, as follows:

	Accumulative Tons of Uncommitted Production Capacity	
Producer	1972 - 77 inclusive	1972 - 80 inclusive
Uranex	17,800	37,400
Nufcor	20,400	33,000
RTZ (excluding Rio Algom)	3,600	9,100
Rio Algom	3,300	5,400
Eldorado	5,400	7,700
Denison	6,000	9,000
Gulf - UCL	3,700	10,000
Australian producers (non RTZ)	0	10,000
Totals	60,200 tons	121,600 tons

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Stockpiles Available for Sale

Uranex	10,000	tons
Nufcor	4,200	
Canada	18,500	
Australia	4,000	

The Canadian stockpile figure was made up as follows:

Rio Algom	1,000
Denison	2,000
Eldorado	2,700
Joint Venture (Denison - Canada)	3,200
UCAN	9,600
	18,500 tons.

Some of the figures in the table on uncommitted production capacity were now out of date, particularly those for Gulf - UCL and new Australian producers. However, if one made the following assumptions, a new table of uncommitted production capacity from 1978 to '80 plus stockpiles could be evolved:

(a) The figures for Uranex, Nufcor and RTZ would not change.

(b) Uncommitted Australian production would be 6,000 tons per year.

(c) Uncommitted Canadian production would be made up of

Rio Algom	2,100
Eldorado	2,300
Denison	3,000
Gulf - UCL 6,750 − 3,000 =	3,750
Total	11,150 tons.

(d) The Canadian stockpile would be reduced 4,500 tons to 14,000 because of the Spanish sale.

(e) The proportion of the stockpile allowed as an addition to uncommitted capacity for the 3-year period would be 0.2 X 3 = 0.6.

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Hence the following table was presented:

Producer	Uncommitted Capacity, 1978-80	0.6 X Stockpile	Total	Percent of Available Market
Uranex	19,600	6,000	25,600	29.8
Nufcor	20,600	2,500	15,100	17.5
Canada	11,150	8,400	19,500	22.6
Australia (excluding MKU)	18,000	2,400	20,400	23.6
RTZ (including MKU but excluding Rio Algom)	5,500	0	5,500	6.5

Mr. Albino raised a number of problems having to do with long-term bids. How did a company operate in the market, for example, after 1977? Would it be free to bid up to say 1990? It seemed to him that large questions were being left unanswered. In Rio Algom's case they were negotiating now for contracts beginning in 1978. Mr. Gilchrist thought that known capacity and known reserves were the only firm things at present and he would be worried about quoting prices that far into the future. Mr. Albino remarked that on the reserve question, taking Rossing as an example, their reserves were not quite infinitely large but very close to it so that reserves did not seem to be a good criterion for market allocation.

Mr. Austin felt that the major problem was how to answer the Australians' request about the possible framework of an arrangement during the period 1978 - 80. He suggested that the viability of a 6-year arrangement from 1972 to 77 would be undermined unless an indication at least could be given as to what lay beyond that. He asked the group for their views on possible prices for the years 1978, '79 and '80. Mr. Albino felt that some attempt should be made to frame up some rules for the period, whereas Mr. Kostuik was hesitant to make any

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commitments on possible price beyond 1977. Mr. Gilchrist's view was that tonnage could be discussed for that period but not price. Mr. Albino remarked that other producers were prepared to bid prices that far into the future. Mr. Austin asked Mr. Albino if Rio Algom would bid firm after 1980, to which the answer was no.

Mr. Austin asked the group if some numbers on price beyond 1977 should be put down on the blackboard. Mr. Gilchrist seemed to reflect the view of the group when he responded negatively. The majority view therefore appeared to be that it was reasonable to talk to the Australians about possible allocation but no commitment should be made on price beyond 1977. In this way the Australians should be satisfied because their major concern was to ensure for themselves a seat at the table in later discussions.

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one for everyone concerned; otherwise it would not work. He referred to the analogy of attempting to shepherd a collection of camels across a desert to an oasis. All camels would have to receive enough water to permit them to make the journey. If it was found by experience later that one needed more water than others, then the dispensation formula would have to change.

Mr. Shilling's view was that there should be some approximate agreement if there was to be serious talk about the period up to 1980. This led Mr. Austin to remark that the expressions from the various groups did not seem to be too far apart. He felt that it would be difficult to solve all problems by agreement now. Perhaps it would be better simply to state them and seek solutions as experience was gained. Mr. Shilling said he was really speaking on behalf of Mr. Proud's problem. He did not see how this problem could be resolved satisfactorily unless some kind of an agreement up to 1980 was reached now. Mr. Proud stated that he had not been asking for a precise formula; rather an enunciation of principles would be satisfactory with an understanding that it did not change in say six months time. Mr. Shilling suggested that perhaps certain percentages of allocated market could be specified for the period 1978-80, as an extrapolation of the '72 - '77 numbers. Mr. Austin said that it seemed clear from the relationships that were developing that a permanent type of association would be a very desirable thing.

Mr. Taranger summarized 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 entities involved in a marketing arrangement, namely Hufcor, 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

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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 uncommitted market of 45,000 tons U_3O_8 during the period 1978 - 80.

Mr. Proud stated that by 1980 and beyond it would be difficult for Australia to be linked with an uncommitted market only. Mr. Taranger reiterated that France was relatively new in the uranium business, had installed far too much uranium capacity and was now paying for that mistake. Hence, France was prepared to ask for much less in the way of an allotment than what might be deduced from its gross production capacity. By the end of 1980 France would have available 48,000 tons from uncommitted production plus stockpiles. They were prepared to ask for only 6,000 tons during the period 1972 - 77, plus an additional 3,000 tons per year until 1980, for a total of 15,000 tons, i.e. only 30% of that accumulated. There was little hope of using any of the balance domestically because France had large stockpiles of slightly depleted uranium (0.69% uranium-235) from its weapons program and this would be feed material for their future enrichment plants. During the same period Kufcor would have available a total of 37,000 tons. The message was clear: there would still be a substantial overhang up to the end of the decade.

Mr. Proud responded by saying that projected new Australian facilities would have produced 20,000 tons by 1980. When coupled with the existing Australian stockpile, 24,000 tons would have been accumulated. Therefore, a market allocation of 9,000 tons during the period seemed disappointingly low. Mr. Taranger suggested that Mr. Proud should explain to Australian companies that in the view of existing producers it would be a mistake to start new production facilities too soon. In the case of Niger, for example, they could if they wished install within three to four years a new production

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capacity of 5,000 tons per year. France was trying to moderate this desire, however, because it was clear that much of this new production would have to be stockpiled.

Mr. Proud remarked that the Ranger Mine alone was planning an output of 6,000 tons per year from 1980 onward. This led Mr. MacMillan to the rejoinder that on the same basis Rossing could have an output of 10,000 tons per year in 1980 and afterwards. Mr. Taranger stated that no matter what new Australian producers might think, they would not be able to capture one-half of the available market. Mr. Proud replied that new Australian facilities would be brought into production even if this meant having to stockpile the product. Dr. Mayers interjected that the total estimated market (committed and uncommitted) from 1978 to 1980 was 95,000 tons and if Australia could have a 20% share of that, it would absorb most of their anticipated 20,000 ton production.

Mr. Shilling suggested that it might be wise for the Australians to look very carefully before committing themselves to a stockpile program, because according to his interest calculations and having in mind the anticipated capital expenditures by the Australian producers, he felt that they could be in economic difficulties. Mr. Austin added that the Canadians had learned through bitter experience that an overextended uranium industry was an expensive proposition. Fully 22 mines had been closed in Canada beginning in the 1960's, and only three were now operating. In addition, the Canadian government had poured literally hundreds of millions of dollars into supporting the shrinking industry.

Mr. Proud responded that he perceived the potential problems as outlined, but nonetheless there was a strong desire in Australia to start new operations. He would have to do his best to obtain agreement for a reduction of the Australian demands. Mr. Taranger reminded Mr. Proud that the French had decided in 1965 to initiate a large uranium procurement program. Now with the switch which had occurred

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in France to light water reactors with their much lower uranium needs, they had tried to recover from an over-production of uranium by entering the international market with very low prices. Every day they did present-worth calculations to determine how much more should the price of uranium be dropped in order to dispose of it. With this kind of competition, it would be impossible for Australia to capture half of the uncommitted market to 1980.

Mr. Austin suggested that it might be wise to proceed with the first phase, that is where there was an arrangement up to the end of 1977. It could be agreed that say by the end of 1973, the situation could be reviewed with a view to establishing new criteria for the period 1974 - 80.

Mr. Proud insisted that Australia must emerge into its correct position, that is, it should grow into a larger share of the total market particularly from 1980 onward. Mr. MacMillan felt that all producers could be satisfied in the 1980's because the market would have changed so substantially. Mr. Taranger said that if agreement was to be reached then one's ambitions had to be reduced. For example, in the case of France with a production of nearly 50,000 tons up to the end of 1980 and contracts for only 10,000, they would be content as mentioned earlier with an allotment of 15,000 tons. Thus, by the end of 1980, 25,000 tons of French uranium would be unemployed and earning interest charges. Mr. Albino felt that it was not possible for the Australians to expect parity immediately. The problem should automatically resolve itself from now on, as future contract commitments into the mid-80's were made. In other words, Australia would gradually work into the position of having an equitable share of the total market.

Mr. Shilling commented that the Australian producers wanted sufficient tonnage to start production. It was being suggested in the meeting that Australia would not find a market

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for 24,000 tons by 1980. Nonetheless, the Australians must be assuming that they could enter the market by undercutting price. If so, Mr. Shilling felt that the whole uranium industry was in for trouble. Mr. Proud replied that Australia must have the right to employ its own economics. Mr. Taranger said that it seemed Australia had a choice between, on the one hand, producing 20,000 tons of which about 10,000 could be sold at $7 per lb, with 10,000 entering the stockpile, or on the other, capturing 12,000 tons at $5 per lb or less. It was up to the Australian producers to decide when faced with these alternatives to say yes or no to an agreement.

Mr. Shilling said that if the uncommitted market to 1980 was assumed to be 75,000 tons, for example, and Australia were to receive 20% of that, say 15,000 tons, or about 4,000 tons per year production, in his view this would be a fantastically generous allotment; in fact to use his words, "no one ever had it so good".

Mr. Kostuik pointed out that in less than 1½ years the price of uranium had dropped from $7.50 per lb U_3O_8 to less than $5. In spite of this drop he felt that there would be a recovery to $10 per lb by 1980. Mr. Kostuik was of the opinion that the group had not been pushing the price up rapidly enough. In 1978, for example, he thought it should not be less than $8 per lb.

Mr. Mazel wondered if it would not be best to first of all try to come to a firm agreement for the whole group even up to the end of 1977 and then move on from there. It was all very much in the hands of the Australians whether such an agreement could be reached.

Mr. Proud summarized what had been suggested as a proposal for him to put to Australian producers. First, there was a concept of five equal partitions of the uncommitted market between 1976 - 80. This market was expected to be about 45,000 tons, of which Australia would be allocated

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9,000, not including production from MKU. This might mean an approximate production of 2,500 tons in 1978, 3,000 in 1979 and 3,500 in 1980. Mr. Proud added that he would not be back in Australia until May 11th, but promised to have a decision by May 20. Mr. Austin suggested that any sales made in the interim might pose a problem. It would be desirable therefore to discuss further the subjects of selling forward, future prices etc. He went on to suggest that he felt it would be desirable to call another working group meeting for May 29.

Mr. Shilling said that before agreeing to another meeting he would like to have the Board of Nufcor and the South African Government approve what had been proposed thus far. He asked if there was any likelihood that any member of the group would have to reject the possibility of entering an arrangement on any legal basis. Mr. Austin said that it was not likely, so far as Canadian producers were concerned. Mr. Estey added that there was some possibility of difficulty with Gulf, but he was very optimistic about unravelling the problem. Mr. Taranger spoke up to say that the French Government would support any arrangement recommended by Uranex. Mr. Kegel stated that the problems of UCL might be more serious than those posed by Gulf. Mr. Shilling said that he had been hoping that the kind of problem revealed would have been solved prior to the present meeting. Mr. Austin promised that UCL's problems would be solved.

Mr. Taranger wondered what should be done about sales to potential customers in the meantime. He felt that one should avoid quoting $6 per lb for 1982 delivery, for example. He asked if the group could agree in the meantime that no prices below the earlier suggested levels should be quoted. Mr. Austin reviewed these prices, which were as follows:

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Year	Japan, Korea and Taiwan	All other markets
1972	$5.60 per lb U_3O_8	$5.30 per lb U_3O_8
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

The meeting then adjourned for lunch.

g) General Session, April 21, p.m.

When the session reconvened after lunch, Mr. Austin opened by indicating that it might be very difficult to communicate a simple yes or no answer to the proposals that had been put forward during the preceding two days. Therefore it might be very desirable to have another plenary session. Mr. Proud responded that he would be able to reply for the Australian producers before the end of May. This led Mr. Taranger to say that if a 6-week interval was being considered the group should agree on some marketing strategy in the meantime. His suggestion would be that producers should avoid bidding below the minimum prices listed earlier, and no firm prices should be offered after 1978; in fact producers should avoid bidding for periods after 1978.

Mr. Mazel asked if there were any bids pending from the Australians. Mr. Proud replied that he did not know about Queensland Mines but Ranger might have some. In any event, Mr. Proud added that any new arrangement entered into should apply from April 21. Mr. Taranger suggested that existing bids should remain until their expiry date and then not be renewed. Mr. Houdaille asked how many bids were in

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the pipeline. Mr. Mazel noted that from his past experience with Australian competition, prices had been driven down by fixed bids quoted through 1985. Queensland Mines was certainly doing this and now that the Australian producers knew what the minimum price structure was, they could undercut. Mr. Proud said that the group should not expect that present bids could change. Mr. Mazel said that he was aware of one bid from Queensland to Japan where a price of $6.30 in 1975 was being quoted.

Mr. Austin suggested that present bids should stand. There was a need to move as quickly as possible and perhaps the Australian representatives would communicate to their companies the group suggestions by telephone. Mr. Mazel said that according to his information Queensland Mines wanted to borrow uranium from the government stockpile and there was word that the Australian government was prepared to back them in a bid to Germany. He thought that Queensland Mines should be represented at the next meeting.

Mr. Kostuik suggested that a new price for 1978 of $8 should be considered. Mr. Houdaille agreed that if there was an arrangement that would be a reasonable price.

Mr. Austin reiterated his earlier suggestion that another meeting of the working party should be held. Mr. Taranger's view was that each delegation had to agree or disagree to the allocations proposed on the previous day, plus the principles of market allocation for the 1978-80 period discussed earlier in the day. If one negative response was received, then there should be no more meetings. If there was unanimity on the other hand, then the present working group should meet again. Mr. Austin suggested that it might be difficult to expect a clear answer from a telex, and therefore it might be worthwhile to agree now to hold a further meeting provided there was no unequivocal negative reply. He put forward the suggestion that Johannesburg would

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SECRET

be a good site for meetings on May 29 and 30, with the opening session to begin at 10:00 a.m. Each group should telex to Dr. Goldschmidt the names of those who would be attending.

Mr. Austin posed the question as to the nature of the document that should be evolved. Should there be a general code written up, for example? Mr. Taranger thought there should be such a document but it should not be necessary to sign anything. Mr. Shilling wanted to be sure that the allocations proposed for 1972 to 1977 would be firm and there would be a proposal in principle to split the 1977 - 1980 market equally over five groups as mentioned earlier. Mr. Proud asked if guidelines beyond that period might be evolved as well.

Reviewing the agreement reached on new contracts, Mr. Shilling summarized as follows:

1. There should be no fixed price bids after 1978, but only reference to the pertaining world market price.
2. There would be no bids for delivery beginning after 1978.
3. Present bids would run until expiry and would not be renewed.

Mr. Austin added that any contracts obtained prior to the next meeting should come out of the new quota. Mr. Proud indicated that he could not respond until after his return to Australia May 11th but if in the meantime Queensland Mines were to win any contracts, they would be taken out of the Australian quota.

Mr. Austin, summarizing the Canadian position, indicated that there are some Canadian producers who may not be able to agree, but on the other hand, who do not disagree with the principles of an arrangement. Finally, Mr. Houdaille suggested that there should be no ceiling placed on escalation, to which there was general agreement.

The meeting adjourned at 3:30 p.m.

O.J.C. Runnalls.

Dx 3375

Gulf Minerals Canada Limited
SUITE 1000, 10 KING STREET E., TORONTO 1, ONTARIO. (416) 362-8215

N. M. EDIGER
Manager

CONFIDENTIAL

DEPOSITION EXHIBIT D20

May 16, 1972.

CONFIDENTIAL

Gulf Energy and Environmental Systems,
P.O. Box 608,
San Diego, California. 92112

Attention: Mr. Herbert E. Hoffman

Dear Herb:

Attached is a copy of my file note pertaining to a Canadian uranium producers' meeting in Ottawa on Tuesday, May 9.

Of particular significance is the draft aide-memoire on page 3, which all Canadian producers will be expected to sign if agreement is reached in Johannesburg. We intend to suggest amendments which will emphasize the fact that our participation is a result of direction from the Canadian government. Therefore, we will likely suggest that the second sentence in paragraph "C" be changed to indicate that Gulf and UCL are complying at the request of the Canadian government, in an arrangement considered to be in the national interest.

Karl Kegel of UCL has also suggested an additional paragraph pertaining to the Spanish contract. A copy of his letter to me is attached. I feel that this matter can be brought up at Johannesburg if agreement is reached on other matters.

Very truly yours,

Nick

N. M. Ediger

/gm
Encl.
cc: Mr. S. A. Zagnoli

RECEIVED

FILE NOTE

SUMMARY OF CANADIAN URANIUM PRODUCERS' MEETING
OTTAWA, MAY 9, 1972

1. Minutes were corrected. On page 3 - position on April 20 has been amended to read - Gulf-UCL uncommitted tonnage. On page 22 - uncommitted capacity 1978-80 for Canada should be 12,150; on page 34 paragraph 2 - to split the 1978-1980 market -

2. Meeting agreed to send Taranger a telex asking if he had received any indication of the Australian position in view of the rash of announcements, with respect to new sales commitments, which started to appear immediately after the Paris meetings.

3. Meeting agreed to confirm Canadian attendance at meeting in Johanessburg, May 29-31, by telex on Monday, May 15. All Canadian producers confirmed that they would attend. Mr. Kegel said UCL would be represented. No one asked me so I kept my mouth shut. However, it was assumed that Gulf-UCL would be present and in a position to make a binding agreement.

At the present time it appears that May 29 and 30 will be taken up in agreeing on the principles of a producers' arrangement (i.e. the policy group), followed by a working committee (called the executive group) who will draft the articles of association. This latter function is expected to take the rest of the week. The articles or by-laws will then be circulated for final approval by the world producers. All present were told to inform MacNabb, no later than May 12, of the names of those who would attend the policy session and who, if anyone, would attend the executive committee sessions, so that he could include the information in his telex to Taranger.

Kegel announced that he had received clearance from the West German

cont'd.....

Government to participate and was awaiting the return of Dr. Gaertner to get expected confirmation of UCL's agreement to proposed world arrangement.

I told the group that Gulf was diligently pursuing a legal opinion with respect to its position in the U.S., and because of the potential gravity of the matter, it would take time. Mr. MacNabb expressed his irritation at the extra-territorial effect of U.S. laws. Albino, an American citizen, Executive Vice-President of Rio Algom, with a wholly-owned subsidiary producing in the U.S., suggested that Gulf was overly concerned.

4. All present agreed that the Canadian position was as defined in my Exhibit 1 (attached hereto). Mr. Austin stated that if the world uncommitted demand did not reach expected 26,000 tons the percentage Canadian allocation would remain the same but that there would have to be some adjustment between producers. Under pressure he also admitted to some flexibility in the Spanish contract.

5. Jack Austin may go to Australia for the week of May 22 to have official talks with appropriate parties, in an attempt to get full government support for Australian participation.

6. The following aide-memoire was drafted and all Canadian producers, including Gulf-UCL, will be expected to sign same at Johannesburg.

cont'd.....

AIDE-MEMOIRE ACCEPTED BY THE UNDERSIGNED CANADIAN URANIUM PRODUCERS ON MAY 9, 1972 AT THE CONCLUSION OF A MEETING IN THE BOARD ROOM OF THE DEPARTMENT OF ENERGY, MINES AND RESOURCES, OTTAWA

Conclusions

(A) There is a strong desire for a marketing arrangement among international uranium producers to stabilize the present chaotic market situation and to avoid a further acceleration of the present price war which could result in uranium being sold in the next 6 years for prices as low as $4 per lb. U_3O_8 in current dollars.

(B) All undersigned Canadian uranium producers agree that it would be desirable to establish a marketing arrangement for the period to the end of 1977 because they would be provided with additional export opportunities during that period and at prices higher than those which now obtain.

(C) All undersigned Canadian uranium producers agree that without a market arrangement, they are unlikely to conclude new export contracts during the next six years, except at distress prices. The Gulf Minerals Canada-Uranerz Canada group agree in principle with the desirability of establishing a marketing arrangement but have not yet fully resolved the legal problems arising from the extra-national ownership of the two partner companies.

(D) The major threat to the establishment of a suitable arrangement stems from the new Australian producers who are resolved to initiate production from their newly-found rich deposits, beginning about 1975.

cont'd.....

(E) The Australian threat would be reduced considerably if an approximate allocation for all uranium producers could be specified during the period 1978-80.

(F) An allocation for 1978-80 proposed by the French at the April 20-21 meetings would ensure that essentially all of the presently uncommitted Canadian production during those three years could be sold. While this may be true, there is no proposal acceptable to all Canadian uranium producers to enter into any arrangement for the 1978-80 period or beyond.

cc: Mr. W. Z. Estey
Mr. R. K. Allen
Mr. I. W. Coleman

May 10, 1972.

EXHIBIT I

APRIL 20, 1972 PROPOSAL FOR
ALLOCATION OF AVAILABLE FREE WORLD
UTILITY DEMAND FOR U_3O_8 DURING 1972-77

Country	Project or Company	Percentage of World Demand		Estimated Short Tons U_3O_8
Canada		33.5		8,710
	Spanish Contract		17.3	4,500
	Uncommitted			
	Rabbit Lake		7.3	1,900
	Denison		3.3	865
	Rio Algom		3.3	865
	Eldorado		2.3	580
South Africa	Nufcor	23.75		6,180
France	Uranex	21.75		5,650
Southwest Africa	RTZ etc. Rossing	2.0		520
Australia		19.0		4,940
	Mary Kathleen		2.0	520
	New Producers		17.0	4,420
TOTAL		100%		26,000

Uranerz Canada Ltd.
Regina, Sask.

May 10, 1972

INSTEAD OF TELEX

Gulf Minerals Canada Limited
Suite 1300
10 King St. E.
Toronto 1, Ont.

Attention: Mr. N.M. Ediger
Manager

(We are experiencing temporary difficulties with the Telex)

Dear Nick:

This morning we have already worked a little bit about the planned amendment of the Aide Memoire of the Canadian Producers. Following is our proposal:

Quote:

The allocation between the Canadian suppliers has been based on the assumption of an uncommitted world demand of 26,000 tons for the period 1972 - 77 and an allocation to Canada of such percentage as would give 8,710 tons (33.5%) of such uncommitted world demand. The Canadian suppliers have agreed to the following allocations between themselves.

Name of Supplier	Allocated Tonnage (Based on 8,710 tons to Canada)	Percentage of Deemed or Actual Canadian Allocation
Uranium Canada	4,500	51.67%
Gulf - UCL	1,900	21.82%
Dennison	865	9.93%
Rio Algom	865	9.93%
Eldorado	580	6.65%

If the actual world demand shall fall below or rise above 26,000 ton and, proportionally to the other world producers, the deemed Quantit of 8,710 tons allocated to Canada shall decline or increase, each of the Canadian suppliers shall be entitled to the abovementioned percentage of the actual quantities allocated to Canada.

Unquote

Regards
Carl

ENERGY SECTOR
Department of Energy, Mines and Resources
Ministère de l'Énergie, des Mines et des Ressources

File Number
No de dossier

SPECIALLY
CONFIDENTIAL

588 Booth St.,
Ottawa, Ontario,
K1A 0E4,
May 17, 1972.

CONFIDENTIAL WITH ATTACHMENT

Mr. N.M. Ediger,
Manager,
Gulf Minerals Ltd.,
10 King St. East,
Toronto 1, Ontario.

Dear Nick:

Attached are minutes of the Canadian Uranium Producers meeting held in Ottawa May 9, together with the Aide Memoire which was agreed at that meeting. As indicated in the minutes, copies of the Aide Memoire will be taken to the Johannesburg meeting for collective endorsation.

Yours sincerely,

John

O.J.C. Runnalls,
Senior Adviser, Uranium
and Nuclear Energy.

Att

MEMORANDUM

CLASSIFICATION
CONFIDENTIAL

Department of Energy,
Mines and Resources.

File

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

FROM De O.J.C. Runnalls

Ottawa, Canada
DATE May 16, 1972

SUBJECT Sujet Meeting of Canadian Uranium Producers, May 9

A meeting of Canadian uranium producers was held in the E.M. & R. Board Room at 588 Booth Street at 7:00 p.m. on May 9, 1972, to discuss the preparative steps necessary for a meeting of international uranium producers tentatively scheduled for Johannesburg May 29 and 30. The following individuals were in attendance:

J. Austin,	UCAN,	Chairman
J. Kostuik,	Denison Mines	
N. O'Brien,	Denison Mines	
G.R. Albino,	Rio Algom	
A.F. Lowell,	Rio Algom	
J.C. Burger,	Eldorado Nuclear	
N.M. Ediger,	Gulf Minerals	
K.E. Kegel,	Uranerz	
W. Klaus,	Uranerz	
G.M. MacNabb,	UCAN	
O.J.C. Runnalls,	UCAN	

Mr. Austin opened the meeting by thanking those present for agreeing to a change in the hour on such short notice. The purpose of the meeting was to discuss possible Canadian participation at the Johannesburg meetings and the composition of the delegation that would attend.

Prior to launching into that discussion, however, the minutes of the last meeting of April 20 and 21 were discussed. There was general agreement on the minutes with the exception of two points. Mr. Lowell, referring to bids

after 1978, indicated that it had been the understanding that either the pertaining world market price should apply, or a price based on the last year in the schedule, 1978, with escalation added. Mr. Ediger suggested that on page 3, in the table under the heading "Position on April 20" the words "Gulf - UCL Uncommitted Production" should be changed to "Gulf - UCL Uncommitted Tonnage". Mr. Austin said that there was no proposal to circulate the minutes beyond those who already had copies, unless someone such as the Minister should wish to see them.

Turning then to the discussion of the Johannesburg meeting, Mr. Austin indicated that it had been his understanding that the meeting would proceed unless some negative comment was received in Paris. The largest uncertainty centred around the Australian position. Mr. Ediger felt that the Australians were likely to agree to the meeting but he guessed that they would be anxious to have a single arrangement for the whole of the period 1972 to 1980. There was some discussion then about the recent announcements in the press on possible Australian sales to the Japanese over the period 1977 to 1985. Mr. Ediger felt that the announced sale by Queensland Mines of 2230 tons U_3O_8 to Shokoku Electric was quite authentic. In addition, the 10,000 ton rumoured sale of Peko - Wallsend was also thought to be firmly based.

Mr. Austin then led the group into a discussion of the points to be settled prior to the Johannesburg meetings. There were several things to be discussed including:

(a) The Gulf - UCL position;
(b) Who should attend the South African meetings;
(c) Who would be left as a working party to prepare and circulate documents.

On the first subject Mr. Ediger indicated that a problem still existed for Gulf Minerals; they were continuing

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to make representations in Washington, however, and at this time could see no insurmountable difficulties. Mr. Austin asked if Gulf was prepared therefore to go ahead in Johannesburg and take the associated risk. Mr. Ediger replied in the affirmative, adding that Gulf hoped to be in a stronger position on the legal issues involved by the end of the month. Mr. Kegel stated that on the UCL side, good progress had been made since the Paris meetings, and they now had an unofficial approval for the Johannesburg meetings. Personally, he was very optimistic that approval would be given for UCL's participation. Mr. Austin thought that it would be desirable to inform Mr. Taranger by May 15 as to whether or not the Canadians would participate in Johannesburg, and if so, on the composition of the delegation. Mr. Kegel suggested that if no message had been obtained from UCL by May 15, then it would be acceptable to assume that they would participate.

Mr. Austin felt that it would be desirable to have the same group present as had attended the April 20 meeting in Paris. Mr. Albino indicated that there would be one representative from Rio Algom to start, and a second later on to attend a possible meeting of the Executive Committee. Mr. Kostuik confirmed that Denison Mines would participate. Mr. Burger indicated that Eldorado would as well. Mr. Kegel thought there would be one representative from UCL. Mr. Ediger went on to ask if the Canadian Government party could be limited to three, to which Mr. Austin agreed. Mr. Austin then asked if the participants could let Mr. MacNabb or Dr. Runnalls know the compocition of the group that would be participating in Johannesburg by Monday May 15.

Mr. Austin asked the group if there was a need to enquire from the French as to whether or not anything had been heard about the Australian position. Mr. Kostuik thought that there would be no harm in asking Mr. Taranger.

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Hence it was agreed that a telex should be sent indicating that a Canadian producers' meeting had been held on the evening of May 9, and that the composition of the Canadian delegation would be communicated by May 15. In addition there was to be a query about any advance information on the possible Australian position that might be taken in Johannesburg. *

Mr. Austin enquired if the group would consider it useful for him to sound out the Australians before the South African meeting. Mr. Albino replied that there was no doubt that Australia was the key if an arrangement was to be concluded, and he felt that it would be useful for Mr. Austin to travel to South Africa via Australia if he could spare the time. Mr. Kostuik also supported such a move, as did Mr. Ediger. Mr. Austin agreed to discuss the subject with the Minister before making a decision. If he were to go he would leave on the 19th or 20th of May.

An Aide Memoire was then circulated among the participants for comment. The agreed version is attached as an Appendix to the minutes. After some discussion it was agreed that a representative from each of the uranium producers should sign the document. The most expeditious way of doing this seemed to be to take copies to Johannesburg where all could sign together. Mr. Austin agreed therefore to have the necessary number of copies of the Aide Memoire prepared and carried to Johannesburg.

Mr. Austin then summarized the intended allocation for the 1972 - 77 period, as follows:-

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* This telex was sent to Mr. Tarangér on May 10.

Spanish contract	4500	tons U_3O_8
Gulf - UCL	1900	
Denison	865	
Rio Algom	865	
Eldorado	580	
Total	8710	tons

The allocations as noted above were accepted by all the producers present.

Mr. Kegel asked if there was any protection that might be provided to the private producers should the estimated market of 26,000 tons prove to be too high in practice. In other words, since the Spanish contract was inelastic, the tonnages available to the other producers would drop disproportionately should the market be smaller than now anticipated. Mr. Austin replied that in his view, the Government would not be inflexible should such a situation develop. There was no discretion on the joint venture portion of the Spanish sale, but there could be some flexibility on the remaining portion. It was not possible at this time, however, to give any assurance.

A short discussion followed on post-1977 allocations. Mr. Albino wanted it clearly understood that in spite of the French suggestion for inclusion of Rio Algom in the RTZ group for their proposed 1978 - 80 allocation, Rio Algom would insist on remaining part of the Canadian group. An appropriate number would need to be broken out, therefore, from the RTZ quota. Mr. Ediger asked if the group would be prepared to bend somewhat if the Australians wanted a greater allocation up to 1977, or an arrangement which covered allocations for a longer period. Speaking for Gulf,

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he said that his company could not contemplate an arrangement that would extend beyond 1977.

Finally, Mr. Austin reiterated his thanks to the participants for travelling to Ottawa, and the meeting was adjourned at 9:00 p.m.

O.J.C. Runnalls.

App.

Appendix

Aide Memoire Accepted by the Undersigned Canadian Uranium Producers on May 9, 1972, at the conclusion of a meeting in the Board Room of the Department of Energy, Mines and Resources, Ottawa

(a) There is a strong desire for a marketing arrangement among international uranium producers to stabilize the present chaotic market situation and to avoid a further acceleration of the present price war which could result in uranium being sold in the next six years for prices as low as $4 per lb U_3O_8 in current dollars.

(b) All the undersigned Canadian uranium producers agree that it would be desirable to establish a marketing arrangement for the period to the end of 1977 because they would be provided with additional export opportunities during that period and at prices higher than those which now obtain.

(c) All the undersigned Canadian uranium producers agree that without a market arrangement, they are unlikely to conclude new export contracts except at distress prices during the next six years. The Gulf Minerals Canada - Uranerz Canada group agree in principle with the desirability of establishing a marketing arrangement but have not yet fully resolved the legal problems arising from the extra-national ownership of the two partner companies.

(d) The major threat to the establishment of a suitable arrangement stems from the new Australian producers who are resolved to initiate production from their newly-found rich deposits, beginning about 1975.

(e) The Australian threat would be reduced considerably if an approximate allocation for all uranium producers could be specified during the period 1978 - 80.

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94-080 O - 77 - 35

(f) An allocation for 1978 - 80 proposed by the French at the April 20 - 21 meetings would ensure that essentially all of the present uncommitted Canadian production during those three years could be sold. While this may be true there is no proposal at this time acceptable to all Canadian uranium producers to enter into any arrangement for the 1978 - 80 period or beyond.

Uranium Canada Ltd.

Denison Mines Ltd.

Rio Algom Mines Ltd.

Eldorado Nuclear Ltd.

Gulf Minerals of Canada Ltd.

Uranerz Canada Ltd.

SPECIALLY

CONFIDENTIAL

June 2, 1972

CONFIDENTIAL

FILE MEMORANDUM

Worldwide Uranium Marketing Organization

I spoke with Roger Allen in Johannesburg this morning concerning a probable Canadian Government "invitation" that Gulf provide one of the two Canadian representatives who would sit on the governing board of the proposed cartel.

I want to emphasize that Roger had not discussed this point yet with Mr. Zagnoli but will be doing so the early part of next week. Roger wanted to know what our Law Department thinking was in advance of taking the matter up with his client.

I told Roger that my recommendation to Messrs. Coleman and Minks would be that Gulf accept the Canadian Government invitation for these reasons:

(a) From a business standpoint, it is potentially advantageous for Gulf to know firsthand what is going on and to have an opportunity to constructively shape the functioning of the cartel board.

(b) It is potentially more dangerous for Gulf to be a member of a cartel where Gulf has no voice in what is going on than it is for Gulf to occupy a position which assures accurate, current information about the functioning of the cartel and an opportunity to register a negative vote should action outside the reasonable scope of the arrangement be proposed without Canadian Government direction.

(c) The fountainhead of our antitrust defense is the effective Canadian Government direction that Gulf participate in the cartel, buttressed by the projected minimal impact on the trade or commerce of the United States. These are the matters that fundamentally shape our antitrust position--not implementation within the reasonable scope of the cartel arrangement we have been directed to participate in.

(d) It is at least as important for Gulf to become a sophisticated and substantial participant in worldwide uranium matters as it was for us to undertake similar efforts with respect of oil and gas 30 or 40 years ago. Having a representative on the governing board of the world marketing organization would be helpful in achieving this objective.

I told Roger I would present these views to Messrs. Coleman and Minks so that if there is any difference of viewpoint, we can communicate with Roger on his return to Denver next week.

Roy D. Jackson, Jr.

RDJJr:ps

cc: M. E. Minks
I. W. Coleman
R. K. Allen - Denver

Specially
CONFIDENTIAL

June 2, 1972

FILE MEMORANDUM

Worldwide Uranium Marketing Organization

In view of recent developments at the Johannesburg meetings, it seems preferable to delay preparation of our white paper until the fact situation has stabilized and we have in hand Wen Ramsey's impact statement addressed to the latest developments.

Specifically, it now seems probable that the Canadian Government will cause to be issued official regulations dealing with production quotas and pricing. In principle, this should strengthen our antitrust position by showing in even more forceful fashion the compulsory governmental direction of Gulf's participation in the proposed uranium marketing arrangements.

Roy D. Jackson, Jr.

RDJJr:ps

cc: M. E. Minks
I. W. Coleman
R. K. Allen, Denver
M. W. Ramsey

Att. 5

FROM D. Hunter AT

TO Mr. H. E. Hoffman AT DATE 6/8/72

SUBJECT Uranium Marketing Strategy

Over the past 5 months we have made considerable progress in defining future Gulf U_3O_8 marketing strategy. The purpose of this memo is to confirm the agreements which we have reached in the last couple of days with respect to action which we will be taking.

1. The overall strategy must reflect the interrelationship existing between foreign and domestic markets. We are currently quoting uranium in the world marketplace. In competition with other world suppliers, we are offering foreign material in the U.S. market subject to lifting of the embargo. As you know all of our domestic offers except the recently completed Gulf United arrangement include a provision which will allow us to include foreign uranium with our domestic supplies.

We have recently begun discussions with the Canadian government with respect to the utilization of the Canadian stockpile in sales in the U.S. market. Use of this stockpile can be a powerful tool in our U.S. marketing effort and will provide a backup for 1975-76 Rabbit Lake production. Thus, foreign and domestic marketing activities are inseparable and indeed should be treated integrally if we are to optimize the company position.

2. We have recently completed a detailed evaluation of our U.S. production and sales position. Based on input provided by Gulf Minerals, we conclude that corporation profit is greater if New Mexican production begins in 1978 rather than 1976. In addition we have carried the analysis an additional step in order to evaluate the possible impact of large quantities of imported material on the U.S.

price and whether such an influence would dictate a 1980 production. Our evaluation indicates that 1978 is still preferable.

Our sales efforts in the U.S. are based on a source of supply from Gulf production in New Mexico, imports of foreign uranium and purchases in the open market. Our current position regarding sales plus proposals and supply is shown on the attached table. Our purchased quantity ranges from 7 to 12 million pounds depending upon Rancher's success in finding low cost uranium. At the present time we have sold 22 million pounds of uranium and have outstanding an additional 11 million pounds. We plan to continue to quote uranium based on the assumption that New Mexican production will occur in 1978. As you know, Mariano Lake must be in production by that time if Gulf is to maintain this mineral position.

In order for us to realistically appraise our U_3O_8 competitive position as well as to effectively sell foreign uranium, it is necessary for us to sell uranium directly to the U.S. utilities. This would be in addition to the HTGR and Gulf United needs. At the present time we would suggest that we limit our total direct utility sales from domestic sources to 10-20% of our total sales. I will initiate this action immediately and will of course keep the Nuclear Power Marketing Division appraised of our activities.

Since the time of our commitment of U_3O_8 to Gulf United and the HTGR early this year, early year schedules for both have slipped and we find ourselves with potential excess positions in 1976 and 1977. In anticipation of such an occurrence, our contracts with Ranchers and Union Carbide provide the mechanism for shifting the delivery of this material to a later date. However, we can see the possibility of making a significant profit by being a seller of 1976-77 material to selected utility customers and are pursuing this approach.

All in all we have made significant progress over the last five months. We have established ourselves in the U.S. and world marketplace. We have sold 22 million pounds of yellowcake representing approximately $200 million in business from which the corporation should make a substantial profit both from production and from brokered material.

cc: W. C. Galloway
C. A. Rolander, Jr.
W. D. Fowler

c.c. O.J.C. Runnalls' file.

MEMORANDUM

From O.J.C. Runnalls SPECIALLY CONFIDENTIAL

CONFIDENTIAL

To Mr. J. Austin
c.c. Mr. G.E. MacLabb.

Date June 15, 1972.

Subject: Meeting of Canadian Uranium Producers in Johannesburg, May 20, 1972.

A meeting of Canadian uranium producers was held in the President Hotel, Johannesburg, at 8:30 p.m. on May 20, 1972, to discuss the strategy to be adopted for the meeting of international uranium producers commencing the next day. The following individuals were in attendance:

J. Austin	UCAN.	Chairman
J. Kostuik	Denison Mines	
M. de Bastiani	Denison Mines	
G.R. Albino	Rio Algom	
W.M. Gilchrist	Eldorado Nuclear	
J.C. Burger	Eldorado Nuclear	
H.M. Ediger	Gulf Minerals	
H. Hoffman	Gulf Minerals	
R.K. Allen	Gulf Minerals	
D. Hunter	Gulf Minerals	
K.F. Kegel	Uranerz Canada Ltd.	
G. Glattes	UCL	
M. Phillips	UCL	
G.E. MacLabb	UCAN	
O.J.C. Runnalls	UCAN.	

Mr. Austin opened the meeting by indicating that the international discussions on the following day would be difficult because the Australians would be going into these meetings feeling they had the whip hand. The major problem would be the Australian allocation from 1978 onwards. This should not come as a surprise, of course, because that was the way the problem

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was left in Paris, and it had been discovered there that the Australians were not likely to be shy in making extraordinary claims. In Mr. Austin's view, they were capable of being pragmatic but they would start by over-stating their initial request. The South African and French positions seemed clear, since they had telexed their acceptance of the quotas for the 1972 - 77 period. The Australians would also likely agree to the 1972 - 77 arrangement but would want to extend it into later years. All of the parties with the exception of Canada would insist on an agreement to the end of 1980. There was a reasonable probability under these circumstances that the Canadians would become the victims of the meeting if they were the hold-outs on an agreement to 1980. It seemed, therefore, that some allocation formula was needed for 1978 - 1980 if the Canadians were to participate in the "club" and this was a key item before the Canadian group.

Mr. Austin then reviewed the French proposal which had been made at the April meetings in Paris. Briefly, the French had suggested that for the period 1978 - 80, the market should be subdivided into five equal portions for France, South Africa, Canada (minus Rio Algom), RTZ (plus Rio Algom), and new Australian producers. The proposal had been noted by South Africa without substantive comment or action either way at the time. In Canada's case, it had been looked on as a possible guideline. It seemed clear that it was not particularly appealing to the Australians. Whether or not the Australians would be ready to enter into an agreement needed to be clarified early on in the meetings of the following day. Mr. Austin's guess was that the Australians had come ready to enter into an arrangement. Their reaction was likely to depend, however, on the success or lack of it that they had encountered in their recent dealings in the Japanese market. It seemed clear that the Australians would like to negotiate from a firm basis, i.e. with some contracts already won.

There followed some general discussion as to the nature of the orders that the Australians might have obtained recently in Japan. Mr. de Bantiani thought that 1300 tons was to be supplied by Poko - Kallsend to Kyushu Electric. Mr. Albino thought that an additional 1700 ton order had been awarded to

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Poko - Wallsend by Chubu Electric. Mr. Kostuik indicated that Denison could have stepped in and captured a 2000 ton order in Japan recently if it had really wanted to do so. Mr. Hunter added that the Chubu order could have gone to Gulf if they had been prepared to offer a 10¢ per pound reduction below the Australian bid.

Mr. Austin reminded the group that two Australians, Timbs and Gates, had been present at the February 3 and 4 Paris meetings and had been given the suggested pricing structure at that time. Further clarification on prices was obtained by Proud in Paris at the March 13 and 14 meetings. It was quite apparent that since that time the Australians had been out selling, while the rest of the group had been sitting around talking. Mr. Austin suggested that there should be a group attitude towards Australia. Mr. Kostuik remarked that the Canadians were unanimously agreed that an arrangement was highly desirable. Perhaps, however, it might be worthwhile waiting to see what tack the Australian delegation would take. Mr. Austin then read a telex from Canberra which indicated that Queensland Mines had petitioned the government for financial help to permit them to successfully launch the development of the Maberlek deposit. Mr. Albino felt that it would be worthwhile asking the Australians directly what their present circumstances were with respect to potential orders. According to Mr. Hunter's sources, the Australian price quoted to Chubu was about 10¢ per pound under the suggested producers' 1975 price of $6.65 per pound. Mr. Austin's view was that if the Australians were "playing ball" everything should be fine. If on the other hand they could not be trusted at this stage, how would it be possible to look forward to a stable arrangement later? After some further discussion it was generally agreed that if a suitable opportunity arose, it would be worthwhile asking the Australians for details on their recent dealings in Japan.

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Mr. Austin remarked that the Japanese government was holding active discussions about the possibility of building a substantial stockpile of enriched uranium. Mr. Kostuik added that U.S.A.E.C. had been talking seriously with MITI and some other Japanese group about the possibility of selling enriched uranium for this purpose to the extent of some 5,000 tonnes of separative work.

Mr. Austin then asked for views on the position that should be adopted with respect to the terms of a possible arrangement, i.e. should a definite period after 1977 be considered? Mr. Gilchrist was prepared to extend the term beyond 1977 provided there was a periodic review, say once every year. The limit should be set at 1980, however, because to go beyond that would be unwise. Mr. Albino did not think that the Australian position was an illogical one; they would not start substantial production until 1977 and they would be anxious to know, therefore, what their prospects would be beyond that. He did not think that the Canadians could give a logical reason for not extending an arrangement beyond 1977. Rio Algom would be willing to do so provided there was a regular review of the situation. Mr. Ediger felt that even with a periodic review, there must be some firm termination date. One must recognize that bids were now being made on a ten-year basis and it was necessary to give some thought to the post-1977 period. However, so far as Gulf was concerned, their hazards with U.S. anti-trust legislation would increase as the end of the decade was approached. Mr. Allen said that the best advice Gulf had been able to obtain from outside counsel was that they should not even file a White Paper with the Department of Justice. Gulf Minerals had agreed to take a business risk, therefore, up until 1977 on the assumption that the U.S. embargo would not be lifted until 1970. In addition the instructions which had been received from the Minister of Energy, Mines and Resources had helped considerably.

Mr. Austin suggested that some guidelines for further negotiation were needed as had been proposed in Paris, but the

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detailed negotiation would not have to begin, in his view, until 1974. Mr. Kostuik said that from Denison's standpoint, they had held the view that it was not possible to foresee beyond five to six years. Furthermore, they had a very special relation with the largest utility in the world, Tokyo Electric, and were committed to deliver yet another forty million pounds of U_3O_8 to them. If Tokyo Electric were to ask in 1978 for an extension of their contract, Denison would feel a commitment to at least discuss the issue. On the other hand, Denison would not be the one to prevent any possibility for an arrangement. Mr. Austin asked if Mr. Kostuik was suggesting that he would be prepared to go along with an extended arrangement. Mr. Kostuik replied in the affirmative but indicated that 1980 would be a limit for Denison. Seeking further clarification, Mr. Austin asked if Denison would leave the club if the relationship was to be tested by Tokyo Electric. In other words, if the utility requested an extension on the present terms, would Denison accept such a proposal? Mr. Kostuik replied that Denison would be obliged to accept such a request. Mr. MacNabb suggested that perhaps the material required could come from some other company. Mr. Kostuik agreed, saying that Denison would not be the one to break up the club.

Mr. Albino felt that an extension to 1980 was a reasonable compromise. Personally he would be unhappy if the Australians wanted more than that. Mr. MacNabb suggested that the original French formula of five equal divisions should be assumed for the moment. Later on a quota for Rio Algom could be taken out of the RTZ total and added to that of Canada. Mr. Ediger asked what UCAN's view was of an extension to 1980, if the arrangement were to extend that far. He wondered if one could bid beyond 1980 and on what basis.

Mr. Austin thought that there was not only a commercial problem but a legal one. It had been necessary to measure the risk of falling within the confines of the Combines Investigation

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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. Mr. Phillips remarked that if the Canadian Government thought the risk was grave beyond 1977, the producers were certainly not going to be interested in extending the period.

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. This attitude had been clearly expressed in a message sent to each of the producers by the Minister of Energy, Mines and Resources on April 14. All Canadian producers were faced with a law that could not be amended by Cabinet; furthermore, all advisers to the Cabinet had suggested that 1977 was the latest date that should be considered. On the other hand, 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 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. The Government would not regulate, however, unless such a request was received. It would be necessary to reach a consensus at the present meeting, because on the following day the Canadians would have to disclose whether or not they were prepared to enter into an arrangement extending to 1980.

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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 asked how much time would be needed to bring such a Regulation into effect. Mr. Austin replied that a small amount of drafting in the Department of Justice would be required, followed by Cabinet consideration. The whole process should take no more than four to six weeks. The Regulation would simply state that there would be a prohibition of uranium sales in the export market (excluding the United States) below a certain price and above certain volumes. The Canadian producers could supply the necessary numbers and these would be recorded in the Regulation.

Mr. Albino could see no disadvantages 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. He added that this alternative had been raised as a possibility earlier, but then Canadian producers had said that more regulations were not wanted. Mr. Albino 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. Albino asked if a request from Rio Algom and Denison would be sufficient. 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.

Mr. Austin then asked if Denison, Rio Algom and Eldorado agreed that they would request the Government to

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proclaim a Regulation under Section 9(d) of the Atomic Energy Control Act to specify price levels and volume of sales. Messrs. Kostuik, Albino and Gilchrist all agreed that they would make such a request. Mr. Phillips added that, speaking as a lawyer, if the Department of Justice were to formulate such a Regulation as proposed, then from his standpoint it was quite an acceptable arrangement. Mr. Austin noted that the Regulation would be restricted to the export market and would exclude the U.S. market as well. The Regulation, once promulgated, would take effect immediately.

The discussion then turned to the subject of the Aide Memoire which had been evolved at the previous meeting of Canadian producers in Ottawa on May 9th. Mr. Allen remarked that after the meeting, they had looked at the wording in further detail and had had some difficulty. As a result, they had evolved a re-worked version. Mr. Austin suggested that perhaps it was not worthwhile to spend time on a revised Aide Memoire, particularly in light of the petition that had been received from the existing producers for a Regulation under the Atomic Energy Control Act.

Mr. Phillips, speaking for the UCL delegation, indicated that they would not attend the international meetings on the following day because of the problems that had been encountered with anti-trust regulations.

Mr. Albino then suggested that in order to show producers outside the country that Rio Algom was a Canadian company, perhaps it would be desirable for Mr. Armstrong to act as Chairman of the Canadian group on the following day. Mr. Kostuik's view was that since Mr. Austin had been acting in this capacity, and in a most competent manner, it would be unwise to change the

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Chairman at this stage. There was general agreement, therefore, that Mr. Austin should continue to be the spokesman for the Canadian group.

The meeting adjourned at 11:00 p.m.

O.J.C. Runnalls.

Dx 3453

MEMORANDUM
GOVERNMENT OF CANADA

NOTE DE SERVICE
GOUVERNEMENT DU CANADA

#2

CONFIDENTIAL

YOUR FILE - MOTRE RÉFÉRENCE

YOUR FILE - VOTRE RÉFÉRENCE

DATE
June 27, 1972.

REPLY TO
ENVOYER LA RÉPONSE À

TEL. NO.
TÉL.

O.J.C. Runnalls SPECIALLY

CONFIDENTIAL

Mr. J. Austin
c.c. Mr. G.M. MacNabb

Meeting of Canadian Uranium Producers
June 9, 1972

A meeting of Canadian uranium producers was held in the Board Room of the Department of Energy, Mines and Resources, 588 Booth Street, Ottawa, on June 9 at 12:15 p.m. Those in attendance were:

J. Austin	UCAN	Chairman
G.M. MacNabb	UCAN	
N.M. Ediger	Gulf Minerals	
K.E. Kegel	Uranerz	
N. Phillips	Counsel for UCL	
M. de Bastiani	Denison	
A.F. Lowell	Rio Algom	
W.M. Gilchrist	Eldorado	
J.C. Burger	Eldorado	
O.J.C. Runnalls	UCAN.	

Mr. Austin opened the meeting by indicating that its main purpose was to review the document issued by the uranium operating committee which had met in Johannesburg May 31, June 1 and 2. Mr. MacNabb summarized the results of the meeting by referring to the document which had already been circulated. He indicated that one of the major tasks before the Canadian group was to decide how the 27% quota for Canada referred to in Section 1 (d) was to be distributed.

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Mr. Phillips asked why there was specific reference in Section 2 (d) to some particular contracts; for example, what was the point of making reference to the UCL - UEB contract? Mr. MacNabb replied that as indicated in Section 2 (f) there were certain exclusions from the quotas of UCL sales to RWE, but some amounts were included as in Section 2 (c)(ii) to Neckarwerke. Simply stated, Section 2 (d) had been added for the purpose of clarification and not discrimination. Mr. Lowell indicated that some of the shipment to Neckarwerke was to be provided by Rio Algom. Mr. Phillips then asked what was meant in Section 3 (c) (ii) by "a negotiated world market price". Mr. de Bastiani remarked that whatever price was negotiated, it should not be less than the minimum specified in the price schedule.

Mr. Austin felt that Section 3 (c) needed an extra sentence for clarification. Mr. MacNabb said, however, that it was difficult to resolve into more specific terms and the operating committee had felt that the wording should remain relatively loose. Mr. Austin thought that there would have to be a good Secretariat to ensure that no disputes arose later from this particular clause.

Mr. Kegel asked if Canadian dollars might be the currency used in future bids. The general feeling was that there was not likely to be any significant change from the present preponderance of bids in U.S. dollars. On Section 3 (f) having to do with flexibility, Mr. Phillips wanted to be sure that variations on tonnages would apply to everyone.

Mr. MacNabb then outlined the bidding that was underway for the next large contract to be awarded, from Sweden. Australia had been bidding vigorously in competition with an American firm believed to be Westinghouse. The order could be for up to 6,000 tons but was likely to be closer to 2,500. Westinghouse was thought to be bidding low on the basis of a stockpile which it held of about 1,000 tons. The

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operating committee had agreed that Uranex should be allowed to drop under the Westinghouse price for this particular contract, and Houdaille was going to Sweden to discuss a possible contract on June 12.

Next the subject of an order for Hamburg Electric of 1,200 tons to be delivered in 1975, '76 and '77 was discussed. Queensland Mines had bid $5.72 per lb U_3O_8 for 1975; they now found, however, that they could not meet all of the conditions of the contract and would withdraw from the bidding. Mr. Kegel noted that the UCL price was higher than that of RTZ and therefore they could withdraw also. Mr. MacNabb said that after the Swedish and Hamburg Electric orders there might be an additional 8,000 tons to be awarded during the next year. Perhaps it would be wise, he suggested, to consider the possibility of pooling the two periods into a single one of 1972 - 80. Mr. de Bastiani mentioned that the French had already agreed to subdivide the Swedish contract if they were to win it. 1,700 tons would go to Uranex and 800 to Australia.

Mr. MacNabb noted that the next meeting of the operating committee would be held in Nice July 6 and 7. Each group was entitled to one representative and one alternate. Mr. Austin made reference to some of the publicity that had appeared in the press following the Johannesburg meetings. Mr. Gilchrist was concerned that there might be some reaction from the U.S.

Mr. Austin then brought up the subject of a Canadian Secretariat. One of the requests of the producers was that there be a Canadian centre for checking the information from the international Secretariat. He wondered how such a service would be paid for. Referring to the international Secretariat, Mr. MacNabb indicated that there would be two people there plus a secretary. Mr. Austin outlined some of the possible

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problems that a Canadian Secretariat might face, such as the flow of information from the Secretariat and from producers, and contacts with the Atomic Energy Control Board. He did not know how far the Department of Energy, Mines and Resources should become involved. It really should be a producers-led group, in his view.

Mr. Ediger thought that if there were going to be Canadian regulations the government should lead the way. Mr. Austin asked Mr. Gilchrist for his view, and he replied that if Dr. Runnalls could take on the job, it would be desirable in his view. Mr. de Bastiani asked whether there could be some additional help provided from the Mineral Resources Branch. Mr. MacNabb felt that Messrs. Simpson and Williams might be able to give some assistance. Mr. Ediger referred to the fact that the C.E.A. was providing someone on a temporary basis for Uranex and wondered if the Department could not offer a similar service to the Canadian producers. Mr. Gilchrist suggested that Dr. Runnalls should take on the responsibility 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 C.E.A. 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.

The subject of the 1978 - 80 allotment was then raised by Mr. Austin. Mr. MacNabb's suggestion was that the 10,450 ton quota might be subdivided as follows:

Denison	2,500	tons
Rio Algom	2,500	
Gulf	3,450	
Eldorado	1,400	
UCAN	600.	

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Mr. Gilchrist felt that the established producers should not be asked to give away quite so much to a new one, particularly in view of the earlier accepted subdivision of 37.5% for Denison, 37.5% for Rio Algom and 25 for Eldorado. After further discussion it seemed that an impasse had been reached.

Then Mr. Austin said that he would be prepared to contribute UCAN's allocation to Eldorado. If for any reason Eldorado could not use this allocation, however, it was to be understood that it should be returned to UCAN. Furthermore, UCAN's share of present contracts was to stand. This suggestion boosted Eldorado's tonnage to 2,000.

Mr. Ediger was unhappy with the proposed 3,450 tons for Gulf, since during the period 1972 - 77 a 995 ton stock-pile would be accumulated and the 300-ton cut from their uncommitted production in 1978 - 80 of 3,750 tons represented the profit in the Rabbit Lake venture.

Mr. Austin raised the subject of representation to the Nice meeting. Mr. de Bastiani passed on Mr. Kostuik's views that Denison and Rio Algom should each be represented at this particular meeting. Mr. Lowell added that it would be useful if existing producers with their experience were to be represented. Mr. Austin asked if it would be acceptable to the group to have Messrs. de Bastiani and Lowell attend, and report back to the group later. Mr. Ediger was sorry that Mr. MacNabb would be unable to go. Since it was such a critical and important meeting he would like to have a representative there from Rabbit Lake. Mr. MacNabb pointed out that Gulf would have a substantial tonnage of uncommitted production, even during the period 1972 - 77, and because of this he felt there should be one representative from either Denison or Rio Algom, plus one from Gulf at the Nice meetings. After some further discussion it was finally agreed that the representation

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at Nice would be Messrs. de Bastiani and Lowell, with Mr. Ediger deferring for a year, at which time he would replace Mr. de Bastiani on the operating committee.

Mr. Austin indicated that at a future meeting a decision would have to be made as to how to raise money to pay for the Secretariat. Mr. Gilchrist remarked that the less there was committed to paper, the better, so far as he was concerned. Mr. Phillips thought it would be a good idea to have a legal reviewer of any paper which was evolved.

Mr. Austin then returned to the question of subdivision of the Canadian quota and asked about the Gulf - UCL position. Mr. Kegel thought that if there was some opportunity for business in the Canadian market then the suggested allocation of 3,450 would be acceptable. Mr. de Bastiani could not see, however, that the Gulf - UCL group was giving up as much as the existing producers were in trying to meet the total of 10,450. He felt that the Denison allotment should be higher and could not agree, therefore, with the subdivision as presented. When it became apparent after a few more minutes of discussion 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.

Finally Mr. Austin agreed that the minutes of the meeting would be circulated, but those of later meetings would be put on file only. The meeting adjourned at 2:30 p.m.

O.J.C. Runnalls.

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Note to File: U-Marketing -- Agreements

Meeting of Operating Committee -- Cannes, July 6, 7, 1972.

Present:	Michel Houdaille	(Uranex)
	Philippe de Benauros	(")
	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. Secretarial 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 behalf 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.

813.242.20.2 5014

INTERNAL CORRESPONDENCE
GULF 670

FROM D. Hunter AT San Diego IN REPLY REFER TO

TO Mr. S. A. Zagnoli AT Denver DATE 7/7/72

SUBJECT Foreign Marketing

Confirming our agreement of today, we have reviewed the situation existing in the world marketplace over the last several weeks and believe that the interest of the corporation would be better served with a modification to our current pattern of operation. The interrelationships which exist between the UEB agreement which you are currently renegotiating and our marketing activities make it highly desirable for the foreign marketing operation to be physically located with the production function at Gulf Minerals Canada. These considerations are further strengthened by the posture which we must maintain as a Canadian producer. In light of this it is appropriate for us to transfer Mr. L. T. Gregg as Manager of International Sales to Toronto at a very early date.

As we have agreed, the operating instructions relating to the interplays of marketing with production will be provided by Mr. Ediger and yourself to Mr. Gregg. Mr. Gregg will continue to administratively report to me in San Diego. We believe this revised mode of operation will improve the integration of the marketing and production phases of our foreign uranium business while at the same time preserve overall marketing and sales guidance.

Mr. Gregg will visit Toronto on Tuesday, July 11, and I have asked that he and Mr. Ediger reach agreement regarding the timing for the move as well as the proposed broad operating guidelines. I think we are in agreement that the above noted action will serve to improve Gulf's position in the world marketplace.

cc: N. Ediger
W. C. Gallaway
L. T. Gregg
H. E. Hoffman
C. A. Rolander, Jr.

GOC 0000793

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
F. R. O'Hara, Pittsburgh
M. W. Ramsey, Pittsburgh
S. A. Zagnoli, Denver

ACCOUNTING COPY
PLEASE PRESENT TO PETTY CASH CASHIER FOR ADVANCE

Gulf General Atomic
Incorporated

GGA 269 REV. 12-67

Lucy

TRIP NO. 70189

TRAVEL REQUEST

DEPARTMENT 179-GE&ES/Uranium Supply & Distribution DATE 8/10/72

THIS IS TO REQUEST AUTHORIZATION FOR DONALD HUNTER (TRAVELER) TO TRAVEL:

FROM	TO	DATE	METHOD OF TRAVEL	HOTEL RESERVATIONS FROM	TO	PREFERENCE
Diego	New York	8/10/72	1. AIR ☒			
York	San Diego	8/11/72	2. TRAIN ☐			
			3. OTHER			

PURPOSE OF TRIP: Meeting w/Executive

ADVANCE REQUESTED: CASH $ 100.00 TRAVELERS' CHECKS $ TOTAL AMT. $ 100.00

ESTIMATED TOTAL COST (INCLUDING TRANSPORTATION) IS

ESTIMATED CHARGES TO PROJECTS			
PROJECT NO.	%	PROJECT NO.	%
115668	100		

Energy & Environmental Systems Inc. 04852 CASH RECEIPT

DATE 8/30/72

D. Hunter

AMOUNT	ACCOUNT	ORG.	ENHANCE #	REF. #1	REF. #2	APV	RCD
2	1143.00 C1	179	1	1272	9043975442		
20	1013.00 C1	326	1				

RECEIPT COPY

Gulf General Atomic
Incorporated

GGA 359 REV. 12-67

TRAVEL REQUEST

TRIP NO. 70188

TMENT 179-GE&ES/Uranium Supply & Distribution DATE 8/7/72

THIS IS TO REQUEST AUTHORIZATION FOR DONALD HUNTER (TRAVELER) TO TRAVEL:

FROM	TO	DATE	METHOD OF TRAVEL	HOTEL RESERVATIONS FROM	TO	PREFERENCE
n Diego	Seattle	8/8/72	1. AIR ☒			
ttle	San Diego	8/8/72	2. TRAIN ☐			
			3. (OTHER)			

OSE OF TRIP: Uranium Discussions w/Standard Oil

ICE REQUESTED: CASH $ 50.00

TRAVELERS' CHECKS $ TOTAL AMT. $ 50.00

ATED TOTAL COST (INCLUDING TRANSPORTATION) $

ESTIMATED CHARGES TO PROJECTS

PROJECT NO.	%	PROJECT NO.	%
115668	100		

THIS STUB NOT GOOD FOR AIR FLIGHT
PASSENGER'S RECEIPT
2526228
SAN FRANCISCO/OAKLAND-SAN JOSE
AND SAN DIEGO
$24.50

TURE OF TRAVELER

OVED (DEPARTMENT CHAIRMAN OR PROJECT MANAGER)

APPROVED

AREA FOR ACCOUNTING USE ONLY:

TRAVELERS CHECKS ISSUED IN THE AMOUNT OF:

QTY.	DENOM.	AMOUNT	SERIAL #	FROM	TO-INCL.
	$10	$			
	$20				
	$50				
	$100				

GULFMINCEN OMR

GR

5034

GULFMINCO TOR

10:00 AM

TO S. A./ ZABNOLIA/ R. K. ALLEN / W. C. LARRABEE
DENVER OFFICE

FOLLOWING TELEX SENT THIS A.M.

GULFMINSCO TOR
AUGUST 25, 1972

9:30 AM

URANERZBERGBAU, BONN, WEST GERMANY
ATTENTION: D. NOTTMEYER/K. KEGEL/G. GLATTES

RE CONTRIBUTION TO SERU

AS THE OPERATION OF SERU AND THE PAYMENT FOR ITS OPERATING COSTS WILL BE DISCUSSED AT THE FORTHCOMING MEETING OF CANADIAN PRODUCERS I WOULD LIKE YOUR COMMENTS WITH RESPECT TO THE FOLLOWING DIVISION OF CANADA'S 27 PERCENT SHARE.

RABBIT LAKE JOINT VENTURE 51/49	38 PERCENT
DENISON	25 PERCENT
RIO ALGOM	25 PERCENT
ELDORADO	15 PERCENT
UCAN	5 PERCENT

I BELIEVE SUCH A FORMULA WOULD BE EQUITABLE AND IF YOU AGREE I AM PREPARED TO SUGGEST IT AT THE APPROPRIATE TIME.

BEST WISHES

N M EDIGER

Ex. 34
CAEEC

CC SAZ/RKA/WCL VIA TELEX
LTG/MC BY MAIL

PS TO DENVER OFFICE

WILL SERU OPERATING COSTS BE A CHARGE AGAINST THE RABBIT LAKE PROJECT OR AGAINST GULF MARKETING COSTS? I PRESUME THE LATTER EVEN THOUGH GMOL MIGHT INDICATE THE CHEQUE SHOULD BE INITIATE THE CHEQUE AND THEN RE-INVOICE.

Yes to marketing

N M EDIGER

Foreign Uranium Marketing Organization DRAFT

(1)

The following information has been compiled at the request of Gulf's lawyers as part of their work product for purposes of counseling the 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: (1) Gulf, (2) U.S. exports, and (3) U.S. imports.

Gulf

Gulf's current foreign uranium resources are limited to the Rabbit Lake area of Saskatchewan. Table I shows a summary of Free World (excluding U.S.) uranium reserves. The four countries (Australia, South Africa, France, and Canada) currently discussing this proposed marketing organization are estimated to control 823,000 tons of U_3O_8 in reasonably assured reserves. Canada has about 30% of this total. However, the Rabbit Lake reserve of 22,000 tons is only 9% of the Canadian reserves and only 2.6% of the total Free World reserves (excluding U.S.).

Figure 1 shows the Free World foreign uranium supply and demand estimate by major producing areas. The Rabbit Lake project is expected to come on stream in early 1975 and to produce 2,250 tons of U_3O_8 per year through 1984. In 1975 this would represent only about 9% of the foreign uranium demand. By 1980 this proportion will have dropped to 5-6% of the total foreign demand.

These data demonstrate that the Rabbit Lake uranium will represent only a very small part of the reserves and production in comparison to the totals for Free World uranium producers.

During the past year, Canada has hardened its attitude toward foreign investors, especially those engaged in exploring and producing Canada's natural resources. Legislation is being drafted now to restrict foreign ownership of uranium production; however, approval has been granted for the Rabbit Lake project to continue with 100% non-Canadian ownership.

Continued operation under this exception to Canadian Government policy is necessarily contingent on the current attitude of the sovereign power. The Canadian government is insistent that all Canadian uranium producers participate in the proposed foreign marketing arrangement and have advised us that this arrangement is in the national interest of Canada. If we refuse to participate, there are a number of possible actions, such as refusal to grant producing and export licenses, environmental restrictions, prorationing of production, etc., that the Canadian government can take and effectively force us to withdraw from the Rabbit Lake project. In that event, Gulf would have no practical alternative but to sell its ownership under distress conditions and suffer severe financial loss.

In addition, forcing Gulf to withdraw from the Rabbit Lake project would not have any effect on the proposed marketing arrangement. A new Canadian owner would include this production in the marketing arrangement or the Rabbit Lake quota would simply be redistributed among the other Canadian producers. Thus, either course would result in the same quantity

of Canadian uranium being included in the marketing arrangement.

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 II shows U.S. production and exports. Exports beyond 1972 are based on existing contracts. 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.

Figure 1 shows that uranium capacity at existing foreign production centers is expected to exceed foreign uranium demand until at least 1978. It seems likely that further slippage will occur in bringing nuclear power plants on stream so that this supply-demand balance point may be delayed until perhaps 1980. In addition, it is estimated that on the order of 50,000 tons of uranium has been stockpiled outside the U.S. and that this could further delay the time at which foreign uranium demand will exceed presently planned production capacity.

Table III shows a comparison of expected foreign and U.S. uranium prices. This table shows that U.S. uranium prices will be substantially above those prevailing in the foreign market during this decade regardless of whether the proposed marketing arrangement is consummated. There are a number of reasons for the higher U.S. prices. The most important being higher operating costs in U.S. mines and the depressing effect of a significant

amount of South African uranium production being available as a result of by-product material resulting from gold ore tailings.

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. If anything, the spread in prices will become greater and further deter U.S. exports.

Since the proposed foreign marketing arrangement would increase foreign uranium prices, this would decrease the gap between U.S. and foreign prices and would, if anything, encourage greater exports of U.S. uranium.

U.S. Imports

The AEC 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 exceed domestic demand until at least 1976 and possibly longer, depending on slippage in nuclear reactor programs as well, 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 no need or opportunity for importation of foreign uranium during the life span of the proposed foreign marketing arrangement.

TABLE I

SUMMARY OF FREE WORLD FOREIGN URANIUM RESERVES

AT LESS THAN $10 PER POUND

(AS OF DECEMBER, 1971)

	Country District or Mine	Reserves Reasonably Assured in Tons of U_3O_8
I.	Australia	
	A. MKU & Others	16,000
	B. N. Territory	106,000
	C. S. Australia	19,000
	Sub-Total	141,000
II.	S. & S.W. Africa	
	A. Rand & Klerksdorp	170,000
	B. Orange Free State	30,000
	C. S.W. Africa	100,000
	Sub-Total	300,000
III.	France & F. Africa	
	A. Mainland France	67,000
	B. French Africa	63,000
	Sub-Total	130,000
IV.	Canada	
	A. Elliot Lake	205,000
	1. Denison	155,000
	2. Rio Algom	50,000
	B. Beaverlodge & Others	25,000
	C. Rabbit Lake	22,000
	Sub-Total	252,000
V.	Other Areas	41,000
	Total	864,000

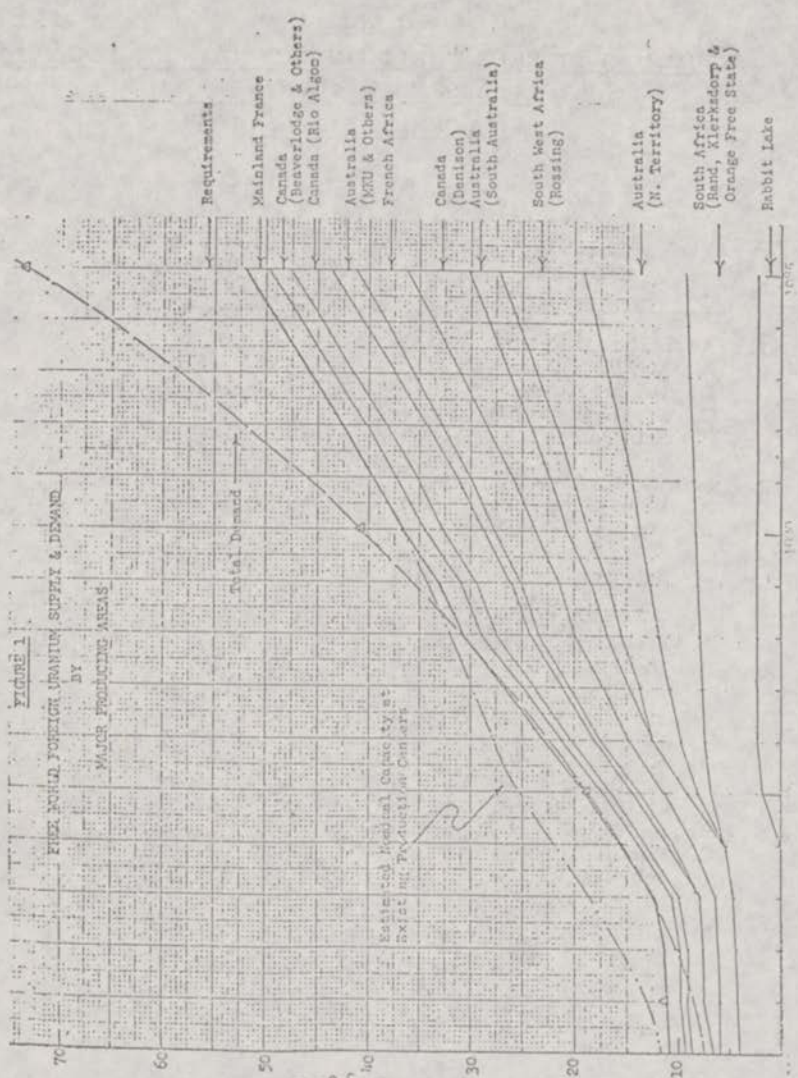

FIGURE 1
FREE WORLD FOREIGN URANIUM SUPPLY & DEMAND
BY
MAJOR PRODUCING AREAS
Short Tons of U_3O_8 x 10^3
70
60
50
40
30
20
10
Requirements
Total Demand
Mainland France
Canada
(Beaverlodge & Others)
Canada (Rio Algom)
Australia
(MKU & Others)
French Africa
Canada
(Denison)
Australia
(South Australia)
South West Africa
(Rossing)
Australia
(N. Territory)
South Africa
(Rand, Klerksdorp &
Orange Free State)
Rabbit Lake

Table II

U. S. URANIUM PRODUCTION
AND
EXPORTS
(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.S. Production
1968						310				12,850
1969										12,595
1970		500	500		850		1,790			13,07⌒
1971										13,000*
1972										11,000*
1973										13,000*
1974				260				450		15,000*
1975	700									18,000*
Total	700	500	500	260	850	310	1,790	450	5,360	108,518

1. $\frac{5{,}360 \text{ Tons } U_3O_8 \text{ Exported}}{108{,}518 \text{ Tons } U_3O_8 \text{ Produced}} = 4.9\%$
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

Table III

URANIUM SALES PRICES

	Foreign		U.S.	
	Gulf Forecast of Foreign Prices	International Producers Posted Price	Gulf Forecast U.S. Prices	Actual U.S. Prices[1]
1975	5.35	6.35		
1976	5.50	6.60	7.90	7.70
1977	5.65	6.85	8.35	8.00
1978	5.85	7.10	8.80	8.30
1979	6.05		9.15	8.60
1980	6.30		9.55	8.90

[1] Lowest of several competitive bids recently solicited by Gulf for domestic material.

All prices refer to the average of long- and short-term sales for delivery in the year 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.

4/21/72

Economic Effect of Producer's Agreement on Gulf

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.

The attached schedule of prices presents the expected market price (the price that could be achieved under the producer's agreement), the prices used in the AFE for Gulf and its German partner, and the notification price (the price at which UCL is committed to sell). For a definition of notification price, see the original agreement with UCL dated December 30, 1970.

Assuming that Gulf would be forced to work under the producer's agreement, and, thus be limited in sales from Rabbit Lake for the 1975-1977 period, the economic effect on Gulf can best be described by the attached graph.

The curve labelled "1" indicates what Gulf's resultant discounted cash-flow rate of return (DCF) would be if both Gulf and UCL could achieve the expected market price under varying sales levels in the early production years. Although lower sales levels are reached in the early years, Gulf's profitability is increased directly by higher price levels and indirectly by higher overriding royalties from UCL.

The remaining curves indicate the effect on Gulf's profitability of various other pricing levels for Gulf and UCL as a function of early production capacity utilized. In all cases, 100% operating capacity is assumed from 1978 to the end of the project.

The importance of the graph is to illustrate that Gulf will be better off from a DCF standpoint if the producer's agreement goes into effect. Because of higher prices and royalties, actual net profit will also be increased.

In addition, the graph indicates that even under the worst realistic situation (Curve 3), the project is still quite profitable.

PRICES USED IN STUDY

Year	Expected Market Price	AFE Prices		UCL Notification** Price 12/30/71
		Gulf	UCL	
1975	6.35	5.35	5.35	5.14
1976	6.60	5.50	5.50	5.36
1977	6.85	5.70	5.65	5.58
1978	7.10*	6.00	5.85	5.78
1979	7.35*	6.35	6.05	5.98
1980	7.60*	6.70	6.30	6.18
1981	7.85*	7.00	6.60	
1982	8.10*	7.35	6.85	
1983	8.35*	7.65	7.15	
1984	8.60*	7.95	7.45	
1985	8.85*			

* Price Estimates beyond 1975 are assumed to continue to increase at $.25/lb/yr.

** Average of notification prices given quarterly.



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.

TableIII 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.

Foreign Uranium Marketing Arrangement

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).

9-8-72

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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.S. Production
1968						310				12,850
1969										12,595
1970		500	500		850		1,790			13,073
1971 *										13,000*
1972										11,000*
1973										13,000*
1974				260				450		15,000*
1975	700									16,000*
Total	700	500	500	260	850	310	1,790	450	5,360	108,518

1. $\frac{5,360 \text{ Tons } U_3O_8 \text{ Exported}}{108,518 \text{ Tons } U_3O_8 \text{ Produced}} = 4.9\%$

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

Requirements
Rabbit Lake
1975

Table III
Uranium Sales Prices
US $/lb.

	Foreign		US
	Gulf Forecast of Foreign Prices	International Producers Posted Price	Price Range
1975	5.35	6.45	
1976	5.50	6.80	7.30-8.50
1977	5.65	7.15	7.70-9.00
1978	5.85	7.50	8.10-9.30
1979	6.05	Not Available	8.50-9.80
1980	6.30	Not Available	8.90-10.30

All prices refer to the average of long- and short-term sales for delivery in the year 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.

SPECIALLY

W.Z.E. + COLLEAGUES

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CONFIDENTIAL

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Ottawa, Canada
K1A 0H4

URANIUM CANADA, LIMITED
URANIUM CANADA, LIMITEE

September 25, 1972.

Memorandum to:

Mr. G.R. Albino
Mr. J. Kostuik
Mr. W.M. Gilchrist
Mr. N.M. Ediger
Mr. K.E. Kegel
Mr. G.M. MacNabb.

Attached is a copy of the minutes of the Canadian Uranium Producers Meeting held in Ottawa September 5, 1972, for your disposition.

O.J.C. Runnalls.

th Street
Canada
54

CONFIDENTIAL

URANIUM CANADA, LIMITED
URANIUM CANADA, LIMITEE

September 21, 1972.

Memorandum to Mr. J. Austin

from O.J.C. Runnalls.

Subject: Minutes of Canadian Uranium Producers Meeting September 5, 1972

A dinner meeting of Canadian uranium producers was held September 5, 1972, at Le Cercle Universitaire in Ottawa beginning at 6:00 p.m. Those in attendance were

J. Austin,	UCAN	Chairman
M. de Bastiani,	Denison	
G.R. Albino,	Rio Algom	
A.F. Lowell,	Rio Algom	
W.M. Gilchrist,	Eldorado	
D. Bullock,	Eldorado	
S.A. Zagnoli,	Gulf Minerals	
N.M. Ediger,	Gulf Minerals	
L.T. Gregg,	Gulf Minerals	
E. Gaertner,	UCL	
K.E. Kegel,	UCL	
G.M. MacNabb,	UCAN	
O.J.C. Runnalls,	UCAN	

Mr. Austin welcomed the various delegates to the meeting and discussed briefly the next planned Plenary Session which would be held in Toronto after the Washington ANS meeting. Mr. Ediger volunteered to look into the possibility of using a Gulf Oil Canada conference room as a possible site. In the meantime Mr. Austin suggested that Dr. Runnalls should send a telex to Mr. Taranger indicating that the date of November 10 was agreed and further details would follow later. It was agreed that a

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lunch and dinner would be hosted with Denison and Rio Algom accepting responsibility for the arrangements. The possibility of visits for the delegates to Elliot Lake or Pickering was also discussed and will be examined in further detail later.

Mr. Austin made reference to the flurry of newspaper accounts that had appeared recently on the uranium producers' activities. He felt there was no need for the Government of Canada or anyone else for that matter to say anything further on the subject to reporters.

Mr. Austin then invited Mr. Lowell to summarize the discussions that had been held among international uranium producers in Cannes on July 6 and 7. Mr. Lowell reviewed his notes on the meeting which had been distributed to Canadian producers July 12. He indicated that the Paris secretariat seemed to be working quite well under the direction of André Petit. Since Mr. Petit had some responsibilities still to the C.E.A. in connection with Euratom affairs and gaseous diffusion work, the French would pay his salary. Mr. Petit had presented a working capital budget required for the balance of the calendar year of ff 50,000 of which 13,500 was due from Canada. The Canadian commitment had already been sent to Petit from Eldorado which had in turn been reimbursed by the various Canadian producers.

Mr. Lowell, in referring to Mr. Petit's minutes of the Cannes meeting, indicated that he had not recorded the agreement reached that the 3,000 ton commitment from UCL to RWE over the period 1978 - 80 would be treated as a single amount, i.e. delivery would not have to be prorated annually. Mr. Lowell suggested that this omission should be corrected at the Sydney meeting. Mr. Austin felt it would be worth while to send a telex to Petit immediately to clarify the issue and Dr. Runnalls agreed to do this.

Mr. Lowell went on to describe the rather acrimonious debate that had taken place with Louis Mazel who had accepted

.... 3

200 tons of business from Chubu without specific RTZ sanction. The outcome of the battle was that RTZ was levied a nominal "penalty" of 10 tons to be deducted from its quota for infringing club rules. Suggestions for the penalty had come from Houdaille, of Uranex. Mr. Lowell indicated that there had been the standard arguments relating to the quotation of floor prices after 1978, adding that it was likely that this subject would be debated further in Sydney. He then reviewed what was known about negotiations between the SSPB of Sweden and U.S. Westinghouse. Some discussion had taken place in Cannes on matters relating to club rules. These would be discussed further at Sydney, along with the currency risk issue. Mr. Austin thanked Mr. Lowell for his account of the meeting, indicating that the operating committee and the secretariat seemed to be successfully launched.

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.

The discussion then turned to the up-coming Sydney meeting. Mr. Lowell made several suggestions about possible items for inclusion in the agenda of the Sydney meeting, including a review of the functioning of the secretariat, the status of the new Australian contracts and agreement on internal Australian quotas, RTZ supply - demand forecasts, and the RTZ forecast on currency risks. He promised to compile a list of his suggestions so that Dr. Runnalls could

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forward them from the Canadian secretariat to Paris prior to the Sydney meeting.

Another item raised for discussion at Sydney was the section on Force Majeure. Mr. Albino thought it could be modified somewhat to advantage in order to avoid strong negative reactions from the consumers to restrictions imposed. Mr. de Bastiani's view was that the purchaser should assume more responsibility than was being proposed by Mr. Albino. This led Mr. Gilchrist to remark that his heart didn't bleed for the utilities. Mr. Austin summarized the discussion by saying there were three points of view on Force Majeure, as follows:

1. It should be accommodating to the consumers,
2. It should be the opposite of No. 1,
3. Each company should make its own choice.

He felt it most important at Sydney that the Canadian representatives should press for a uniformity of club behaviour. Mr. Zagnoli agreed with the need for a basic definition of Force Majeure which would ensure uniformity. Mr. Albino was still worried that if the world consumers became terribly unhappy, the club would have a very difficult time.

Mr. Austin then called for views on what the Canadian team should say about the subject. For example, should there be a standard Force Majeure clause? Mr. Gilchrist thought there should be, and Mr. Ediger agreed but qualified his answer by saying that after the first standard response, then there should be some flexibility. Mr. Albino thought that a standard clause was probably the right way to start. Dr. Gaertn cautioned that in all his dealings in the coal, oil, gas and water business, he had never found such a clause, so one should be cautious about introducing it in the uranium business. Mr. de Bastiani stated that he was in agreement with Dr. Gaertner's

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views. Mr. Austin said that there seemed to be an even balance on the issue among Canadian producers, and he had no doubt these differences in view would be well expressed by our two representatives at the Sydney meeting.

The discussion then turned to representation at the Sydney meeting. Mr. Austin suggested that there was a dichotomy between continuity and the desire for every company to be represented. There were several possible solutions, and he wondered what the desire of the group was. 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. Somehow, he thought, one representative should be present from UCAN. This was particularly important at present because of the Spanish sale and the fact that the Canadian secretariat was located in Ottawa. Thus Mr. Ediger proposed that Mr. de Bastiani should be a permanent delegate and there should be a rotating one in addition, initially to come from UCAN.

Mr. Austin indicated that he would be glad to provide a service to the Canadian producers as long as such service was useful because UCAN required the information in any event. Nevertheless, he would like to keep the government presence in the background among the Canadian participants; there was no question that there should be continuity on the Operating Committee, and this could be provided by having an overlap. Mr. Gilchrist suggested that the same two representatives could serve until the end of 1973, and then one could continue to the end of 1974. Mr. MacNabb remarked that with such a long tenure other companies would get no detailed insight into the international negotiations for more than a year because of lack of exposure.

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Mr. Albino complimented Mr. Austin on knowing when to bow out of the operation. He said that the government contribution had now been made, and private companies should take over henceforth. He felt the Department had done a good job in promoting government - industry cooperation. Mr. Austin remarked that his Department needed the same informational exposure so that there should be continuing government involvement; in short, UCAN would be represented at Plenary Sessions but neither UCAN nor government would look for representation on the Operating Committee. Mr. Albino hastened to add that his previous remarks had referred only to the Operating Committee. He went on to say that he also preferred continuity of the Operating Committee and would like some overlap. One year service for the two representatives would be a happy compromise with one continuing for a further period. There would be a burden of course on those two to keep others informed during their period of tenure.

Mr. Austin asked if either Eldorado or Gulf had a desire for early representation on the Operating Committee. Mr. Gilchrist replied in the negative, adding that he favoured a longer period for representation. Mr. Ediger indicated although there was a great deal to be gained from company participation in the "cut and slash" of the international meeting table, on balance he felt that continuity was more important. Hence it was agreed that Messrs. de Bastiani and Lowell would be the initial representatives. Mr. Austin, after flipping a coin, proposed that Mr. Lowell would serve until June of 1973 and Mr. de Bastiani until the end of that year, and all agreed with the proposal.

Mr. Austin then reviewed progress that had been made on the new Regulation and Direction under the Atomic Energy Control Act. Mr. MacNabb indicated that an amendment to the Direction would be made to make it abundantly clear that in addition to the market allocations indicated therein, there

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was a "captive market" for the Rabbit Lake production of 3,300 and 3,000 tons of U_3O_8 in the periods 1972 - 77 and 1978 - 80 respectively, which was exempt from all but the pricing criteria of the agreement, provided it was sold to and consumed by RWE and its affiliated companies.

The final item on the agenda related to a subdivision of the 1978 - 80 Canadian quota. Mr. Austin said that although there was no pressing demand to resolve the question, perhaps it could be settled nevertheless. He put forward the suggestion that the 10,450 ton Canadian allotment could be subdivided as follows:

Denison	2,600
Rio Algom	2,600
Gulf - UCL	3,250
Eldorado	2,000
Total	10,450

In the discussion which followed it was clear that Mr. de Bastiani thought the allotments for Denison and Rio Algom were too low and the Gulf - UCL amount too high, whereas Mr. Ediger felt strongly that the Gulf - UCL amount could not be reduced further without introducing serious economic difficulties for the Rabbit Lake venture. Mr. Austin suggested that since resolution of the problem still appeared difficult, the question should be tabled for another meeting which would be called to hear an account of the October discussions in Sydney.

The meeting was adjourned at 10:00 p.m.

O.J.C. Runnalls.

A7200 00354 813.242.21.1 5010

9/28/72

TELEX

MICHEL HOUDAILLE, DIRECTOR GENERAL
URANEX
191-195 Avenue Charles-De-Gaulle
92-Neuilly-Sur-Seine
Paris, FRANCE

Our checks of the Westinghouse situation lead us to believe that the material they are quoting overseas is of foreign origin. We have not yet been able to pin point the source but will continue to work on the problem. Concerning our discussions on the New Mexico properties, I would like to hold off on these for a while since I understand Mr. Taranger is providing point of contact to Mr. Hoffman. I will keep you appraised of this situation as it develops.

Regards,

D. HUNTER
GE&ES-SAN DIEGO

OIL INSURANCE LIMITED
BOX 1751
HAMILTON, BERMUDA

Roy D. Jackson, Jr.
PRESIDENT

Specially
CONFIDENTIAL

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

Gulf Oil Corporation
LAW DEPARTMENT

Specially
CONFIDENTIAL

Frank R. O'Hara
general counsel

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

94-080 O - 77 - 39

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. <u>The consensus finally reached was that</u>

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

CONFIDENTIAL

N. M. Ediger AT Toronto IN REPLY REFER TO

S. A. Zagnoli AT Denver DATE December 27, 197

Canadian Quota Allocation 1978-80

Attached is a copy of a letter from J. Austin dated December 22 proposing a final settlement of the internal distribution of the Canadian quota.

I am concerned about the implication in the second paragraph that there was some kind of acceptance of the tonnages set out in this table. Acquiescence would be more descriptive. We have consistently put forth the view that anything less than 3750 tons is unacceptable but that we had no choice but to obey the Canadian regulations. Therefore, I propose to respond to Mr. Austin's letter at the next Canadian producers' meeting scheduled for Ottawa on January 8, 1973 by again reiterating our stand that if this internal distribution becomes the subject of a ministerial direction to the AECB then we have no choice but to comply.

However, it also occurs to me that if the ministerial directions are issued at the request of the producers' or in response to some agreement among producers, any case under 5.1 of Appendix C of our agreement with UCL may be weakened.

Original Signed
By N. M. Ediger

N. M. Ediger.

/cp

cc: R. K. Allen
W. Z. Estey

M. D. Fowler

Mr. D. Hunter

EXXON Nuclear

DATE Feb. 23, 1973

86700 00011

Tom Upchurch advised me that he had come down to Los Angeles on Monday to attend the AIF meeting to discuss the embargo question where other producers were present. EXXON has very conservative guidelines on such participation and when Tom discovered that the AIF representation was not acceptable (lack of a lawyer and/or M. Gordon), he elected not to participate and returned to Seattle.

This may have some peripheral impact on your call to Ray and thought you should be aware.

Fowler

Pittsburgh Documents
(Feb. 1977)

D. Hunter AT

Mr. T. A. Johnston AT

Westinghouse Uranium Position

GR IN REPLY REFER TO

DATE 3/1/73

We have learned that Westinghouse has submitted a joint venture with Queensland Mines for approval of the Australian Government. If this arrangement is approved, Westinghouse will be provided with up to 2 million pounds per year from 1975 to 1980 and 600,000 pounds per year post-1980 from Nabrelek plus additional quantities which might be found as a result of exploration at a price approximately 60¢ per pound below the existing world market price. The proposed venture is approximately three months away from fruition and if it develops would provide Westinghouse with a potential source for U.S. reactor sales. It would also provide a source for their substantial foreign shortage.

We will work with GMCL to try to put pressure on the Australians to block the proposed arrangement.

cc: W. C. Gallaway
H. E. Hoffman
J. W. Landis
C. A. Rolander, Jr.

Mr. L. T. Gregg — At Gulf Minerals, Toronto — In Reply Refer To

Mr. W. D. Fowler — At CE&ES, San Diego — Date April 2, 1975.

Subject: GUNFC and Westinghouse

I thought it would be worthwhile to record the events of last week before Nick and I leave for Europe. While we are gone, George Boyce of this office will be handling marketing communications, so feel free to call him if anything urgent comes up and he can get in touch with us.

1. GUNFC

Basically, Bill Teer agreed that he would accept a bid on:

1978	500,000 lbs.
1979	500,000 lbs.
1980	600,000 lbs.
1981	900,000 lbs.
1982-85	1,000,000 lbs. per year

since I told him a contingent quote prior to 1980-81 on 50% of our share of production is not good business. I talked to him later about the 1978 quantity and he said to throw it in if we liked although he doubted if he could use it.

As we agreed, there are at least two possibilities on the embargo deferral problem:

a. A preferential take by GUNFC of GNCL material, i.e. they take the first x million lbs. that they can take from us before they take from anyone else.

b. If they can't take in the U.S. for a given year or firmly commit it outside the U.S., we resell in the world market and any differential below the GUNFC contract price (plus escalation) is shared in some manner.

Bill said that early May would be acceptable from his standpoint for a bid. I'll call you as soon as I get back.

2. Westinghouse

Basically, I told Mike Connor to call me when he's ready to talk seriously again after May 1. He said that was fine and that he definitely wants to talk.

I did not call him on the other matter we discussed.

When I return I should know the real story on the Westinghouse-KIECOR deal so we can factor that into our dealings with Niue.

L. T. Gregg

Gulf Minerals Canada Limited
SUITE 1330, 10 KING STREET E., TORONTO 1, ONTARIO. (416) 362-6325

55500 00564

411·10·8·1511

May 24, 1973.

Mr. Erik Kvaven,
Assistant Chief,
Nuclear Procurement Branch,
Division of Purchasing,
Tennessee Valley Authority,
Chattanooga, Tennessee. 37401

Dear Erik:

Wayne Fowler informed me that you would like our thoughts on mechanisms for determining world market price. While we do not pretend to have had a great deal of experience along this line, nevertheless, we have had some, and also have looked at various aspects of the problem in quite some detail. I am pleased to be able to present these thoughts to you.

While other methods no doubt could be conceived, we have concentrated on the following:

1. The average sales price, including escalation, achieved by a producer for the year of delivery.

2. The average purchase price, including escalation, paid by a buyer during the year of delivery.

3. A combination of 1 and 2.

4. The average sales price, including escalation, of all U_3O_8 or U_3O_8 equivalent deliveries by Canadian producers during the year of delivery as published by the Canadian Government, assuming that such information is in the public domain.

5. A negotiated price, wherein both the producer and the buyer would make offers and attempt to arrive at a mutually satisfactory value.

The first method would seem to be representative of world market price (WMP) only if the producer had a relatively large number of separate sales for a given year. Likewise, method 2 would be workable (or representative) only if the buyer had a large number of separate purchases. Method 3 depends on methods 1 and 2. Method 4 has been criticized by others on the grounds that some Canadian sales were made 6-7 years ago when the market was considerably different than it is now.

TVA 000007

cont'd.....

FREEDOM OF INFORMATION ACT

411-10-8-1511

Mr. E. Kraven May 24, 1973.

55500 00565

We are currently tending to favour the last method. However, the major problem here is what to do if producer (Seller) and Buyer cannot agree. I recite below a method which we have worked up.

> MNP for any delivery year shall be established in accordance with the following procedures: At any time prior to the first day of the twenty-sixth month preceding the commencement of a given year of delivery, Buyer shall furnish Seller with its best estimate of prevailing prices for like quantities for delivery during such delivery year. Within ten (10) days after receipt of Buyer's estimate, Seller shall advise Buyer whether it agrees that Buyer's estimate corresponds to the prevailing price, and if Seller does not so agree, it shall furnish Buyer with Seller's best estimate. If Buyer rejects Seller's counter proposal, the parties will thereafter negotiate during a period which shall not extend beyond the last day of the 26th month (November) preceding the delivery year being considered in a good faith effort to agree on a price. Seller shall have the right exercisable on or before December 10th following close of negotiations to accept in writing the highest price offered by Buyer during negotiations. Should Seller not so accept, Buyer shall have the right exercisable during the period December 11th to December 31st to accept in writing the lowest price offered by Seller during negotiations. If the parties determine a mutually acceptable MNP, such price shall be firm for such delivery year and shall not thereafter be subject to a price adjustment. If the parties have not mutually agreed upon a MNP on or before January 1st of the second year preceding the delivery year, each party shall be relieved of its obligations hereunder insofar, and only insofar, as the same pertains to quantities which would have otherwise been delivered during such delivery year.

As an alternative to relief of performance, it would seem preferable to perhaps go to an independent third party for arbitration, or to strike the average between Buyer's highest offered price and Seller's lowest offered price, or so forth. In any event, I believe Buyer and Seller should be able to agree without the spectre of cancellation for failure to agree.

I hope these thoughts will be helpful to you. Please don't hesitate to contact me if you have any questions about the above matters.

Very truly yours,

POOR QUALITY ORIGINAL

L. T. Grose,
Manager,
Uranium Marketing.

/ga
cc: Mr. K. D. Fowler

TVA0000005

M280753

MAY 29 1973

R19

L. T. Gregg/W. D. Fowler AT San Diego

Mr. N. M. Ediger AT Toronto

SUBJECT Westinghouse

IN REPLY REFER TO

DATE July 3, 1973

CONFIDENTIAL

On July 3 we called Chris de Salvo at Westinghouse and asked if he would be interested in a bid for 2.5 million pounds U_3O_8 for delivery 1975-77, with an option on another 2.5 million pounds for delivery 1978-80. He said yes, but thought we were planning to bid further out, i.e. into the 1980's. We answered that this was the maximum commitment we could make at this time.

Chris promised to send a telex to W. D. Fowler formally requesting a bid on the above quantities.

Based upon this response, we have prepared the enclosed draft proposal and transmittal letter. If approval is received to make this proposal, it should be sent to Westinghouse (from CGA) the week of July 9.

The proposal covers a minimum of 500,000 pounds in 1975, and 1,000,000 pounds per year in 1976 and 1977. Pricing is firm through 1977, the prices shown for this period in Table II of the proposal being $0.20-0.30/lb. higher than RMP in Japan and Europe, and also being an average of about $2.50/lb. higher than our net (guaranteed price minus commission) from UCL for the designated amount.

The quantity for 1978-80 would (ideally) be delivered at a uniform rate of about 800,000 pounds per year. We have built a pricing floor in for this period: the prices, while firm, are to be the greater of the prices shown in Table II or 90% of the price for U.S. origin material. This pricing floor is slightly below the extrapolated NUEXCO "price line" reported in Nucleonics Week, June 28, 1973.

Two areas that need immediate investigation before this proposal can be approved and transmitted to Westinghouse are:

1. The exact quantity available in 1975 from our designation to UCL. Since we did not have with us information on the commitment by UCL to RMR for 1975, and since the official project startup date has slipped to July 1, 1973, we could not resolve this matter here today, and thus compromised on 500,000 lbs. as being the probable quantity to offer Westinghouse from the "1975 UCL stockpile."

2. The exact status of, and mechanism for, our call back right on designated amounts.

[redacted]

GGC 000025

If this proposal is successful and a contract is obtained, the following benefits will result:

1. Higher revenues to Gulf in 1975-77 than are obtainable from UCL via designation.

2. Commitment of a large percentage of the Gulf share for 1978-80 when the non-U.S. market is still soft.

3. Amelioration of a part of the financial impact to UCL of carrying the Gulf-designated amount in stockpile.

W. D. Fowler will call you on Monday, June 9, to discuss this matter. We have not communicated this to Denver pending your review.

Doc N° 73 - 91 10.10.1973.

DRAFT MINUTES OF THE EIGHTH SESSION OF THE OPERATING COMMITTEE HELD IN LONDON ON OCTOBER 8 - 9. 1973.

37

I. - APPROVAL OF THE MINUTES.

The draft Minutes of the Operating Committee held in Johannesburg on August 2nd and 3rd. 1973 were approved with the following amendments :

- Page 5. a) fifth line : read " ... be added or substituted, between ... ".
- Page 5. c) eleventh line : read 97.75 % instead of 97.95.
- Page 5. last but one line, read " that, for contracts concluded after club commencement, they should ... ".
- Page 7. paragraph 21, fourth and fifth lines, read : "... with European customers but such initiative ... ".

II. - REVIEW EXISTING BUSINESS (Table B.22)

a) The Canadian partners were asked to accelerate the negotiation of the subcontract with the Australians for the Rokurfku contract with Gulf.

b) Pending further investigation it was agreed to leave the 130 s.t. for Neckarwestheim (C.2b) in the R. T. Z. quota in second period.

c) The tonnages counted against Uranex quota for Trabel (A.53) were confirmed until conclusion of this business.

d) It was decided to switch the INEN - Mexico (A.36) tonnages from the Australian and Canadian quotas to Uranex.

c) Concerning the additional tonnages for Neckarwestheim (A.2 complement), it was decided to wait for the decision of the customer before including any tonnage in any group's quota. It was also agreed that it was up to Nufcor whether or not to permit the re-selling of part of their Philipsburg tonnages to Neckarwestheim.

III. - NEW BUSINESS.

a) Leibstadt (A.55) : The leadership is given to Australians acting in conjunction with Nufcor. All tonnages obtained either by Australians or by Nufcor will be counted against Australian quota. Runner - up will be joint bidding by Uranex and Eldorado. All bidders may seek the form of currency protection they prefer, but may also quote Swiss francs without currency protection. If contracts are granted to runner-up, there will be no obligation to sub-contract.

b) Westinghouse NOK (A.60) : Uranex will be leader and Canadian runner-up.

IV. - RELATIONS WITH MIDDLEMEN.

a) C.F.P. : R.T.Z. confirmed the contract was for 15 000 s.t., yearly quantities increasing from 1981 to 1990 at World market price FOB Southern Africa. Shares bought are 10% of Rossing's capital. The tonnages can be re-sold anywhere and Total wishes to be associated with the Club. The contract is open for inspection by the Secretary in R.T.Z.'s offices.

b) Ranger - ENI : The contract with AGIP is for 10 693 s.t. from 1981 to 1990 at World market price with a floor of Aust. $ 6 (= U.S. $ 8.91). AGIP get 10% equity in Ranger I and will take 10% of the output at costs in addition to the quantities sold. The tonnages are mainly for Italian Market. The contract is under review by the government and the Secretary will be informe

as soon as a decision has been taken .

c) AGIP - Somafr : Latest information given is included in revised version of table A . 37 . It was decided to include this business in Table B. 23 under Uranex quota . Nufcor was also contacted by AGIP but refused to quote .

d) Westinghouse : Nufcor received from Westinghouse a proposal to buy at 25% below Club prices and declined it .

V. - BORROWING .

There was general agreement to decline borrowing outside the Club .

VI. - SUBCONTRACTING . (INEN)

See above item II. d) .

VII. - POSSIBLE ADJUSTMENT FOR LOW PRICED CONTRACTS .

The possibility of correcting the tonnages counted against one group's quota when low prices have to be quoted in order to match external competition may be contemplated for future business on an ad hoc basis .

VIII. - SALES OF DERIVATIVES OF U_3O_8 OR UF_6 .

R. T. Z. will confidentially indicate to the Secretary the price quoted to P. N. C. (A. 42) and the breakdown of this price in order to enable him to verify that the natural uranium was not counted in this price for a value below leader minimum . In the future the prices quoted to the customers will be disclosed in tables A and the breakdown communicated confidentially to the Secretary .

IX. - ESTIMATE OF THE UNCOMMITTED MARKET .

R. T. Z.'s estimate of the Uncommitted Market dated October 1973 was noted . It was suggested that the 310 s. t. mentioned for Yugoslavia in 1977 should be switched to 1978.

The groups will disclose , if possible before the end of October , the quantities sold from 1973 onwards in contracts concluded before the Club . They will indicate the name of the buyer and the yearly tonnages . The existence of options and if possible their tonnages will also be disclosed .

0000230

X. - DISCLOSURE OF CONTRACTS CONCLUDED UNDER PARAGRAPH 2 f) OF FIRST JOHANNESBURG MINUTES.

For contracts concluded before Club's operation, only the tonnages will be indicated to the Secretary. For new contracts it is contemplated to communicate them confidentially to the Secretary. A letter of intent is under negotiation for Mühlheim Kärlich for the following tonnages :

460 M.T.U in 1976 - 77
195 M.T.U in 1979
184 M.T.U. in 1980
187 M.T.U in 1981
189 M.T.U in 1982
190 M.T.U in 1983

XI. - NEW LINE OF PRICES.

Following the Policy Committee's decision to increase the rate of escalation of our line of prices, a new line of prices was established as indicated in Appendix to the present Minutes.

There will be no automatic adjustment of this line of prices due to currency movements, but the Secretary will inform all groups if he notes any further depreciation of the dollar. This new line of price will be proposed to the next Policy Committee, but will be applied immediately unless there is formal opposition by anyone of the groups. In particular it will be applied to Leibstadt, Westinghouse and KKN.

Following the Policy Committee's decision, the decision taken in Johannesburg concerning currency protection was removed.

Emphasis is stressed on FOB - CIF problem which will be considered when designating the leader.

XII. - It was agreed to discuss during the next meeting of the Operating Committee the problem of re-negotiation of prices in Japanese contracts. Nufcor and R. T. Z. will consult bilaterally on re-negotiation of the Austrian contract.

XIII. - It was agreed not to quote in any market below the non - Japanese minimum for lender , without prior approval of the Operating Committee .

XIV. - . It was decided to invite UG to discuss their problems with the Operating Committee during its next meeting . Uranerzbergbau will also be invited .

XV. - Uranium institute . R. T. Z. and Canada will study the possible conditions in which such an institute might function in U. K. and Canada . The Australians will prepare a draft constitution .

XVI. - Secretary's fifth quarterly report will be examined at the next meeting . It was accepted that a contribution of 100. 000 F. F. for the fourth quarter of 1973 should be requested .

XVII. - Next Operating Committee meetings to be held on :

- November 23. 1973 most probably in Las Palmas .
- January 29. 1974 and possibly on February 2nd . 1974 in Johannesburg .

APPENDIX . 10.10.1973.

Doc N° 73 - 91

According to the decision taken by the Policy Committee , the Operating Committee has , during its meeting on October 9. 1973, established the new prices as follows :

New minimum prices C. I. F. any converter (1) as from Oct. 9. 1973.

	lb U_3O_8		. Kg U in UF6	
	Japan Taiwan Corea	Other countries	Japan Taiwan Corea	Other countries
1973	6.85	6.70	20.75	20.35
1974	7.35	7.20	22.15	21.75
1975	7.85	7.70	23.60	23.20
1976	8.35	8.20	25.00	24.60
1977	9.10	8.95	27.10	26.70
1978	9.85	9.70	29.15	28.75

These price are the agreed minimums for all bidders . For each business , designated leader and runner up may go below these prices with the following rebate :

Leader : - 20 cents for U_3O_8 - 50 cents for UF6

Runner-up : - 5 cents for U_3O_8 - 15 cents for UF6

It was recalled that the leader could be authorized by the Operating Committee to go below these prices if it was necessary to match external competition .

Ops 0000213

(1) As previously , in case of quotation F. O. B. , reductions of up to 10 c / lb U_3O_8 through 1975 and 15 c / lb 1976 - 78 can be made .

H-F Z Dx 3364

CONFIDENTIAL

AL-1

EXHIBIT D-5

FROM Mr. N. H. Ediger AT Toronto IN REPLY REFER TO

TO Mr. S. A. Zagnoli AT Denver DATE October 26, 1973.

CONFIDENTIAL

Attached is a copy of a letter from Mr. J. Austin, dated October 24, which we received yesterday. For the past several months we have steadfastly resisted the blandishments of the Canadian Government in respect to this matter. Our position has been that we do not wish to increase our legal exposure, particularly since we do not believe that our representation on the Operating Committee serves our best business interests.

As you know, both Mr. L. T. Gregg and I have attended meetings of the Policy Committee at which all non-U.S. uranium producers are represented. We have also participated in all meetings of Canadian uranium producers held in Canada, and those held in conjunction with some of the international meetings. Representatives of Gulf Minerals Canada Limited participated in drafting the "Johannesburg Rules" in June, 1972. All meetings were attended at the direction of the Canadian Government.

A meeting of the Policy Committee was held in London on October 5. After that meeting, Mr. Gordon S. MacNabb, Senior Assistant Deputy Minister of Energy, Mines and Resources, again brought up the question of GMCL's representation on the Operating Committee (specifically Mr. L. T. Gregg). I once more told him that, "in addition to our potential exposure under U.S. anti-trust legislation, I did not wish to participate in the cutting of my own throat". He responded by stating that as a Canadian company we had an obligation to represent Canada's interest at the Operating Committee in order to prevent the Canadian uranium industry's throat from being cut. As a new Canadian producer and active explorer he felt we could more closely identify with Canadian national interest than some of the existing producers.

The Government's determination that we respond to their suggestion in an affirmative manner obviously resulted in their decision to make their request a formal one.

We have continuously objected to the existence of the "Uranium Club" and Canada's participation in it. However, in fairness, it appears to have resulted in a new degree of market stability and higher prices, which should ensure the more orderly development of reserves and long term surety of supply for the nuclear electric power plants of the world. The Canadian Government appears determined to continue participation in the international arrangements, and within the current climate of economic nationalism I believe we should accede to their request.

At the present time Dr. O. J. C. Runnalls, Senior Advisor, Nuclear Energy, is a representative on the Operating Committee and Mr. M. de Bustani, Denison Mines, is an alternate whose term is drawing to a close. There is

Mr. S. A. Zagnoli October 26, 1973.

a strong possibility that he will become a permanent member and the alternate representatives from industry will rotate according to some mutually acceptable formula. If this becomes the case the industry will always serve in conjunction with Government as representatives of Canada's national interest.

I feel it is going to be increasingly more difficult to maintain the co-operation and understanding we have received from the Canadian Government in the past if we do not comply with Mr. Austin's request.

N. H. Ediger

jga
cc: Mr. R. K. Allen

DX3364

DEPUTY MINISTER
OF
ENERGY, MINES AND RESOURCES

SOUS-MINISTRE
DE
L'ENERGIE, DES MINES ET DES RESSOURCES

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,

J. Austin, Q.C.

CONFIDENTIAL

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 procucers 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,

C. M. MacNabb.

CONFIDENTIAL

813.242.20.

5031

Senior Assistant Deputy Minister
of
Energy, Mines and Resources

Sous-ministre adjoint principal
de
l'Energie, des Mines et des Ressources

Ottawa, Ontario,
K1A 0E4,
January 8, 1974.

Mr. H.M. Ediger,
Manager,
Gulf Minerals Canada Limited,
10 King St. East, Suite 1300,
Toronto, Ontario - M5C 1C3.

Dear Mr. Ediger:

There will be a meeting of international uranium producers in Johannesburg on January 31st. It is deemed to be in the public interest that you and Mr. L.T. Gress attend this meeting to represent Gulf Minerals Canada Limited. I am writing to ask, therefore, that you and Mr. Gress make every effort to be present at this meeting.

Yours sincerely,

G. K. MacNabb.

PRIVATE DATA

CONFIDENTIAL

IN REPLY REFER TO

FROM W. D. Fowler AT

TO Messrs. L. J. Colby, Jr./ AT DATE 2/22/74
W. C. Calloway

SUBJECT NUEXCO

Attached for your information is the foreign producer status report. There's no question, the international producers have jumped on board the OPEC band wagon.

Fowler

Attachment

DX-3395

FROM W. D. Fouler AT

TO L. J. Colby, Jr. AT

IN REPLY REFER TO

DATE 3/28/74

SUBJECT Uranium Pricing

As a rough indication of uranium price instability, the following prices are a composite of those offered by domestic buyers in February 1974 vs. those offered in March 1974. There have been no sales by producers at either of these price lines.

Delivery Year	Feb.	March	% Inc.
1979	$11.50	$14.85	29
80	$12.50	$15.45	24
81	$13.15	$16.20	23
82	$13.80	$16.90	23
83	$14.50	$17.70	22

I've had an offer out for several weeks that is in excess of the March line and of course there's been no action on it. It's important to note that the international producers that are still in the market are quoting a $12.50 base price, thru 1980, which escalates from 1973 and this is the floor price. The actual price paid is "market" or the floor, whichever is greater.

I view the $12.50 as yielding a 1980 floor price of $16-17. What appears to be happening is that the international producers are in effect setting the world price via

a) establishing a "floor" that is higher than the U.S. offers to buy

A-1377

b) the U.S. producers refuse to sell at any price that doesn't 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 constantly nudging the floor upward.

In the interim, the U.S. buyer becomes increasingly frustrated, offers a higher price in order to get some response and the cycle starts over again.

It seems likely that at some point, the mechanism will break down and if it does, there will again be price competition. However, it doesn't appear likely the break will come in the immediate future.

cc: D. Hunter

W. Fouler

CLEAN DRAFT

4 March, 1974
AP/OJCR/HBM/LTG

DOC. 74.24

RULES FOR ORDERLY MARKETING[1]

0.1 I. SECRETARIAT

(a) The Secretariat is located in Paris.

(b) The Secretariat is directed by an Operating Committee consisting of one representative and an alternate from each participating group.

(c) Expenses of the Secretariat shall be borne by the five participating groups in relation to their average market quotas over the period 1972-80 inclusive. These quotas are:

Canada	27%
NUFCOR	21%
Uranex	20%
Australia	22%
RTZ	10%

Billings will be made to each group on a quarterly basis.

II. MARKETS AND MARKET QUOTAS

(a) The following market quotas were established:

[1] The references in the margin "0.1, 2.3" etc.... or "P.1.2 ....." indicate in the minutes of which Operating (O) or Policy (P) Committees the rule was established or last amended.

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Group	Percentage 1st Period 1972-1977	Percentage 2nd Period 1978-1980	Percentage 3rd Period 198[illegible]
Canada	37.3	21.86	26.87
Nufcor	26.4	18.30	14.77
Uranex	24.2	18.38	22.39
Australia	7.6	27.81	24.57
RTZ	4.5	13.65	11.40

(b) The U.S. domestic market is excluded from the present arrangements. (Differ from overseas) (No imports?)

(c) The domestic markets of France, South Africa, Australia and Canada are excluded from the present arrangements in the first and second periods.

(d) Figures corresponding to the French and Canadian domestic markets in the third period will be charged against the respective quotas in proportion with other business allocated.

(e) Sales to count against quota allocations are all new sales after January 1, 1972 including:

(i) Spain (Denison-UCAN)

(ii) Neckarwerke (UG and UCL)

(iii) S.S.P.B. (Uranex)

(iv) Shikoku (Queensland, RTZ, Uranex)

(v) Kyushu (Ranger, Nufcor)

(vi) Chubu (Nufcor, Ranger)

Only yearly tonnages involved in the above contracts will be notified to the Secretary.

(f) For tonnages in excess of those excluded under (g) below, the RTZ-Rossing contract with UG and the Uranex/Somair contracts with UG and Agip Nucleare will be included in quotas once the material is resold.

(g) Sales to be excluded from quota allocations are all

those sales concluded and options granted prior to January 1, 1972 including:

(i) Brazil-Furnas (Nufcor)

(ii) Westinghouse-Beznau (Rio Algom)

(iii) Tohoku (Denison, RTZ, Nufcor)

0.1 (iv) Kansai spot sale (Rio Algom, Nufcor, Uranex)

(v) Gundremmingen (Nufcor and UCL)

(vi) GKT (Nufcor, UG)

(vii) ENEL 4 (Uranex)

(viii) THTR/VEW (UG)

(ix) Steag/Muhleberg (UG)

(h) Also excluded from the quotas are UCL sales to RWE of
0.3 3,200 tons during 1972-77 and 3,000 tons during 1978-80 inclusive. Tonnages in excess of these will be counted against the quotas once allocated. Corresponding contracts will be communicated
0.7 confidentially to the Secretary (except) for those contracts concluded
+0.8 before 1.1. 1972, in which latter case only the tonnages involved will be disclosed.

(i) Voluntary restrictions

Producer groups will voluntarily limit sales in the post-1983 period, pending settlement of quotas for succeeding periods,
P.4 to the following percentages of the estimated total non-U.S. market (including domestic markets):

Australia	12.6%
Canada	13 %
Nufcor	9 %
RTZ	15 % in 1984, reducing by 1% a year to 9% in 1990
Uranex	6 %

Canadian and French sales in their respective domestic markets will not be charged against these percentages.

PRICING RULES

The pricing rules presently in force are attached as Appendix I.

These rules may be changed from time to time by the Operating Committee, subject to the Policy Committee's approval. Pending formal approval, the new pricing rules shall provisionally apply.

IV. TERMS AND CONDITIONS

0.3 (a) Costs of weighing, sampling and assaying at the conversion plant will be for the buyer's account unless the buyer and the conversion plant accept the producer's own weighing, sampling and assaying results.

(b) Standard conditions for payment are:

0.1 (i) - 95% within 30 days after delivery at converter's facility or enrichment facility or f.o.b. embarkation point, as the case may be

- the balance upon final acceptance, or within 60 days after delivery c.i.f. or 90 days after
0.4 delivery f.o.b., whichever is the earlier; provided that if the final weights and assays are not known within 60 days or 90 days (as the case may be) final adjustment can be made afterwards.

0.1 (ii) Any other terms of payment which deviate from the above must use a minimum rate of interest of 8% per year.

(c) Currency

(i) Quotations can be made in either the buyer's or seller's currency, in U.S. dollars or in a major European currency.

0.1 (ii) Any quotations in a currency other than U.S. dollars shall be made at the exchange rate existing
0.4 at the time of quotation or, if a published exchange rate does not exist, at the average of buying and selling rates at that time. The exchange rate used in the quotation shall be notified to
New the Secretary at the time of quotation. Any exchange rate used by a member shall provide the necessary margin above the leader's quotation, if applicable.

(d) Quantity Flexibility

(i) Initial cores or unspecified requirements: ± 10% maximum of the contracted quantities.

0.1 (ii) Reloads: ± 15% maximum of the contracted quantities

0.3 (iii) These flexibilities shall apply to each delivery year.

(iv) Flexibility for a variation in tails assay content may be given in addition to the above in cases where the buyer's enrichment contractor is entitled to unilaterally change the tails assay.

New

(e) Schedule Flexibility

0.3 (i) Twelve months before the start of any delivery year, the customer must identify provisional delivery months within that year, and the tonnage within the limits specified above.

0.1 (ii) Nine months before the provisional delivery month or the actual delivery month, whichever is the earlier, the exact delivery date must be fixed within ± 2 months of the provisional delivery month, at which time ± 5% variation will be allowed, provided the total variation does not exceed the limits specified above.

(iii) In case this flexibility leads to delivery in adjoining years, the minimum price for that year should apply as the absolute minimum.

(f) Force majeure

(i) Nuclear plant breakdown, permit withdrawal, or lack of operating licence will not be accepted as a force majeure on the buyer's part.

0.1 (ii) Consequential damage clauses will not be accepted.

(iii) Force majeure will not be waived for any period in order to guarantee delivery.

(g) Replacement of late deliveries or non-specification material

0.1 (i) Liability for late delivery shall be limited to

converter's extra charges in the case of delivery of U_3O_8 and enrichment plant extra charges in the case of delivery of UF_6.

(ii) In any shortfall 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 altered, any consequential increase or decrease in costs shall be for the buyer's account.

(h) Taxes, Duties and Other Imposts

Suppliers shall not accept liability for taxes and duties in the buyer's country or in the country of delivery specified by the buyer. Suppliers may accept such liability within the country
0.4 of origin of the material supplied or the country of the supplier, or (in the case of UF_6) the country where the UF_6 is converted, provided that suppliers will not accept any taxes imposed in the U.S.A.

(i) Storage

(i) Suppliers may provide free storage of U_3O_8 if there is space available. If there are any additional costs involved
0.1 for storage, they shall be for the buyer's account. If storage is required after the contracted delivery date, then full payment shall be made on that date subject to adjustment later upon determination of final weights and assays.

0.1 (ii) Any storage charges for UF_6 shall be for the buyer's account.

(j) Return of Depleted Uranium

0.10 Suppliers will only accept responsibility for the return of depleted uranium from enrichment plants at buyer's costs.

(k) Options

0.1 No tonnage options will be granted.

(l) Validity Period

0.1 The maximum validity period for any quotation shall be 90 days unless there is a prior agreement to the contrary. Any extension shall be consistent with the rules in force at the

time the extension is granted.

(m) Applicable Law

P.3 As far as possible, contracts should be concluded under either the law of the producer's country or English law. When subcontracting has been decided, the main contractor should negotiate in close co-operation with the subcontractor.

0.3 (n) The source of the material will not be defined if practically feasible.

V. WORKING MECHANISMS FOR ALLOCATIONS

(a) Allocation of New Business

0.1 (i) Allocation of new business will be based upon up-to-date estimates of the remaining uncommitted market.

(ii) Allocations will be initially based on contracted tonnages, and as far as possible each group's quota will be filled at a uniform rate.

P.4 For the allocation of business in the third period, the filling ratio will only take into account business allocated after 22.11.1973.

0.1 (iii) Final resolution of quotas for each quota period should be based on actual deliveries.

(iv) Any adjustments necessary for each quota period will be realized through adjustments for future deliveries.

P.2+0.8 (v) In case some material has to be borrowed by a member for an early delivery, this should only be done from another member.

(b) Procedure for Quotations

P.4+0.1 (i) For all enquiries concerning deliveries to be made prior to 1984 into markets other than the U.S., French, Canadian, South African and Australian markets, a leader and runner-up will be selected by the Secretary in consultation with the Operating Committee.

(ii) Enquiries from Intermediaries for which the procedure under (i) above is not practicable can be subject to independent bids after reporting to the Operating Committee, provided all rules are observed.

(iii) The selection of leader and runner-up will be based on the five participating groups rather than individual companies. The group selected as leader or runner-up will where appropriate designate a company within its group as leader or runner-up, as the case may be.

(iv) The leader does not have to open bidding at the minimum prices but should not quote above the minimum figures applicable to the "Other Producers" unless otherwise agreed by the Operating Committee. The leader shall advise the Secretary of his opening quotation.

(v) If a company not designated as a leader, and having quoted in accordance with the rules, gets an order, it is free to accept the contract provided it offers the possibility of a subcontract to the leader, unless otherwise agreed by the Operating Committee. If a subcontract is offered to and accepted by the leader, the contracting producer is obligated to negotiate the contract in close co-operation with the leader.

VI. DISCLOSURE OF INFORMATION

(a) The Secretary will be provided for his use and vetting, and for any necessary discussion with the producer, with:

(i) all enquiries and quotations involving deliveries starting within the agreed quota periods, and

(ii) all letters of intent or other commitment documents, contracts and invoices of actual deliveries, except those concerning exclusively the U.S., French, Canadian, South African and Australian domestic markets.

(b) The Secretary will report on a quarterly basis on markets, contracts, deliveries and positions vis-a-vis quotas.

(c) In regard to approaches from or negotiations with Intermediaries, the communication under (a) (i) above may be replaced by a verbal report to the Operating Committee.

(d) In the case of sales of derivatives of U_3O_8 or natural UF_6, the price actually quoted for the product sold will be disclosed. For all sales of material at a stage of processing beyond natural UF_6, the minimum price of natural UF_6 must be the one applicable at the date when such natural UF_6 should be, at the latest, further processed in order to deliver the material sold in due time. The Secretary will be provided confidentially with a breakdown of the final product price.

(e) Vetting of the Contracts

The following action will be taken when contracts are provided to the Secretary:

(i) The Secretary will vet the contract to ensure that it complies with the rules.

(ii) The Secretary will attempt to resolve with the contracting supplier any apparent discrepancies or deviations from the rules. If there are discrepancies or deviations which cannot be resolved, the Operating Committee will review the situation at its next meeting.

(iii) The contracting supplier will advise the Secretary whether or not the contract is available for inspection by other members. If the contract is not available for inspection, then the supplier concerned shall at the request of any group representative explain at a meeting of the Operating Committee the reasons for non-disclosure. If the Committee considers that the reasons given do not justify non-disclosure, then the group representative concerned may have access to the contract in question.

VII. OTHER PRODUCERS AND INTERMEDIARIES

(a) Uranium Suppliers

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.

(b) Intermediaries

(i) When negotiating with fuel and reactor manufacturers, producers should maintain the right to quote direct to end users and should endeavour to obtain a commitment from the buyer to disclose the identity of the buyer's prospective customers.

0.4 (ii) No quotations will be made to other intermediaries unless the end user of the material is known.

(c) Urangesellshaft

UG having accepted to sell exclusively in principle members' material and to adhere to all rules, although not becoming a 0.9 + member, there will be, as far as needed for UG sales, a full 0.10 exchange of information between the Operating Committee and UG through the channel of the Secretary.

UG should make no quotation without telling the Secretary previously the source or backing of the material which it is selling.

APPENDIX I

MINIMUM FIXED PRICES: C.I.F. ALL CONVERTERS OR C.I.F. ALL ENRICHMENT DELIVERY POINTS AS APPROPRIATE*

Year of Delivery	U_3O_8 U.S. $/lb.	UF_6 U.S. $/kg. U in UF_6
1974	8.50	25.20
1975	9.35	27.50
1976	10.30	30.10
1977	11.35	32.95
1978	12.50	36.10

*For this purpose F.O.B. destination is considered equivalent to C.I.F.

NOTE:

(1) Fixed prices may not be offered for deliveries after 1978.

(2) Leader and runner-up may discount the above minimum prices by not more than:

	U.S. $/lb. U_3O_8	U.S. $/kg. U
Leader	0.30	0.80
Runner-up	0.10	0.25

(3) For U_3O_8 prices that are quoted F.O.B. mill or port of embarkation, the following maximum reductions are permissible per lb. U_3O_8:

1974 and 1975 : $0.10
1976 to 1978 : $0.15

(4) UF_6 prices include weighing, sampling and assaying by the converter, conversion, losses during conversion (1/2%) and are calculated according to U_3O_8 C.I.F. prices plus conversion at assumed costs of:

	U.S. $/lb. U
1974	1.35
1975	1.40
1976	1.45
1977	1.50
1978	1.55

2. ESCALATED PRICES

For deliveries after 1978 but not beyond 1985, or as an alternative to the minimum fixed prices in 1. above, escalated prices, on a base price of U.S. $10.00/lb. U_3O_8 C.I.F. all converters ($29.10/kg U in UF_6 C.I.F. all enrichment delivery points) may be offered from any year provided that:

(a) the escalation formula is to operate from 1974 at the latest at the stipulated minimum base price irrespective of the first delivery year in the contract;

(b) at least 80% of the price is subject to escalation; and

(c) the "labour" and the "materials" cost components of the escalation formula are at least 30% each.

(d) a base price for escalation starting in 1975 shall be determined by the Operating Committee before the end of 1974, and annually thereafter.

NOTES:

(1) As in the case of fixed prices, the leader and runner-up may deduct, respectively, $0.30 and $0.10 per lb. U_3O_8 from the $10.00 base ($0.80 and $0.25 per kg U in the case of UF_6) and, on U_3O_8 sales, the same deductions as in fixed prices may be made for f.o.b. deliveries.

(2) There shall be no ceiling on the rate of escalation.

3. ALTERNATIVE NEGOTIATED PRICES

Any supplier may offer negotiated prices in any year - or over any period - subject to discretionary minimum prices but not subject to any ceiling prices; provided that when ultimately negotiating the price, the supplier concerned does not, without prior approval of the Operating Committee, agree (subject to contractual arbitration clauses) to a price lower than the minimum leader price ruling at the time of negotiation for delivery in the year in question.

APPENDIX B

Gulf Oil Corporation

1977 JUL 29 PM 2:52

Jerry McAfee
Chairman of the Board

July 27, 1977

SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS

Gulf Building
Pittsburgh, Pa. 15230

The Honorable John E. Moss
Chairman
Subcommittee on Oversight and
Investigation of the Committee on
Interstate and Foreign Commerce
2323 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to respond to your letter dated June 24, 1977 in which you requested further information.

The names of the employees in Gulf's Washington Office for the first six months of 1972 are set forth hereafter:

Norval Carey	Nestor C. Ortiz
Nancy B. Elliott	Judith A. Pilgrim
Elizabeth A. Healy	David A. Roberts
Colin A. Heath	Stella T. Thompson
Edward L. Heller	Louise A. Tunnell
Bella Mae Isemann	Claude C. Wild, Jr.
Mary E. Jefferson	Margaret M. Smith
Thomas P. Kerester	Christine DeBruyne
Frederick A. Myers	Richard J. Killian
Stuart D. Nelson	Philo A. Hutcheson
Phyllis C. Nurney	Debra L. Mudd
Donnice Parnell	

Reference has been made to and you have inquired about a memorandum written by Mr. Donald Hunter to Mr. Herbert E. Hoffman, dated June 8, 1972, which states, inter alia, that, "The overall strategy must reflect the interrelationship existing between foreign and domestic markets." Mr. Hunter explained what he intended by the quoted statement in his testimony on June 17, as

follows:

> We had, as you indicated earlier, sold uranium to some U.S. utilities. We were searching for supplies of uranium to cover those commitments. We evaluated, in order to do that, a combination of purchases from U.S. sources, a contingent removal of the embargo and the possibility that that would form a source, and we also worked with Gulf Minerals in Denver to see what their potential production might be from Mount Taylor or Maryanna (sic) Lake. (June 17 Tr. 135.)

Thereafter, Mr. Hunter then went on to testify about his memorandum as follows:

> Mr. Santini. What is the interrelationship between foreign and domestic?
>
> Mr. Gore has touched upon this. Are we talking about price interrelationships in part, as referred to in your first paragraph of that same document?
>
> Mr. Hunter. I was referring to supply interrelationships.
>
> As I tried to indicate, we were buyers. One source that we hoped to use was foreign supply, contingent upon the removal of the embargo.
>
> We felt at this time that the embargo would be removed before 1980.
>
> It was our contention that since the embargo was probably going to be removed, it should be considered as a potential source.
>
> Mr. Santini. And it had no factual relationship to the potential for an international and domestic market relationship at that time?

Mr. Hunter. Could you repeat that?

Mr. Santini. It was purely prospective. You were not then referring to a relationship between the domestic and international market at that time?

Mr. Hunter. That's correct. There was embargo at the time, and there was all the future projections. (June 17 Tr. 137-138.)

You have also invited Gulf's comment on the effect of the United States import embargo during which certain foreign purchases of uranium were made by United States companies. The operations of the foreign uranium cartel explicitly and expressly excluded the United States market. The United States governmentally imposed embargo prohibited the enrichment in this country of foreign uranium for use in domestic reactors. Any foreign uranium producer was totally free, however, unfettered by any of the cartel's terms, to unilaterally negotiate with United States utilities for the sale of uranium to those utilities at any quantity and at whatever prices, terms and conditions it and the utility agreed upon, for the utility's use if and when the embargo was ever lifted. There was, of course, no firm assurance, until the Atomic Energy Commission finally established its rules for gradual lifting of the embargo, that the embargo would, in fact, ever be removed.

You have asked whether a representative of Gulf ever discussed or received an opinion on the cartel from the State Department or the Atomic Energy Commission. Gulf has investigated this question and to date has found no indication that the matter was discussed with the State Department or the Atomic Energy Commission.

You have likewise asked whether Gulf or its representative participated in Atomic Energy Commission deliberations with respect to the lifting of the embargo on foreign uranium. Similarly, Gulf has conducted an examination of its records and to date has found no indication that it or its representative had any direct contact or participation with the Atomic Energy Commission in this matter.

You have also solicited our comment on the memorandum written by Mr. Donald Hunter to Mr. T. A. Johnston dated March 1, 1973, which states, inter alia, "We will work with Gulf Minerals Canada Limited to try to put pressure on the Australians to block the proposed arrangement." As I testified, this was simply a statement by Mr. Hunter. Indeed, Mr. Hunter acknowledged that he was not acting at the direction of any other Gulf employee when he wrote the memorandum nor was he carrying out any corporate policy. (June 17 Tr. 113.) Moreover, Mr. Hunter further clearly stated that he knew of no specific action that had ever been taken to implement the above-quoted statement of his memorandum. (June 17 Tr. 114.) Likewise, Gulf has investigated this matter and found no indication that there was ever any implementation of the statement made by Mr. Hunter.

You have requested that Gulf provide any reports from Doctor Matheson regarding a meeting of the Atomic Industrial Forum's Mining Committee in March, 1973, in Oakbrook, Illinois. Gulf has examined its records and at this time has found no such reports.

You have also requested that Gulf provide the names of the persons who made the final decision that no laws were violated by Gulf Minerals Canada Limited's association with the cartel and, as well, to provide the Committee with a certain legal memorandum from Roy D. Jackson. The legal aspects of GMCL's association with the foreign cartel, at every stage, were given serious consideration by the Gulf Law Department, which review and advice continued over a period of several months. The advice that such association would not violate any law, concurred in by outside counsel, was formalized and communicated to the management of GMCL in a formal legal opinion or "white paper" signed by Roy D. Jackson, dated September 8, 1972, and addressed to N. M. Ediger, Gulf Minerals Canada Limited, 10 King Street East, Toronto, Ontario, Canada.

Mr. Jackson's memorandum is being furnished to your Committee in response to the subpoena for its production.

Sincerely,

Jerry McAfee

APPENDIX C

CONFIDENTIAL REPORT

TO

Irwin J. Landes
Chairman
Corporations, Authorities and
Commissions Committee

FROM:

William F. Haddad
Director
Office of Legislative Oversight
and Analysis

May 20, 1977/revised

CC: Honorable Stanley Steingut
Honorable Melvin Zimmer
Stanley Reiben, Esq.

It has been the contention of the oil companies who have appeared before the New York State Assembly's Task Force on Natural Gas that the price of natural gas should be permitted to rise to the price "levels of alternative replacement fuels," which, in turn, would be subject to the competitive fluctuations of "the free marketplace."

Members of the Task Force, counsel and the Office of Legislative Oversight, having probed the high degree of horizontal integration of the major oil companies, questioned the independence from corporate policy control of various wholly-owned energy subsidiaries (the alternative fuel producers) of the oil companies and expressed doubts about the degree of competition in the alternate energy marketplace.

With respect to natural gas, there is mounting and convincing evidence that a pattern of withholding has developed and is now in operation which effectively denies to the Northeast needed supplies and requires replacement by higher-priced energy. Under the various rate structures, these costs are directly and immediately passed along to the consumer. (Natural gas hearings are still in progress and an interim report is expected in late June, 1977).

With respect to its inquiry into the pricing patterns of alternative fuels, the Office of Legislative Oversight was made aware and provided certain public and private documents which leave little doubt that a world cartel was formed in Paris in 1972 to control the price of uranium, and that this cartel was, in

large measure, responsible for the seven hundred percent increase in the cost of uranium, resulting in higher energy costs to New York residents, and posing serious legislative and policy questions for the future development of nuclear power in the state.

BACKGROUND

In mid-April, 1977, the Oversight Office verbally shared its findings and suspicions with the House Interstate and Foreign Commerce Committee's Subcommittee on Oversight and Investigation, and on April 20, 1977 formally informed the Committee of the Assembly's interest in the matter and the course of action contemplated in the State. At the same time, Mr. Robert Pugleise, General Counsel of the Westinghouse Corporation was informed of pending action by the Assembly. On that same date, Judge I. Martin Wekselman of the Court of Common Pleas, Allegheny County, Pennsylvania, was made aware of the Assembly's desire to obtain certain records under his protection which, in an earlier ruling, he said could only be released to "authorities of a competent jurisdiction."

On May 4, 1977, the Office of Legislative Oversight filed an amicus curiae motion before the United States District Court for the District of Columbia in the matter of the Gulf Oil Corp. vs. Westinghouse Electric Corp. The brief was in support of the position of the House Interstate and Foreign Commerce Committee's Subcommittee on Oversight and Investigations. The Subcommittee had subpoenaed certain Westinghouse documents referred to in the April 20 letter of the Oversight Office which were protected by the Judge Wekselman's ruling that only competent jurisdictions could have access to certain testimony of the Gulf Oil Corp., particularly

correspondence and communications which Gulf deemed to be protected by the attorney-client relationship. The Court action resulted in the critical Westinghouse documents being delivered to the Subcommittee.

The subpoena requested by this special report is for these and other documents which can provide additional corroboration for information and documents already in our possession which detail the development, design and operation of the cartel, the participation by the Gulf Oil Corp., and others, in the structuring of "an orderly marketplace" to raise prices, and the resulting escalation of New York energy costs and the skewing of energy policy decisions based on the high cost of uranium.

At the Natural Gas Task Force hearing held in New York City on February 25, 1977, The Gulf Oil Corp. was dismissed as an uncooperative witness "subject to recall."

Although it is not the immediate concern of this Office, it should be noted that several of the documents now in our possession highlight industry's fear that "terrorist" activity, and the possible theft of uranium, might make nuclear weapons available to terrorist groups; the documents also discuss industry's mounting concern about the safe disposal of nuclear waste.

THE CLUB

In late 1971, uranium (U_3O_8 - "yellowcake"), which is used to fuel nuclear reactors, was selling at $4.50 a pound and, according to internal Gulf Oil Company documents, threatening to

drop to $4.00 a pound based on the laws of supply and demand and other factors. One of these factors is explained in this reference contained in corporate papers:

"The French believe that NUFCOR (the South African quasi-public uranium company) is primarily responsible for the current situation as it has been desperately in need of a cash flow and therefore consistently undercuts other producers."

At about this time what appears to be actions on two independent continents began to merge.

In Canada, Rio Tinto Zinc, one of the world's largest producers of uranium, approached the Canadian government through its subsidiary, Rio Algom, to discuss a plan to bring together the world's producers and establish "an orderly market" for uranium. This orderly market concept would be based on (1) the allocation of quotas to producing nations who, in turn, would allocate percentages of the quota to domestic producers; and (2) a system of escalating world prices through a system of rigged bids.

In France, the French Atomic Energy Commission, at the urging of the government owned Uranex Company, (which mines the uranium found in France and in the former French colonies) convened a meeting in Paris on February 1, 1972 to structure this "orderly market."

The Canadian mining officials liked RTZ's concepts and sought and won approval from the Canadian Cabinet to proceed. The Canadians said the court arrangements were in the "highest national interest."

There was one hitch in the Canadian plan (a second was to develop in Paris). The Gulf Oil Company was in a joint venture with a German-owned Corp. to develop Rabbit Lake, which, by 1975 would be a major supplier of Canadian uranium. Documents reveal that both companies were concerned about violations of their own anti-trust laws if they participated in the cartel and throughout, the Gulf Oil Company forced the Canadian government to "require" their participation in the cartel. Early internal correspondence indicates that Gulf was to seek U.S. Justice Department approval for their participation. The Germans reported they had the consent of their government to participate.

At one point, in early 1972, the Gulf Oil Company asked Canadian officials what would happen if they were to offer yellowcake at $5.00 per pound (at a time that the Canadians had decided that the world minimum price should be $6.00). They were told they would not be granted an export license. They were further warned that if they did charge $6.00, and later allowed a discount or a rebate, they would not be granted a license to export. For Gulf, there was no mistaking the intent of the Canadians to enforce regulations which would suddenly and dramatically raise the price of uranium.

At another point, Canadian officials told Gulf that it was "irritated" by the anti-trust concerns of Gulf. After all, the Canadians said, the Gulf Canadian subsidiary, Gulf Minerals Canada Ltd., was a Canadian corporation and should be guided by the decisions of the Canadian government and their views of extra-legality, highlighting one of the major arguments which appears in our commercial bribery investigation, to whom does a multi-national corporation respond?

Currently the Australian and Canadian governments have sealed their files on the cartel and the Canadians are currently and, we believe, effectively pressuring the U.S. Department of State with threats of Canadian retaliation against the Alaskan pipeline if the uranium investigation surfaces as a criminal inquiry. The State Department, we believe, is reacting in the manner which we observed in our coffee inquiry: they are responding government to government without consideration or concern either for the consumer or the standards for non-diplomatic propriety. Fortunately, New York State, unlike other agencies of the federal government, is not subject to State Department arguments, although, in this inquiry, we have remained sensitive to the Canadian concerns and have excluded from this report certain information in our possession which places the Canadian concerns for an orderly uranium market above its responsibilities as a member of various military and economic alliances with the United States.

The Canadians and Australians were also worried about violations of anti-trust laws, but the Canadians legalistically circumvented the intent of the law with the authority and interest of the Cabinet and the Australian participation was always somewhat clouded, although the Australian government (which was in a changing situation) seems to have left it up to the individual participants to decide on their participation. Only one Australian company, Western Mining, continued, for a time, to seek its own markets. The Australian situation required several meetings of producers (some with government officials present) to enforce the cartel's rules. The issue was further complicated by the discovery of new uranium deposits in Australia and the innocent intrusion into the orderly market by the Exxon Corporation.

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With this background, the Office of Legislative Oversight and Analysis able to piece together and confirm this sequence of events:

(1) At the invitation of the French Atomic Energy Commission, a meeting of uranium producers was held in Paris between February 1 and 4, 1972. Present were Australian, Canadian and French delegations, and two major companies, RTZ of Great Britain and NUFCOR, the South African company. (Gulf Oil was not represented at this initial meeting).

The basic design of what was to become to be affectionately known to insiders as "The Club" was called "Societe d'Etudes et de Recherches d'Uranium", or SERA. From the beginning, it was decided that the rest of the world world view only a uranium research operation and not a cartel.

Although it was not until June 1972 in Johannesburg, South Africa that "The Club's" rules were agreed upon, the Paris meeting established the uncommitted world market in uranium, set national quotas for the producers, and set minimum prices for uranium (starting at $6.00 and escalating a modest 3 percent a year for yellowcake; a plan which was quickly abandoned in later Club meetings in favor of more rapid escalations) and designed a well-financed Secretariat to handle the affairs of "The Club". The French AEC loaned an executive to manage the cartel. Six elaborate security measures were created to disguise the purpose of the cartel. One included "burying" its Paris office in the French AEC.

Several problems arose at Paris. The Canadians were unhappy over their share of the world market (approximately 31 percent) and they argued that while Rabbit Lake was not producing, it should

be regarded for purposes of allocating quotas (which were pegged to exisiting production). The Australians were not in complete control of the situation and could not guarantee that one of their companies would not be competitive and sell at below world prices set by the cartel. And, finally, there was the "middleman" problem. Companies, such as Westinghouse, which sold reactors, were also selling uranium in order to guarantee that purchasing utilities would have a long term, low cost supply of uranium. Both the Australian situation and the middleman posed threats to the unity of the cartel.

For Canada, it meant that Gulf Oil had to join its domestic arrangement or Canada would be in the same fix as Australia.

Canada moved quickly to get its own house in order.

(2) The key participants in this phase of the plan were N.M. Edigar, Manager of Gulf Minerals Canada, Ltd., R.K. Allen, his counsel, and J. Austin, Deputy Minister of Energy, Mines and Resources and President of Uranium Canada, Ltd.

On April 4, 1972, D.S.MacDonald, the Minister of Energy, Mines and Resources wired Mr. Ediger that he had been authorized by the Cabinet to enter into the cartel and he wanted all Canadian companies to participate.

After discussions with the main corporate headquarters of Gulf Oil in Pittsburgh (documented in correspondence this Office seeks from the Westinghouse files) led to the decision of Gulf to participate. This was communicated to the Canadian government on April 14, 1972, with Gulf still insisting that it must obtain a Justice Department ruling as to the legality of its participation in the cartel.

One of the avenues of inquiry, which may be beyond the scope of our investigation, is whether or not the Justice Department did, in fact, authorize Gulf's participation in the cartel and, if so, why. This raises the question we have faced before as to the reach of U.S. anti-trust laws. It is also reported, and not confirmed, that the White House was approached for approval and that certain conversations were held with the Atomic Energy Commission.

(The AEC problem revolves around the embargo against foreign uranium being imported into the United States. AEC said it would not lift that embargo without the consent of the American producers. Communications we have reviewed indicate that the domestic American producers did, in effect, agree to a lifting of the embargo and did, indeed, make plans for the importing of foreign uranium. This, too, was a condition of the cartel to leave the United States domestic market outside the quota system established in Paris and Johannesberg).

Paris established the principle that the domestic markets of France, Australia, Canada, South Africa, and the United States were exempted from the quota considerations.

Also established at Paris, for reasons which still remain unclear, were two price schedules, one for all markets and the other for Japan, Korea and Taiwan.

The Paris meeting left no doubt that all countries would operate in tandem on setting minium prices for uranium.

Following the Paris meeting, a meeting was held by Australian producers in Sydney on March 2, 1972 in the offices of Peko-Wallsend, Ltd. At that meeting "some members indicated possible conflicts

of interest and difficulties which might arise from anti-trust legislation in Australia and elsewhere. For example, Pan Continental...associated with Getty Oil might have difficulty with U.S. anti-trust laws.

At the Sydney meeting, Mr. J. Proud, who represented Australia in Paris stressed the need for extreme "secrecy."

Mr. Louis Mazel of RTZ began to apply pressure on the Australians to conform to "The Club's" rules. He wrote:

"The moment one producer undercuts these prices most of us will follow such downward trends." He added "...whatever agreement is struck, it should be on a strictly confidential basis. For the outside world all Paris and subsequent meetings will be in connection with the exchange of marketing information.

(3) Meetings were held in March and April in Paris at which Gulf Oil was represented by Mr. Ediger and, quite possibly, by Mr. S.A. Zagnoli, President of the Gulf Minerals Resources Co., which is the direct link in the Gulf chain of command to the Executive Vice President in Pittsburgh who supervised these Canadian operations. Mr. Zagnoli was also President of Gulf Minerals Canada, where Mr. Ediger was Manager (and Vice President). In 1972, the Gulf Minerals Resources Co. Board included at least two of Gulf Oil's executive vice presidents, E.B. Walker and W.L. Henry, as well as Mr. Zagnoli. C.A. Rolander, President of Gulf Energy and Environmental Systems, who played a role in the cartel arrangements, is also on this Board, as are G. Reif of Gulf Oil Canada (of which J. McAfee was Chairman; Mr. McAfee is now Chairman of Gulf Oil). Gulf Oil Canada, however, does not appear to have played a major role in the decisions regarding participation in the cartel, although this must be established through documents we are seeking.

It is also not clear from the information we now have if L.T. Gregg of Gulf Minerals Canada was in Paris, although he later helped to draft the Johannesburg rules.

The second and third Paris meetings agreed to give Canada 33.5 percent of the world's uncommitted markets and allow Gulf Oil to be considered as a current producer, although it would not be shipping Rabbit Lake uranium until 1975. The Australian problem was resolved.

Each nation was allocated a share of "The Club's" expenses; Canada had to pay for 27 percent of all costs, the highest of all those participating. Gulf Oil paid the largest share of the Canadian expense.

The world markets were divided as follows for the periods shown:

	1972-77	1978-80
Canada	33.5%	23.22%
NUFCOR	23.75%	19.26%
Uranex	21.75%	19.26%
Australia	17.00%	24.44%
RTZ	4.00%	13.82%

Problems arose about existing contracts and RTZ was allowed to honor certain agreements provided it paid with a penalty on its future quotas.

Plans were set in motion to disrupt Westinghouse's activities to sell uranium in Sweden and to buy it in Australia.

The minimum prices set for yellowcake were as follows:

For all markets other than Japan, Taiwan and Korea, beginning in 1972 at $5.40 and rising to $7.50. For Japan, Taiwan and Korea, beginning at $5.60 and rising to $7.70.

For quotations after 1978 "It was agreed that there should be no effective ceiling price quoted lower than the world market price and there should be no escalation with a ceiling on the rate of escalation."

Later, of course, prices were lifted without regard to the more conservative early planning.

(4) The critical organizational meeting of "The Club" took place in Johannesburg in June 1972. It appears that Gulf sent four representatives, two of whom were permitted into the meetings. The two permitted into the meetings were Mr. Edigar and Mr. Gregg. The other two in Johannesburg were R.K. Allen of Gulf Mineral Resources Co. and H.E. Hoffman, Vice President and International Operations and Law Department of Gulf Energy and Environmental Systems. Mr. Gregg helped to draft what "The Club" members began to call the "Johannesburg Rules."

One member of the cartel, in transmitting the minutes of the secret meetings in Johannesburg noted:

"It was further agreed, with some slight amendments, that the notes of the meeting in Johannesburg (of which you will find a copy attached) would be adopted. It has been suggested by the Secretary that as few copies as possible be made in order to prevent eventual difficulties."

Under the terms of this agreement, each member nation was awarded a share of "available free-world utility demand," and prices and market determined through 1978 with a special arrangement for the 1978-80 period.

The agreement rigidly structured the cartel, providing for a well-financed Secretariat with offices in Paris. All producers were members of the Policy Committee. The smaller Operating Committee was composed of only two producers from each nation. Members were kept advised of actions through the Secretariat.

The United States domestic market was specifically excluded from the agreement. Later, evidently in exchange for an agreement not to oppose the importation of foreign uranium into the United States (a ban the Atomic Energy Commission would only remove if the American producers agreed to its removal), the overseas companies agreed not to undercut the U.S. domestic market prices which were rising in tandem to world prices, but started rising from a higher base price and remained at higher levels than overseas prices.

The agreement also provided that "there should be no effective ceiling price quoted lower than the world market price."

Under the section called "Working Mechanisms for Allocations" markets were set "based upon up-to-date estimates of the market potential remaining and in order to insure the regimentation of bids, the following deceptive procedure was established to give the aura of competitive bidding:

"A leader and runner-up will be selected (for bids) by the Secretary in consultation with the Committee. The selection will be based on...participating groups rather than individual companies. The group selected as leader or runner-up will, where appropriate, designate a company within the group as a leader or a runner-up as the case may be...

"The leader does not have to open bidding at the minimum prices but should not quote above the minimum figures applicable to "Other Procedures." The leader should advise the Secretary of his opening quotation."

Price ranges for high and low bids were also set.

To insure compliance, the Secretary was to be "provided with copies of all contracts and invoices of actual deliveries...(and will) vet the contract to ensure that it complies with the rules." (The document outlining the above is attached).

(5) Andre Petit, the personal assistant to B. Goldschmidt, a director of the French Atomic Energy Commission, was loaned to manage the affairs of the Secretariat and to serve as the off-shore neutral disseminator of information between countries and companies. In substance, one company did not have to communicate with another, but could communicate with "The Club" through Petit and he, in turn, would communicate with the others, or bring issues to the appropriate committees of the cartel. In some instances, this was a way around certain anti-trust laws.

(6) At some point, the cartel members began to arrange for prices after 1980 and through 1984, but under revised rules.

(7) RTZ began an aggressive campaign to tie U.S. prices to world prices in an arrangement which not only tied U.S. prices to world market prices (which were rigged), but helped to escalate U.S. prices so world prices could respond in an ever-increasing spiral and providing justification for rising world prices. RTZ was identified as one of the three members of the inner circle which included France's Uranex and South Africa's NUFCOR.

(8) There is significant evidence of cartel plans to eliminate competition and to remove middlemen from transactions. In one instance, Westinghouse's sales to Sweden were challenged and in another the Gulf Oil Company attempted to use its influence with the Australian government to prevent the sale of uranium to Westinghouse. There was fear of other large American companies, like Exxon, moving into uranium development and, perhaps, not abiding by the cartel understandings.

(9) Our review of the industry literature reveals several strong stories indicating a cartel might be in operation, but there was no federal action in response to these stories.

There are many unanswered questions, among which are the following:

Does the cartel still exist? And, if it does, in what form? The Gulf documents, now in the hands of Westinghouse, should provide that answer. We need to trace the direct consequences of the cartel to New York's plans to place an even heavier reliance on atomic energy and to see what impact this will have on those plans.

And we need to verify the Gulf chain of command from the Gulf's operations in Canada to Gulf's executive headquarters in Pittsburghin order to determine which witnesses will provide the most insight into the cartel.

We also need to know the balance between Gulf's response to Canada's initiative and their own aggressiveness in forcing out competitors and setting world prices.

The Chronology of Events

In 1975, the Westinghouse Electric Corporation notified 27 utilities that it didn't have the 65 million pounds of uranium it had agreed to supply over the next twenty years.

Westinghouse argued that it could only get the uranium oxide (known as yellowcake) if it purchased at prices that would not be commercially feasible. Westinghouse said it could not have possibly known that the price of yellowcake would rise so high, so quickly, and citing a section of the Uniform Commercial Code, excused itself from the fixed-price contracts. To supply the uranium required at the fixed price would have cost Westinghouse between one and two billion dollars.

The utilities, including New York's Consolidated Edison and the Long Island Lighting Company sued Westinghouse for the difference in price between the fixed-price contract (an average of $9.50 per pound) and the then-current price of approximately $40.00.

On October 15, 1976, Westinghouse, after obtaining certain confidential information, sued Gulf and twenty-odd other companies (including Kerr-McGee, the nation's largest uranium producer and marketer, Getty Oil, Atlas, Utah International and others) for forming an illegal combination to fix uranium prices.

The issue grew in importance when certain documents were either leaked or stolen from Australia's Mary Kathleen Uranium Ltd. offices. Friends of the Earth, an environmental group with access to the documents, sent them to public service executives in California.

Subsequently, Westinghouse validated the documents as accurate.

Later, in an action involving Gulf Oil, Westinghouse and certain Pennsylvania utilities, Judge Wekselman cleared his court of observers and received certain confidential documents which Gulf had maintained were protected by the attorney-client privilege, a claim which failed to stand either in Penn. State Court, where it was argued in the Wekselman matter, or in Federal Court, where the documents were turned over to the House Oversight Committee.

Our request is for a subpoena to be issued requiring Westinghouse to produce the Gulf documents sealed by Judge Wekselman.

These documents, we believe, will reveal the full scope of Gulf's actions and enable us to trace the economic consequences to New York State and to assist the Task Force and the Corporations Committee in laying the groundwork for corrective legislation and to assist in the possible recovery of funds for the rigged price overcharges.

One personal note:

This is not the first time the Gulf Oil Company has been in trouble. Recently, the Chairman and other executives were removed because of the revelations about overseas bribery. If the charges of this report are sustained, there could be other high level changes at Gulf. Yet the real power of the Gulf Oil Corp. lies outside its official Board of Directors and its corporate executives. The real power, as most interested observers and financiers know, is with the Mellon family. There is no doubt from review of the financial literature that this family controls the corporation, yet, whenever there are charges proven against the corportion, the true ownership remains untouched. If corporate corruption is to be effectively curtailed, on a long term, as contrasted to an investigative period, it can only be done by legislation which reaches beyond existing corporate law and into actual control.

EVOLUTION OF CARTEL U O PRICES, U.S. DOLLARS
3 8

"Club" Meeting Date and Location

	June, 1972	October 9, 1973	Jan. 28, 1974
	Johannesburg	London	Johannesburg
Year of Delivery			
1972	$5.40	-	-
1973	5.75	$6.70	-
1974	6.10	7.20	$8.50
1975	6.45	7.70	9.35
1976	6.80	8.20	10.30
1977	7.15	8.95	11.35
1978	7.50	9.70	12.50

Note: Columns 1 and 2 do not apply to Japan, Taiwan and Korea.

URANIUM PRODUCERS MEETINGS
SUMMARY OF MEETING DATES

	DATE	LOCATION
1.	Feb. 1-4, 1972	Paris
2.	Feb. 28, "	Canberra (Australian only)
3.	Mar. 2, "	Sydney
4.	Mar. 13-14 "	Paris
5.	Apr. 20-21 "	Paris
6.	June, 1972	Johannesburg
7.	July 6, "	Paris
8.	August 7, 1972	Sydney (Australian only)
9.	Oct. 2-3 "	Sydney
10.	Nov. 1, "	Sydney (Australian only)
11.	Nov, 17, "	Toronto
12.	April 9-11, 1973	Paris
13.	August 2-3, "	Johannesburg
14.	Oct. 5,8,9, "	London
15.	Nov. 21-23 "	Las Palmas
16.	Jan. 28-Feb. 1, 1974	Johannesburg
17.	May (late), 1, 1974	London

Appendix A

Notes which formed the basis of the cartel agreement; drafted at Johannesburg, S.Africa and 6/72 transmitted to participants for comment.

1. SECRETARIAT

(a) It was agreed that, on a temporary basis, the Secretariat should be located in Paris.

(b) It was considered desirable that the permanent location should be in a neutral country.

(c) It was agreed that the position of Secretary must be clearly divorced from any of the member groups of the organisation although it was further agreed that the Secretariat would be directed by an operating committee consisting of one representative and an alternate from each participating group.

(d) Expenses of the Secretariat would be borne by the five participating groups in relation to their average market quotas over the period 1972-80 inclusive. These quotas were determined as :-

Canada	27%
NUFCOR	21%
Uranex	20%
Australia	22%
RTZ	10%

Billings will be made to each group on a quarterly basis.

(e) The Secretariat should be designated as the "Uranium Market Research Organisation".

12. .....

Certified as accurate William F. Hudd

2. MARKETS AND MARKET QUOTAS

(a) The following market quotas were recorded :-

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%

(b) Market areas to be excluded from the present arrangements are :-

(i) The domestic markets of France, South Africa, Australia and Canada.

(ii) The United States domestic market.

(c) Sales to count against quota allocations are :-

All new sales after January 1, 1972, including -

(i) Spanish contract (Denison - UCAN)

(ii) Neckarwerke (UG and UCL)

(iii) Sweden

(iv) Shikoku (Queensland, RTZ, Uranex)

(v) Kyushu (Ranger, NUFCOR)

(vi) Chubu (NUFCOR, Ranger)

/(d) .....

(d) For tonnages in excess of those excluded under (e) and (f) below the RTZ-Rossing contract with UG, the Uranex/Somair contracts with UG and Agip Nuclear, and the UCL contract with RWE will be included in quotas.

(e) Sales to be excluded from quota allocations are :-

All sales concluded and options granted prior to January 1, 1972, including -

(i) Brazil - Furnas (NUFCOR)

(ii) Westinghouse - Reznau (Rio Algom)

(iii) Tohoku (Denison, RTZ, NUFCOR)

(iv) Kansai spot sale (Rio Algom, NUFCOR, Uranex)

(v) Gundremmingen (NUFCOR and UCL)

(vi) GKT (NUFCOR, UG)

(vii) ENEL 4 (Uranex)

(viii) THTR/VEW (UG)

(ix) Steag/Muhlenberg (UG)

(f) Also excluded from the quotas will be UCL sales to RWE of 3 200 tons during 1972-77 and 3,000 tons during 1978-80 inclusive.

/3. .....

3. TERMS AND CONDITIONS

(a) For future bids and re-bids the following minimum prices were agreed to for U3O8, c.i.f. conversion facilities:-

Years	Japan, Taiwan & Korea U.S. $/lb. U3O8	Others U.S. $/lb. U3O8 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 UF6, these prices will become in U.S. $ per pound of U contained in UF6 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.

(b) 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 10c/lb. U_3O_8 through 1975 and 15c/lb. 1976-78 can be made.

(c) Quotations after 1978 should be made on the basis of one of the following alternatives :-

(i) Escalation from a base price not less than the appropriate minimum price.

(ii) Negotiated world market price with or without a floor.

It was agreed that there should be no effective ceiling price quoted lower than the world market price and there should be no escalation with a ceiling on the rate of escalation. The possibility of equity participation was discussed and it was accepted that this was outside the control of the agreement, but that the price in respect of the material should not be contrary to the rules.

(d) Standard conditions for payment would be :-

- 95% within 30 days after delivery at converter's facility or U.S.A.E.C. or f.o.b. 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 in the case of CIF delivery or 90 days for FOB delivery, adjustment can be made afterwards.

/Any .....

Any other terms of payment which deviate from the minimum will have to take into consideration a basic standard minimum rate of interest of 8% per year.

(e) 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, 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 currency.

On the question of currency protection it was agreed that all members would give this further consideration and report back to the next meeting.

(f) Flexibility

On tonnages, initial cores or unspecified requirements: ±10% maximum on the contracted quantities.

Reloads : ± 15% maximum on the contracted quantities.

Flexibility for a variation in tails assay content could be given in addition to the above.

(g) Lead time for flexibility condition

18 months before the start of any delivery year, the customer must identify provisional delivery

/months .....

months within that year, and the tonnage within the limits specified above.

9 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 at which time ± 5% variation would be allowed provided the total variation does not exceed the limits specified under (f) above.

In case this flexibility leads to delivery in adjoining years, the minimum price for that year should apply as the absolute minimum.

(h) Force Majeure

(i) It was agreed that producers would not accept nuclear plant break down or permit withdrawal or lack of operating licences as a force majeure item.

(ii) In addition it was agreed that no one would accept a consequential damage clause.

(iii) It was agreed that no producer would waive a force majeure condition for any period in order to guarantee delivery.

(i) Reinstatement of late deliveries

Liability for late delivery would be limited to converter's surcharges in the case of delivery in UF6 and U.S.A.E.C. surcharges in the case of delivery in UF6.

/In .....

In any short fall or rejection situation a minimum of one month should be required to make up the material. If contract specifications for U3O8 or UF6 are to be altered, any consequential increase or decrease in costs to be for the buyer's account.

(j) Taxes, Duties & Other Imposts

Suppliers will accept taxes and duties in their country, but not in any other country.

(k) Storage

Suppliers will provide free storage of U3O8 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.

(l) Storage in UF6

Any storage charges for UF6 would be at the buyer's cost.

(m) Options

No tonnage options will be granted to the consumer.

(n) Validity period

The maximum validity period for any quotation shall be 90 days unless there is a prior agreement to the contrary. Any extension shall be consistent with the rules in force at the time the extension is granted.

/(o) .....

(c) Post 1980 business

It was agreed that there would be no restraints on post 1980 business other than the pricing mechanisms referred to under item (c) above and the obligation to report such business to the Secretary.

4. WORKING MECHANISMS FOR ALLOCATIONS

(a) Allocation of sales

It was agreed that :-

(i) Allocation of sales would be based upon up-to-date estimates of the market potential remaining.

(ii) The allocations would be initially based on contracted tonnages and as far as possible each group's quota would be filled at a uniform rate.

(iii) Final resolution of quotas for each quota period should be based on actual deliveries.

(iv) Any adjustments necessary for each quota period will be realized through adjustments to future deliveries.

(v) The Secretary will report on a quarterly basis on markets, contracts, deliveries and positions vis-a-vis quotas.

(vi) The Secretary will be provided with copies of all contracts and invoices of actual deliveries.

/(b) .....

(b) Disclosure of Information

The following action will be taken when contracts are provided to the Secretary :-

(i) The Secretary will vet the contract to ensure that it complies with the rules.

(ii) The Secretary will attempt to resolve with the contracting supplier any apparent discrepancies or deviations from the rules.

(iii) The Secretary will distribute price and quantity information to members on a routine basis.

(iv) The contracting supplier will advise the Secretary whether or not the contract is available for inspection by other members. If the contract is not available for inspection then the supplier concerned shall at the request of any group representative explain at a meeting of the Operating Committee the reasons for non-disclosure. If the Committee considers that the reasons given do not justify non-disclosure then the group representative concerned may have access to the contract in question.

(v) If there are discrepancies or deviations under (ii) above which cannot be resolved the Operating Committee may review the situation at its next meeting.

Letters of Intent, enquiries and quotations should also be provided to the Secretary for his use and vetting and for any necessary discussion with the producer.

/(c) .....

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A leader and runner-up will be selected by the Secretary in consultation with the Committee. The selection will be based on the five participating groups rather than individual companies. The group selected as leader or runner-up will where appropriate designate a company within the group as a leader or runner-up as the case may be.

It was agreed that :-

(i) The leader would have the right to go to the appropriate minimum price then applicable.

(ii) The runner-up would have the right to go to the minimum price plus 8c/lb. for U_3O_8 or plus 15c/lb. for U in UF_6.

(iii) All "Other Producers" would have the right to go to the minimum prices plus 15c/lb. for U_3O_8 or plus 20c/lb. for U in UF_6.

The leader does not have to open bidding at the minimum prices but should not quote above the minimum figures applicable to the "Other Producers". The leader should advise the Secretary of his opening quotation.

5. ATTITUDE TOWARDS COMPETITORS

(a) Uranium Suppliers

It was agreed 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.

/(b) .....

(b) Fuel, reactor manufacturers, or any other middle men

All quotations to this type of purchaser should be made on the basis of the minimum prices applicable to Japan plus 15c/lb. for U_3O_8 or 20c/lb. U in UF_6 as the case may be.

It was also agreed that no quotations will be made unless the end use of the material is known.

In making quotations to such purchaser 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 member of the organization from any market.

APPENDIX B

NUCLEAR POWER PLANTS IN THE U.S.

NEW YORK					
Consolidated Edison Co. of N.Y., Inc.	Indian Point 1	Buchanan	265	PWR/BbW	1962
Consolidated Edison Co. of N.Y., Inc.	Indian Point 2	Buchanan	873	PWR/W	1973
Power Authority of the State of New York	Indian Point 3	Buchanan	965	PWR/W	1975
Long Island Lighting Co. (New York State Electric & Gas Corp.)	Jamesport 1 (D)	Riverhead	1,150	PWR/W	1982
Long Island Lighting Co. (New York State Electric & Gas Corp.)	Jamesport 2 (D)	Riverhead	1,150	PWR/W	1984
Long Island Lighting Co.	Shoreham (C)	Brookhaven	820	BWR/GE	1979
New York State Electric & Gas Corp.	Somerset 1 (L)	Somerset	1,220	BWR/GE	1984
New York State Electric & Gas Corp.	Somerset 2 (L)	Somerset	1,220	BWR/GE	1986
Niagara Mohawk Power Corp.	Nine Mile Point 1	Oswego	610	BWR/GE	1969
Niagara Mohawk Power Corp.	Nine Mile Point 2 (C)	Oswego	1,080	BAR/GE	1982
Niagara Mohawk Power Corp.	James A. FitzPatrick	Scriba	821	BWR/GE	1974
Power Authority of the State of New York)	Greene County (D)	Cementon	1,200	PWR BbW	1984
Rochester Gas and Electric Corp.)	Robert E. Ginna	Rochester	490	PWR/W	1969
Rochester Gas and Electric Corp.	Sterling (D)	Sterling	1,150	PWR/W	1984
Long Island Lighting Co. (Niagara Mohawk Power Corp.)					

APPENDIX D

AGREEMENT, DUKE POWER CO. AND RIO ALGOM MINES LTD.

4. PRICE

With respect to each pound of U_3O_8 contained in uranium concentrates purchased and sold hereunder Duke shall pay to Rio whichever is the higher of a Settlement Price or a Minimum Price as hereinafter provided. Each of the Settlement Price and the Minimum Price, as the case may be, shall be a price per pound (avoirdupois) of U_3O_8 in concentrates delivered in steel drums, including the cost of such drums, F.O.B. truck at Rio's Elliot Lake production facilities or F.O.B. railcar, Spragge siding Ontario, being the closest rail loading point to Rio's Elliot Lake production facilities.

A. Settlement price

The Settlement Price shall be a price determined with respect to and in advance of each Delivery Year of the Basic Delivery Program by reference to uranium market conditions at the time, all in accordance with the provisions set forth in Appendix I attached to and forming part of this Agreement. The Settlement Price so determined for each Delivery Year shall be the price payable for all the quantities of U_3O_8 in concentrates scheduled for delivery in the relevant Delivery Year under the Basic Delivery Program unless the Settlement Price is lower than the Minimum Price for the relevant Delivery Year, in which case the Minimum Price and not the Settlement Price shall be payable for such Delivery Year.

B. Minimum price

(*a*) The Minimum Price, as herein defined, shall be the price payable for all quantities of U_3O_8 in concentrates delivered in any Delivery Year in respect of which the determined Settlement Price is lower than the said Minimum Price for such Delivery Year, or in respect of which the parties have agreed that the Settlement Price shall be the Minimum Price for such Delivery Year pursuant to Paragraph 3(iv) of Appendix I hereof.

(*b*) The Minimum Price applicable to any Delivery Year as heretofore provided shall be comprised of the following elements:

(i) Actual Cost of Operations.
(ii) Cost of Working Capital.
(iii) Amoritization Allowance for Capital Expenditures.
(iv) Allowance for Exploration.
(v) Allowance for Income and Mining Taxes and Profit.

Each of these elements shall be determined in accordance with the definitions and procedures set forth in Appendix II attached to and forming part of this Agreement.

(*c*) Each of the cost and allowance elements referred to in subparagraph (b), (i) through (v) above shall be limited to the costs incurred or calculated and allowances provided in order to produce up to approximately 90 million pounds of U_3O_8 equivalent under the total of anticipated long-term sales agreements referred to in the Mining Plan outlined in Appendix III hereto, subject to the formula for calculating the amortization allowance set forth in Part IV of Appendix II hereof.

Rio does not anticipate any substantive deviation from the Mining Plan as outlined, but it is expressly understood that the said Mining Plan represents only Rio's current estimate of the most reasonable and sound method of planning production on a long-range basis to meet an anticipated sales objective. Rio reserves the right to deviate from the said Mining Plan depending on unforeseen circumstances in any way it sees fit, provided always that any changes planned or made are in accordance with sound mining and business practices, and further provided that the effect of any such changes would not be to alter

materially the principles and procedures for calculation of Minimum Price elements as provided in Appendix II hereof, nor knowingly increase by a material amount the Minimum Price so calculated which may be applicable at any time during the term of this Agreement, without the prior consent of Duke, which shall not be unreasonably withheld.

(*d*) Subject to the provisions of subparagraph (g) of this Paragraph, Rio shall provide a detailed statement or detailed statements of the actual costs and allowances calculated in accordance with Appendix II to this Agreement, and the actual total production of U_3O_8 in concentrates as may be adjusted in accordance with Part III of this Appendix for each of the years in which delivery is to be made hereunder certified by Rio's external auditors. Duke shall have the option to use at its own expense independent auditors who shall be of a size and professional stature recognized to be among the top ten (10) auditing firms practicing in Canada to verify the statement or statements by examination of Rio's costs and other appropriate records.

(*e*) Rio estimates, purely as an indication and without warranty based on its extensive experience in mining and milling uranium ore from the areas defined in the Mining Plan that if the said Mining Plan had been implemented with effect from 1973, the Minimum Price calculable from the elements set forth in subparagraph (b) above would be approximately Eleven Dollars and Ninety-Seven Cents Canadian (Cdn. $11.97) per pound of U_3O_8 in terms of 1973 Dollars.

(*f*) As soon as is reasonably practicable following the end of each Delivery Year Rio shall determine whether the pre-determined Settlement Price for the relevant Delivery Year is higher or lower than the Minimum Price (unless the parties have agreed during the Pricing Year that the Settlement Price shall be the Minimum Price for the relevant Delivery Year) for such year established according to the procedures set forth in Appendix II hereof. In the event that Rio determines that the Settlement Price is lower than the relevant Minimum Price it shall forthwith notify Duke that it is claiming payment for all deliveries in such year based on the Minimum Price for that Year and that it requires adjustment based on such Minimum Price to any provisional payments made for deliveries in such Year. Upon receipt of such notice from Rio, supported by the statement or statements referred to in subparagraph (d), Duke shall, at its option, within thirty (30) days of the date of Rio's notice:

(i) Notify Rio that it accepts Rio's claim; or

(ii) Notify Rio that it wishes to submit Rio's claim to independent audit as provided in subparagraph (d) above. The independent auditors in order to verify the statements which support the Minimum Price calculation for the relevant Delivery Year may examine the relevant historical data, if required, for two Calendar Years immediately preceding the relevant Delivery Year to ensure the continuity of constant application of accounting policies and procedures in determining the Minimum Price for the relevant Delivery Year.

(*g*) If, following any Delivery Year, Rio is satisfied, according to its own determination, that the predetermined Settlement Price is higher than the Minimum Price for such year, Rio shall be under no obligation to calculate in detail or report such Minimum Price to Duke.

(*h*) In order to determine whichever of the Settlement Price which is expressed in United States Dollars, and the Minimum Price which is expressed in Canadian Dollars is lower, the Settlement Price shall be converted to Canadian Dollar equivalent, for comparative purposes, on the following basis: a simple average shall be taken of all the closing weekly quotations published by the Bank of Canada in its weekly financial statistics for the relevant Delivery Year based on spot rates between the two currencies in order to determine the applicable rate of exchange between the Canadian Dollar and the United States Dollar for such Delivery Year.

(*i*) For all purposes relative to the calculation of Minimum Price and the adjustments and escalation of the various elements thereof, Rio may vary its accounting procedures and practices to meet prevailing needs and circumstances from time to time provided that the basic accounting principles in effect on the date of this Agreement shall not be changed without first discussing such proposed changes with and receiving the approval thereto of Duke, which shall not be unreasonably withheld.

(*j*) In any year in which there is a change in the mining or income tax laws or regulations thereto as compared to those in existence for the year 1973 or in the event that export taxes arising out of the export of U_3O_8 sold under this contract are imposed on or are payable by Rio or if mining or mineral royalties be-

come payable to any level of government with respect to the U_3O_8 mined and sold hereunder, and if the combined effect of any such change or changes is that the profit accruing to Rio from the sale of U_3O_8 under the Minimum Price provisions of this Agreement is substantially affected as compared to the profit that would have accrued to Rio had such change or changes not taken place, then Duke and Rio will meet to discuss the change or changes and will make such adjustment in the Minimum Price as is fair and equitable to both parties. For the purposes of this Paragraph an increase or decrease in the profit greater than ten percent (10%), as compared to the profit which would have accrued to Rio had none of the changes referred to above occurred, shall be deemed to be substantial. The term profit, as used in this Paragraph, means the profit net of taxes calculated for the hypothetical mining company as described in the Note to Part VI of Appendix II of this Agreement.

It is expressly understood between the parties that Duke shall be under no obligation to discuss with Rio any request by Rio for a full compensatory upward adjustment to the Minimum Price if the effect of any tax change or changes heretofore referred to were so onerous to Rio as to eliminate the greater portion of the said profit net of taxes.

5. SHORT AND EXCESS DELIVERIES

(*a*) If by December 31 in any year, Rio has not delivered the poundage required to be delivered in that year under the Basic Delivery Program it may make good the shortfall during the first quarter of the following calendar year. But if such shortfall is not made good by the end of the said first quarter then it shall be made good at such a time and at such a rate as Duke may specify after consultation with Rio provided that the rate of delivery of such shortfall shall not exceed 200,000 pounds per month unless otherwise agreed. Except where any delay in delivery is due to Force Majeure the price payable in respect to tonnage comprised in a shortfall in any year's delivery shall be the price applicable to that calendar year regardless of date of delivery. If a shortfall has occurred during any two or more years the earliest outstanding shortfall shall be made good first.

(*b*) For purposes of payment and compliance with the agreed delivery programs, Duke shall not be required to pay more at any time than the cumulative amounts payable to Rio as set forth in the agreed programs whatever the quantity.

This is Appendix I to an Agreement dated the Fourth (4th) day of September, 1974 between Duke Power Company (Duke) and Rio Algom Mines Limited (Rio).

1. DEFINITIONS

(i) All prices shall be expressed in U.S. dollars per pound of U_3O_8 contained in uranium concentrates.

(ii) The "Delivery Year" means the year of delivery to Duke of the uranium concentrates.

(iii) The "Pricing Year" means the year two years prior to the Delivery Year.

(iv) Any price proposed by Rio to Duke shall be referred to as the "Call Price".

(v) Any price proposed by Duke to Rio shall be referred to as the "Put Price".

2. SETTLEMENT PRICE

Subject only to the minimum price procedure as set out in Paragraph 4B of the main body of this Agreement the price per pound of U_3O_8 shall be determined annually in advance of and with respect to each Delivery Year as hereinafter provided. The price so determined with respect to each Delivery Year is hereinafter referred to as the "Settlement Price".

3. PROCEDURE

(i) Not later than the end of February of each Pricing Year Rio shall propose to Duke a Call Price for the uranium concentrates to be delivered during the relevant Delivery Year.

(ii) Not later than the end of March of each Pricing Year Duke shall either agree to the Call Price or propose to Rio a Put Price. If Duke fails to propose a Put Price it shall be deemed to have accepted the Call Price proposed by Rio.

(iii) Both parties expressly agree to act in a fair and reasonable manner in proposing the Call and Put Prices as the case may be and take into account market conditions for uranium concentrates at the time in the U.S.A. and other free world countries in accordance with the principles set forth in subparagraph (v) below.

(iv) If Duke does not accept the Call Price and proposes a Put Price, both parties shall discuss together at the earliest practical time prior to the end of May of the relevant Pricing Year and shall use their best endeavors to agree to a Settlement Price. The parties may agree during discussion, depending upon market conditions at the time, not to proceed further but to agree to a Settlement Price on the basis of the Minimum Price referred to in Paragraph 4B of the main body of this Agreement and in this event the Minimum Price shall apply to the relevant Delivery Year, and there shall be no recourse to an expert as provided for in subparagraph (v) below.

(v) If the Parties are unable to agree on a Settlement Price by the end of May of the revelant Pricing Year such shall be determined by an expert in the following manner:

(*a*) The expert shall be appointed as early as is practicable by agreement between the Parties or, failing agreement, appointed for that purpose by the President for the time being of the International Chamber of Commerce. The expert shall be instructed by the Parties to determine a Settlement Price for the relevant Delivery Year by the end of September of the relevant Pricing Year and to consider fairly and reasonably and to give the appropriate weights to such factors as:

(i) The then current market conditions for uranium concentrates for deliveries in the relevant Delivery Year in the U.S.A. and other free world countries by on-going producers of uranium concentrates selling directly or indirectly to electricity producers or other commercial undertakings;

(ii) The long-term nature of the contractual obligations under this Agreement and the quantity of uranium concentrates involved;

(iii) All other relevant factors, including, as appropriate, any which should carry less weight or be discounted in the expert's judgment, such as any sales for delivery in the relevant Delivery Year of a spot or short-term nature, or made on a Government-to-Government basis other than on normal commercial terms and conditions or made by a producer of uranium concentrates as a by-product, with respect to which selling terms and conditions may differ materially from terms and conditions then applicable to an on-going producer of uranium concentrates selling directly or indirectly to electricity producers or other commercial undertakings on a long-term basis;

(iv) All other relevant submissions which the Parties consider the expert ought to take into account.

(*b*) The Parties shall each submit to the expert a copy of this Agreement or any other Agreement between them and all relevant market information in their possession which they are at liberty to disclose relating to contracts for sales of uranium concentrates for delivery in the relevant Delivery Year. The expert shall be instructed to treat such information in confidence, and in evaluating such contracts, to have regard inter alia to prices, year of delivery, quantities and dates when the contracts were concluded. The expert shall further be instructed that he may if he chooses settle a range of prices (which should be as narrow as possible) rather than a single price, in which event the mean of the range shall be the Settlement Price. Subject to the provisions for a Minimum Price set forth in Paragraph 4B of the main body of this Agreement, the Settlement Price so determined by the expert shall be final and binding on the Parties.

(vi) In the event that the expert for any reason is unable to or does not determine a Settlement Price by the end of September of the relevant Pricing Year or such later date as may be agreed by the Parties, Duke shall have the option exercisable by notice in writing given to Rio by the end of October of the relevant Pricing Year or such later date as may be agreed to buy the uranium concentrates for the relevant Delivery Year at the lowest Call Price proposed by Rio during the discussions referred to in subparagraph 3 (iv) or later, and in such event such lowest Call Price shall be the Settlement Price.

(vii) In the event that Duke does not exercise its aforesaid option in the time provided therefor the Settlement Price shall be deemed to be a matter in dispute and shall be submitted to arbitration under the provisions of Para-

graph 11 of the main body of this Agreement, and the arbitrators shall be instructed to use all reasonable efforts to determine a Settlement Price before the commencement of deliveries in the Delivery Year to which the Settlement Price refers. In the event that such determination is not made before the said deliveries commence and until such determination is made Rio shall be entitled to invoice Duke on a provisional basis, with respect to each delivery (and/or with respect to any deferred pounds as provided in Paragraph 3 of the main body of this Agreement) at whichever is the higher of:

(*a*) The mean of the lowest Call Price submitted in writing by Rio to Duke and the highest Put Price submitted in writing by Duke to Rio with respect to the relevant Delivery Year at any time up to the time when Rio is entitled so to invoice Duke;

(*b*) Whichever is applicable of Rio's provisionally estimated Minimum Price for the first Delivery Year and the latest available Minimum Price for any succeeding year, as the case may be, pursuant to the provisions of Paragraph 9 of the main body of this Agreement, and Duke shall pay to Rio the full amount of such invoice within 30 days of the receipt thereof by Duke. As soon as a Settlement Price has been determined by arbitration, and provided such price is no less than the applicable Minimum Price under (b) above, any difference between such Settlement Price and the price paid by Duke to Rio with respect to any aforesaid invoices issued provisionally shall be settled promptly between the parties by payment in full to whichever party is required to be reimbursed by the other. If the Settlement Price so determined is less thna the applicable Minimum Price, the latter shall be the price governing all deliveries (and/or deferred pounds) for the relevant Delivery Year, subject to final adjustment after such Delivery Year pursuant to the provisions of Paragraph 9 of the main body of this Agreement. It is expressly agreed and understood between the parties that the Settlement Price shall be submitted to arbitration under the provisions of Paragraph 11 of the main body of this Agreement only under the conditions set forth in this subparagraph (vii) of this Appendix I.

(viii) The cost of any fee to the expert shall be paid by the parties in such proportion as the expert shall decide.

This is Appendix II to an Agreement dated the Fourth (4th) day of September, 1974 between Duke Power Company (Duke) and Rio Algom Mines Limited (Rio).

Principles and Procedures for Calculation of Minimum Price Elements.

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I. Actual Cost of Operations

METHOD OF DETERMINING COSTS

A. Operating costs

Operating costs for agreed planned operations as set out in Appendix III hereof.

Mining,
Milling,
Plant and utilities,
Administration and general,
Special development,
Training programme, and
Transportation.
Dollar costs as recorded in the internal profit centre earnings statement.

The above elements are those currently in use in the internal earnings statements; while they may be either expanded or contracted in number in the

future for valid reason the costs included will comprise only those applicable to the profit centre.

In the event that, at any time, there are other producing operations at Elliot Lake which are not part of the agreed planning operations and these operations are carried on in concert with the planned operations to the extent that certain costs are incurred in the planned operations for the benefit of such other operations, such other operations shall be charged with such costs on an equitable accounting basis which shall give due effect to not only the cost directly involved, but also such portion of administration and general costs, plant and utilities or other applicable costs as may be equtiably and appropriately apportioned to such direct costs.

The major items in the cost elements comprising operating costs are as follows:

1. Mining

Direct costs of operating each mine including:

Normal development—drifts, x cuts, inclines into ore.
Stope preparation—sub drifts, raises, box holes, etc.
Stoping—actual mining.
Operational mine planning and engineering.
General mine expense—includes cage men and skip tenders, etc. (cost of the hoist room is in Plant below)

The costs above includes salaries, hourly labour, and materials such as explosives, drill parts, etc., as well as provision for major underground repairs.

2. Milling

Cost of processing ore on surface from crushing and grinding to packaging of U_3O_8. This includes salaries and wages of personnel operating the mill, as well as all materials and chemicals used in the mill and in processing ore such as grinding media and reagents.

3. Plant and utilities

Cost of all maintenance work performed by Plant Department and cost of electricity, steam, and compressed air, and cost of operating the hoist room. This include maintenance work (labour and material) on underground and surface equipment, buildings, and on facilities such as roads, tailings, dam and pipelines. Cost of electricity, steam and compressed air for the entire operation is charged to plant.

4. Administration and general

This category includes:

Salaries and wages of managerial and administrative personnel (office, warehouse, computer department);
All payroll burden for all operating personnel, i.e., workmen's compensation, unemployment insurance, pensions, vacation pay and statutory holidays, medical plans, etc.;
Insurance, property taxes, telephone expense; and
General expenses and supplies.

5. Special development

Cost of main haulage ways, x cuts, ore and waste passes, footwall drifts, ventilation openings, etc.—generally to service mine over a period of at least several years. This cost includes labour and material.

6. Training programme

Cost of labour and materials used in training people to be underground miners, less any appropriate share of monies received by Rio by way of grants or other credits in aid of such training.

7. Transportation

Freight and handling costs and transportation insurance to place of delivery or collection point of UF_6 converter.

8. These costs as in 1 to 7 above are subject to audit by independent auditors at the option of Duke.

METHODS OF DETERMINING COSTS

B. Area costs

Area costs are costs directly associated with Elliot Lake operations in total but not directly connected with the mining and milling operations.

Administration and housing.	Dollar costs as recorded in the internal profit centre earnings statement.
General mine maintenance.	
Antipollution costs.	
Surface drilling (on planned operations).	Dollar costs as recorded in the internal Mining Division earnings statement for those costs directly applicable to the Elliot Lake area.
Other costs, such as, acreage taxes, mining claims and lease costs, etc.	

The above elements are those currently in use in the internal earnings statements. From time to time it may be necessary to add other elements or subdivide existing elements. In the event that Rio decides to add other elements which would have a material effect on such costs, Rio will inform Duke accordingly with the object of the parties consulting together so as to arrive at a fair and reasonable allocation.

These costs are subject to audit by independent auditors at the option of Duke.

In the event that, at any time, there are other producing operations at Elliot Lake which are not part of the agreed planned operations, area costs shall be apportioned between the agreed planned operations and such other operations on an equitable basis.

The major items included in the cost elements comprising area costs are as follows:

1. Administration and housing

Cost of salaries and payroll burden of long range mine planning, secretaries and several general engineers and costs of maintaining and operating housing in Elliot Lake, less rental revenue.

2. General mine maintenance

The minor costs of surveillance and maintenance of the mines in Appendix III (Quirke, New Quirke, Panel, Nordic, Lacnor, Milliken and Stanleigh) which may not be operational in any given year plus the Spanish-American and Pronto mines.

Includes salaries, wages and payroll burden, electricity, property taxes, insurance less sales of salvaged materials, such as, pipe, track, etc. (not surplus equipment which is included in paragraph C–4 of this Part I).

3. Antipollution expense

Cost of operating and maintaining lime plants at shutdown mines.

Includes labour, payroll burden and materials.

Includes other costs for pollution control at shutdown mines, such as, revegetation, water sampling, ditching, etc.

4. Surface drilling on planned operations

Cost of drilling required to obtain further knowledge of the ore bodies as required to develop the mining plan.

5. Other costs

Acreage taxes: Annual levy per acre paid to Ontario Government on patented claims which is the property in Elliot Lake owned outright, i.e., the company has clear title. This property was acquired in the 1950's.

Leases: Annual fees on leased mining rights in Elliot Lake paid to Ontario Government for mineral rights and/or surface rights. They are usually held for 21 years and are renewable. These rights were acquired in the 1960's.

License of Occupation: Annual levy per acre on mineral rights that lie under water. Terms are continuous.

Miscellaneous: Any other minor costs appropriately and equitably charged to the planned operations.

C. Share of mining division overhead costs

Administration: Operations; and Engineering (net of recharges).	Dollar costs as recorded in the internal Mining Division earnings statement.
Research and Development (net of recharges and government assistance).	
Miscellaneous.	
Mining Finance Department (net of recharges).	Dollar costs as recorded in Rio Algom Corporate Expense ledger accounts.

	ALLOCATION
	All of the above costs shall be prorated to all operating mines and other applicable active operations included in the Division on the basis of their respective total operating costs or such other basis as may prove to be more equitable at the time.

The above elements are those currently in use in the internal earnings statements. From time to time it may be necessary to add other elements or subdivide existing elements. In the event that Rio decides to add other elements which would have a material effect on such costs, Rio will inform Duke accordingly with the object of the parties consulting together so as to arrive at a fair and reasonable allocation.

These costs and allocations of such are subject to audit by independent auditors at the option of Duke.

The major items included in the cost elements comprising Mining Division overhead are as follows:

1. Operations.—Cost of operating the office of the administrative head of the Mining Division including salaries, benefits and office space costs and services and any other costs properly charged to this department.

2. Engineering.—Cost of operating the Mining Division engineering office including salaries, benefits, office space costs and services and any other costs properly charged to this department.

3. Research and development.—Cost of operating the research and development head office and the cost (net of recharges and government assistance) of operating the research facilities. Recharges are made by the laboratory to profit centres for service work performed at their request.

4. Miscellaneous.—Primarily charges for stores obsolescence, and credits for sale of surplus equipment and any other costs properly charged to the Division.

D. Share of Rio Algom mines limited corporate overhead costs

All costs (net of management fee incomes) excluding only: Long term debt interest; Interest income; Extraordinary items not related directly to mining operations; and Mining finance department cost (allowed for under "Mining Division Overhead").	Dollar costs (net as recorded in the Rio Algom Corporate expense ledger accounts prorated as between operating divisions (currently mining and steel) on the most current percentage split used for federal tax purposes (currently 80 percent to 20 percent); the mining portion to be further prorated to all operating mines and other applicable active operations included in the Division on the basis of their respective total operating costs or such other basis as may prove to be more equitable at the time.

These costs and allocations of such are subject to audit by independent auditors at the option of Duke.

II. Cost of Working Capital

In the interest of simplicity the cost of working capital will be calculated on only two elements: the cost of carrying uranium concentrate inventory and mine supplies inventory. These costs are subject to independent audit by independent auditors at the option of Duke.

The carrying cost in any year is deemed to be the average prime bank rate for the Canadian Imperial Bank of Commerce in such year applied to the inventory value in accordance with the formula outlined below (the average prime bank rate to be the average of the said rate effective on January 1 and the said rate effective on December 31 of the relevant Delivery Year).

Concentrate inventory

It is agreed that Duke will pay for the carrying cost in any year of a protective concentrate inventory equal to one quarter of the deliveries scheduled in that year, giving in effect a three month protective inventory.

The formula is:

Prime bank rate per annum divided by 4 times operating cost (excluding transportation costs) as determined in part I–A of this appendix equals concentrate inventory carrying cost.

Mine supplies

Average mine supply inventory to be used as the basis of the calculation will be the arithmetic average of the actual monthly ending inventories during a year. The following formula gives effect to (a) an average three times turnover and (b) the fact that at any point in time approximately one month's purchases will not yet have been paid for:

Prime bank rate per annum times (.75 times average inventory) equals mine supply carrying cost.

III. Calculation of and Adjustments to Actual Cost of Operations and Cost of Working Capital

The Actual Cost of Operations together with the Cost of Working Capital applicable in each year calculated in accordance with Parts I and II of this Appendix shall be divided by the total pounds of U_3O_8 produced from the planned operations in that year to arrive at the cost of the combined segments of Actual Cost of Operations and Cost of Working Capital which shall be included in the Minimum Price. These combined segments of Actual Cost of Operations and Cost of Working Capital shall be subject to the following adjustments:

1. in the event that, in any year, the actual recovered grade per ton milled is less than the Notional Minimum Recovered Grade per ton milled, the divisor shall be the poundage arrived at by multiplying the actual tons milled times the Notional Minimum Recovered Grade, and

2. in the event that, in any year, the actual poundage produced is less than the Notional Minimum Poundage for that year for reasons other than Force Majeure then:

(*a*) The divisor shall be the Notional Minimum Poundage for that year; and

(*b*) The actual operating costs shall be adjusted to an estimate of the mine operating costs which would have been incurred had the Notional Minimum Poundage been produced; in such estimate appropriate recognition would be given to the effect of fixed and variable costs as they pertain to that year.

These costs and adjustments will be taken as recorded in the accounts of Rio (applied or allocated as outlined in this Appendix) and are subject to audit by independent auditors at the option of Duke.

For the purposes of the Agreement of which this Appendix forms a part and specifically with respect to the adjustments referred to above, the following definitions shall apply:

Notional Minimum Recovered Grade shall mean 1.4 pounds of U_3O_8 per short ton of ore recovered from milling and as determined as assays averaged over any and all mills operating within the Mining Plan during any Delivery Year.

Notional Minimum Poundage shall mean (i) if production of U_3O_8 is from one limb only, 4,000,000 pounds (x), or (ii) if production of U_3O_8 is from both limbs for the entire year, 6,000,000 pounds (y); provided that if production of U_3O_8 is commenced from a second limb during any year, then the Notional Minimum Poundage shall mean 4,000,000 pounds plus the prorated portion of y–x pounds determined for that portion of the year during which production is derived from the second limb.

IV. Amortization Allowance for Capital Expenditures

The amortization segment in the Minimum Price is intended to be a rate per pound which would recover the actual capital costs incurred on the agreed planned operations, in implementing the Mining Plan up to and including the year 1997, over the economically recoverable ore reserve poundage as and when produced.

The amortization segment of the Minimum Price in any year will be that rate per pound used to calculate book amortization in that year as recorded in the accounts and reported on the internal profit centre earnings statement of the agreed planned operations; (all in accordance with normal accounting practice consistently applied) subject to the following adjustment:

If the rate used in the accounting determination should at any time incorporate

any capital expenditures anticipated beyond 1997, such rate, for Minimum Price purposes, shall be adjusted to eliminate such expenditures.

The amortization rate used in the accounts in any year for the planned operations is and will continue to be the rate per pound required to amortize the said actual capital costs over the remaining proven, probable and indicated ore reserve poundage in accordance with the following formula:

The amortization segment per pound equal *a* plus *b* divided by *c* where

a is the unamortized book balance of capital expenditures actually incurred to the end of the preceding year,

b is the estimated capital expenditures required to deplete the ore reserves with the current year expressed in current dollars and future years in escalated* dollars (*—the escalation rates used will be those considered appropriate at the time in accordance with Rio's normal accounting practice).

c is the ore reserve poundage calculated annually on mining engineering principles by the mine management and reported to the Finance Department of Rio.

The amortization rate is reviewed each year by the company's external auditors with a view to ensuring that it is appropriate and conservative having regard to the factors known at the time.

The capital costs, amortization and determination of the amortization rate will be subject to audit by independent auditors at the option of Duke.

V. Allowance for Exploration

The allowance for exploration shall be $0.35 per pound (1973 Canadian Dollars) of U_3O_8 in concentrates escalated from 1973 in accordance with the provisions of Part VII of this Appendix II.

VI. Allowance for Income and Mining Taxes and Profit

The allowance for income and mining taxes and for profit shall be $1.70 per pound (1973 Canadian Dollars) of U_3O_8 in concentrates escalated from 1973 in accordance with the provisions of Part VII of this Appendix II.

NOTE TO PART VI OF APPENDIX II

The allowance for income and mining taxes and profit (the allowance) as set out in this Part VI has been calculated with the intent of obtaining a profit margin which will result in a discounted cash flow yield of 10% (real terms and net of taxes on all new capital employed to support production of ninety million pounds of U_3O_8 equivalent from the Elliot Lake operations of Rio as contemplated by the Mining Plan described in Appendix III to the Agreement between Rio and Duke. A detailed cash flow simulation would require an input: cost escalation and inflation forecasts, new and undepreciated capital balances, net cash inflows and outflows, etc., from all of Rio's operations to the year 1997.

It is self-evident that the accuracy of the resulting forecast of tax payments would be quite illusory. In order to avoid these difficulties and in the interest of both simplicity and fairness, the calculation of the required profit margin is thus derived from consideration of only the cash flows (in constant 1973 Dollars) related to the production and sale of the said ninety million pounds and taxes as though the contracts resulting from such sale and the reserves were the sole assets of a hypothetical mining company incorporated in the Province of Ontario. The cash inflow by years is calculated by deliveries multiplied by a constant operating profit margin before the deduction of amortization and taxes. The cash outflows by years is the capital cost schedule and the appropriate provincial mining taxes, corporate taxes and federal taxes as calculated under prevailing tax laws for the hypothetical mining company. Thus, the net present value (at 10%) of the net cash flows can be calculated and, by interpolation, between two or more cases at different prices the constant price element before amortization and taxes to yield a zero NPV can be determined. The allowance provided for profit and taxes is simply the calculated price element above less the amortization.

It is expressly understood between the parties that the inclusion of this note to Part VI of Appendix II does not provide, contemplate or imply any obligation upon or right to either party to adjust or seek to adjust the said gross profit allowance as escalated insofar as execution of the Mining Plan by Rio or any subsequent revised calculation made by Rio of the forecast cash flow yield from

the Mining Plan were to result in a discounted cash flow yield different from the aforesaid 10% calculated by Rio prior to the execution by the parties of this Agreement; and further that any adjustment to the said gross profit allowance, unless otherwise agreed between the parties, may be made pursuant only to the provisions of subparagraph 4B(j) of the main body of this Agreement.

VII. Escalation Factor To Be Applied to Allowance for Exploration and Allowance for Income and Mining Taxes

(*a*) For the purposes of determining the escalation factor to be applied to the Allowance for Exploration and the Allowance for Income and Mining Taxes and Profit, the Base Escalation Indéx shall be the simple average of the General Wholesale Price Index and the Consumer Price Index for the year 1973 each as derived from Table 5 "Selected Price Indicators" and Table 8 Consumer Price Indexes, Canada column headed "All Items", respectively in the Statistics Canada publication "Prices and Price Indexes".

(*b*) At the end of each year in which deliveries are made, Rio shall determine a simple average of the General Wholesale Price Index and the Consumer Price Index for the said year in the same manner as described in paragraph (a) above. The average obtained shall be called the Revised Base Esclation Index.

(*c*) Rio shall then determine the Escalation Factor for the said year by dividing the Revised Base Escalation Index by the Base Escalation Index.

(*d*) The Allowances for Exploration and for Income and Mining Taxes on Profit as stated in Parts V and VI hereof shall each be multiplied by the Escalation Factor for the year as calculated above and the products so obtained shall be the Allowance for Exploration and the Allowance for Income and Mining Taxes and Profit respectively for the year to which the Escalation Factor is applicable.

This is Appendix III to an Agreement dated the Fourth (4th) day of September, 1974 between Duke Power Company (Duke) and Rio Algom Mines Limited (Rio).

Outline of Mining Plan

1. The quantity (20 million pounds U_3O_8) purchased and sold under the within Agreement forms part of a total projected sales plan of some 90 million pounds U_3O_8 all on a long-term delivery basis. The Mining Plan outlined below is designed to produce all the tonnage necessary to meet the projected sales plan.

2. The sales plan, broadly, contemplates the probable conclusion and governmental approval within the fairly near future of sufficient additional long-term sales agreements to commit the balance of some 70 million pounds. The latter quantity is expected to be sold partly for domestic Canadian end-use and partly to export markets. While it is impossible to be precise in advance of the conclusion of such additional sales on the delivery and production scheduling which will be agreed to with the buyers concerned there are natural limitations on Rio's ability to deviate substantially from the Mining Plan outlined below and deliveries within the 70 million pounds of projected additional sales would have to be spread on a relatively even annual basis from a period starting not earlier than around the end of the present decade until the early 1990's, with the probability that some balance will be delivered, at lower annual rates, up to the mid-to-late 1930's.

3. Rio anticipates that sufficient ore will be available to produce the total contemplated 90 million pounds of U_3O_8 from the following designated properties, which form the basis of the Mining Plan—Quirke, New Quirke, Panel, Nordic, Lacnor, Milliken and Stanleigh. Other dormant and potential ore bodies owned by Rio in the Elliot Lake area are specifically excluded from the Mining Plan. Total ore reserves in the proven, probable, and indicated categories within the designated properties are at present caculated to be approximately 125 million pounds of U_3O_8 recoverable from mining to an in situ cut-off grade of one pound of U_3O_8 per short ton of ore. During the term of the Mining Plan the average grade recovered in the mill is currently anticipated to be 1.6 pounds of U_3O_8 per short ton of ore.

4. The Mining Plan required to meet the sales plan will, of necessity, require regular annual production from two separate areas, referred to respectively as the North Limb and the South Limb. Three of the designated properties

(Quirke, New Quirke and Panel) are situated in the North Limb and four of the designated properties (Nordic, Lacnor, Milliken and Stanleigh) are situated in the South Limb. All current production is derived exclusively from the New Quirke mine and the Quirke mill.

5. The Mining Plan contemplates an expansion of mill capacity at Quirke towards the end of this decade from the current 6,000 tons per day to 7,000 tons per day. Around the end of this decade or the beginning of the 1980's as available working places at Quirke decline, the Panel mine is scheduled to be re-opened and will supplement ore feed to the expanded Quirke mill at an increasing rate. With respect to the South Limb, the Mining Plan contemplates mining from all the designated properties as a single mining entity but with mills located at both the Nordic and the Milliken properties, unless it is decided closer to the time of production that a single large new mill would be a preferable alternative or that the Nordic mill would be expanded. As there would be considerable practical difficulties if the expansion of North Limb operations and the reactivation of South Limb operations were to be carried out simultaneously, the Mining Plan contemplates fulfilling both these tasks on a sequential basis, the reactivation of the South Limb very probably following in time the expansion of the North Limb, although the Mining Plan may have to be modified in the event that a somewhat different scheduling of delivery requirements is called for under the balance of sales agreements still to be concluded within the overall sales plan.

6. The incremental capital cost of carrying out the Mining Plan is currently estimated to be approximately One Hundred and Twenty Million Dollars ($120,000,000.00) in 1973 Dollars. This anticipated expenditure includes the expansion of the Quirke mill, the re-opening of the Panel mine, the total reactivation of the South Limb as outlined above, and replacement capital required during the term of the within Agreement and the terms of the balance of anticipated additional sales agreements, all limited to capital expenditure required to provide for production and sales of up to 90 million pounds of U_3O_8 in total. Any capital expenditures incurred or to be incurred beyond the scope of the Mining Plan or the related sales plan, as for example with respect to production from properties other than the designated properties or with respect to sales additional to those contemplated in the sales plan will be treated entirely separately and outside the scope of the within Agreement.

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