The Great Uranium Flap

Westinghouse faces hefty financial losses, while the case puts GulfOil’s reputation in peril.

By ANTHONY J. PARISI

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

With his florid face, trim physique and sculpted good looks, Robert Kirby looks a movie stereotype of a gambling man. In fact, he is a gambler. In 1973, after a heated argument with contract X, which earnings plummeted to a fraction of their customary level because of the company’s buyout of a quartet of bad business ventures, he put most of the assets of Westinghouse on the line by betting on a $2 million in uranium supply contracts.

He bet that an unusually sharp run-up in uranium prices — a run-up that had caught the company short some 50 million pounds — offered the same sort of legal umbrella that an act of God provides an insurer.

Then, in 1975, documents surfaced in Australia proving the existence of an international uranium cartel organized by producer governments to orchestrate sales and thereby control prices. The United States knew of the cartel but declined to participate.

Westinghouse, however, contended that the cartel, through a Canadian connection, had infiltrated the American market and was the culprit behind the uniquely sharp increase in uranium prices in this country. The alleged domestic ringleader: Westinghouse’s corporate neighbor, the Gulf Oil Corporation. “This was one of the massive rip-offs of all time,” he said. “I don’t know if there’s any of it anymore.”

What’s at Stake

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

In a sense, Gulf has far more at stake than its neighbor. To Gulf and Westinghouse, the case of the cartel is mostly a matter of money. A lot of money, to be sure, but after out-of-court settlements and tax write-offs, perhaps only $90 million or so. To Gulf, however, its past tainted by political payoffs and the ouster of a disgraced chairman, its present marred by earnings setbacks and a round of belt-tightening, and its future clouded by critics of multinational oil companies who would force the company out of the uranium business, the cartel dispute is a matter of reputation and on a grand scale.

It is also a personal concern to Jerry McAfee. With his untarnished image, Mr. McAfee was brought in two years ago from his post as head of Gulf Oil Canada Ltd. (the Gulf Oil Corporation owns 68 percent of Gulf Oil Canada) to wipe up after his predecessor. The accusation by Westinghouse, he says, his forefinger repeatedly tapping his chest, “tended to be a blot on my personal scutcheon.”

Hydra-Headed Battle

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

What was to become a hydra-headed controversy started on Sept. 8, 1975, when Westinghouse shocked the corporate world by announcing that it would not honor its contracts to supply nuclear fuel to 27 electric utilities to which it already sold nuclear reactors. Over the previous 30 months, the company pointed out, uranium oxide prices had shot up from about $6 a pound, a level they had hovered around for years, to $25 a pound. Something was clearly amiss in the market, Westinghouse said, and the company invoked a provision of commercial law that renders a contract void if it proves “commercially impracticable.” Uranium prices continued their extraordinary climb after the Westinghouse announcement, reaching almost $60 a pound in April, 1978. The fuel now fetches close to $44.

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

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

Everyone agrees that a cartel was formed early in 1972, though whether it did anything illegal under international law is disputed. And Gulf concedes that its Canadian subsidiary joined the group — by order of the Canadian Government and without running afoul of United States law. But Gulf insists that the organization specifically excluded the American market from its plans.

The company further argues that the cartel, which was formed at a time when global supplies had outrun demand, broke up after the world worked off the surplus on its own and market prices stabilized.

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

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

Last May 8, Gulf retaliated against its Pittsburgh neighbor with a counter-
suit in Chicago. There Gulf alleged that Westinghouse, in promising to supply uranium it did not have, was conspiring
to monopolize the markets for nuclear reactors, fabricated nuclear fuel and uranium. Through affiliates, including the San Diego-based General Atomic Company, Gulf is in all three busi-
nesses, though it no longer actively is trying to sell reactors. Gulf owns 59 percent of General Atomic; the other owner is a subsidiary of the Royal/Dutch Shell Group.
The third round of cartel cases in-
volves Gulf, General Atomic and several domestic uranium processors. These Gulf adversaries have con-
tacted to supply uranium to General Atomic, which in turn has middleman
contracts to furnish nuclear fuel to a number of utilities, although several of the
producers are now selling Gulf and General Atomic were named by Westinghouse in its Chicago complaint, these suppliers have latched onto the theory that the price run-up was
inspired by the cartel to which Gulf —
and indirectly General Atomic — be-
longed. Thus, they argue that their agreements with General Atomic are invalid. If they succeed in getting out of
the contracts, they will be free to sell
their uranium at today's premium prices, taking windfalls of some 300 percent.
The most publicized of these cases is a con-
frontation with United Nuclear, a large independent producer. United Nu-
clear was originally threatened with a suit by Gulf, which in the end settled an
out of court for $25 million. Westinghouse, however, has continued its
legal battle. United's decisions have been a subject of complaint to industry
courts and regulatory agencies. Westinghouse contends it
has not been able to obtain uranium at the prices
it was promised. The case is
now headed to court.

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

Key Uranium Cartel Lawsuits Involving Gulf and Westinghouse

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

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

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

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

"Among other things, the cartel dis-
pute threatens some of Gulf's premis-
ging new ventures in uranium. In addi-
tion to its interest in General Atomic,
the company wants to buy and
process some 34 million pounds of uranium, Gulf has its own uranium business that we're pretty pleased with," said Mr. McAfee.
The company is now opening up
troika of executives and a growing
cent or so in the first quarter. The
company has stretched itself a little too thin in recent years with a series of ambi-
tuous development programs, shrink-
ing its cash reserves to an uncomfort-
able level. Austerity has set in — Mr. McAfee recently reduced capital spending and ordered cuts in the work-
force. Understandably, he would like to concentrate on these problems; yet al-
ways there's the cartel business.

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

Not that business is suffering all that much. Even after writing off extraordinary losses of $30.5 million to cover out-
court settlements with seven utili-
ties for about 5 percent of the uranium in dispute, the company increased earnings in the first quarter by 5 per-
cent, to $258.8 million — a far cry from the $31.1 million it made in 1974, when it had to write off some bad projects. But Mr. Kirby pointed out that the cor-
poration's total outside legal fees last year were $25 million.

"I think we were caught in a web that I never understood," Mr. Kirby was musing over the events of the past three years, "I knew then, I just knew then, there were things I would have done differently. But I didn't know the cartel was operating."

Settlements?
Now Mr. Kirby is talking about set-
tling with his adversary neighbor. "I don't think it's ever too early to talk about settlement," he said. "I'm sure they have a problem. If they settle, they sort of get themselves open to suits from any other company that believes it has been damaged."

Mr. McAfee considers the question. "There's got to be a way to put these pieces together," he reasons in a talk that
even a fair settlement of this serious
case might conclude is to be possible and, indeed, in the national interest."