

EAST AFR. PRCT
12729

CO
12729
REC'D
REC. 26 FEB 19

Am. Electric
Power & Light Co. Ltd.

1919

24 Feb.

at previous Paper.

6689

Electricity Ordinance & Co. Concession

*Submit City Council opinion - state
that a clause safeguarding Co's interest
may be inserted in Ordinance & Annex
Suggested*

Mr. Bush, Mr. Bottomley.

Electricity in E.A. is a painful subject to all who have had to do with it, and I am afraid it is necessary now to add you to the number.

You will find in the red cover ^{the} ~~the~~ original concession of 1906, which was to run for 10 years, and to be continued for a further 15 years if, during the first term the Govt. were satisfied with the working of the concern. (Clause 20). The ten years expired in 1916, when we had for some years been in communication with the Company as to their removal to a more powerful ^{plant} (fall than the one which they used up to that time. The negotiations went on without any reference being made to the termination of the first period of 10 years. On the other hand, there have been formal complaints addressed to the Company by the Prot. Govt. which, I imagine, preclude the Company from claiming that the previous offer of a further period of 15 years has tacitly been carried into effect.

It is unnecessary at this stage to go into

Subsequent Paper.

6686

the many differences of opinions as to the terms of the revision of the lease. The immediate point is that, whereas the original concession gave a monopoly for the supply of electricity to the Nairobi district, a monopoly which, as I read Clause 20, would continue throughout the additional period of 15 years, the proposed agreement would only continue the monopoly of supply for a short period (not ^{yet} defined) of the term of the lease of the new fall. [Negotiations for the revision of the lease have been held up pending the receipt of the draft of the Electricity Ordinance, and secondly for the revised draft as amended in Committee which reached us in November last].

The Company take exception to the terms of the Ordinance on the ground that it interferes with their monopoly rights under the old concession, and they do not in any way refer to the effect of the Ordinance on the proposed terms of the revised concession, which was the point which we had chiefly in mind.

The ~~provisions~~ ^{prohibition} of monopolies in Clause of the Bill was one of the points ^{introduced} ~~introduced~~ by Mr. J.H. Rider in his letter of the 30th of January. (6689)

Personally I see no objection at all to the inclusion in the Ordinance of a clause saving the rights of the Company ^{under} ~~in~~ their existing concession (but of course without ^{reference to} ~~qualification~~ of any new concession that may be ^{substituted} ~~constituted~~ for it). This we can arrange at once with the Gov. by telegraph, but the first thing to do seems to be to decide what the rights of the Company under the existing concession now are both as regards their monopoly (for the present purpose) and also generally (for the purpose of future negotiations as to revision).

It seems to me that the Company have either no rights at all under the old concession, which must be taken to have elapsed in 1916, or have ^{monopoly} rights for the further period of 15 years. If the revision of the

the many differences of opinion as to the terms of the revision of the lease. The immediate point is that, whereas the original concession gave a monopoly for the supply of electricity to the Nairobi district, a monopoly which, as I read Clause 20, would continue throughout the additional period of 15 years, the proposed agreement would only continue the monopoly of supply for a short period (not defined) of the term of the lease of the new fall. [Negotiations for the revision of the lease have been held up pending the receipt of the draft of the Electricity Ordinance, and secondly for the revised draft as amended in Committee which reached us in November last].

The Company take exception to the terms of the Ordinance on the ground that it interferes with their monopoly rights under the old concession, and they do not in any way refer to the effect of the Ordinance on the proposed terms of the revised concession, which was the point which we had chiefly in mind.

The ^{prohibition} ~~provision~~ of monopolies in Clause of the Bill was one of the points ^{introduced} introduced by Mr. J.H. Rider in his letter of the 30th of January. (6689)

Personally I see no objection at all to the inclusion in the Ordinance of a clause saving the rights of the Company ^{under} in their existing concession (but of course without ^{reference to} qualification of any new concession that may be ^{constituted} constituted for it). This we can arrange at once with the Gov. by telegraph, but the first thing to do seems to be to decide what the rights of the Company under the existing concession now are both as regards their monopoly (for the present purpose) and also generally (for the purpose of future negotiations as to revision).

It seems to me that the Company have either no rights at all under the old concession, which must be taken to have elapsed in 1916, or have ^{monopoly} rights for the further period of 15 years. If the revision of the

congress, on way to a happy end and there is
no difficulty in making an arrangement as to the
position of the ~~company~~ since 1916, but it is very
desirable that we should now be assured how we stand
both as regards the plea of breach of faith in the
matter of monopoly and generally as regards our position
if the negotiations for revision have to be broken off.

I have a quantity of previous papers as to the
negotiations which I shall be glad to show you if you
wish.

L to an
at 11:30
Friday, 1/11/19
12/11/19

W. C. C. 4. 3. 19
If now or later you can go through the
O.D.C. I shall be very glad to have read
it without finding any points for comment
other than those raised by the Board +
5272 + 6689 - it is a ~~very~~ ~~long~~ ~~document~~ and
has no comments. It is a ~~very~~ ~~long~~ ~~document~~
of the ~~company~~ ~~and~~ ~~the~~ ~~Board~~
Company + to any other ~~legal~~ ~~point~~
the O.D.C. may go through ~~it~~ ~~for~~ ~~as~~
I am concerned.

W. C. C. 4. 3. 19

The ~~main~~ ~~point~~ ~~of~~ ~~the~~ ~~1906~~ ~~Agreement~~ is
I think that if at the end of 10 years the Contract
has supplied electricity to the satisfaction of the Govt,
& has otherwise performed his Covenants - the agreement
automatically extends for another 10 years. This
means the whole apt. & every part of it.

Whether the Govt. were satisfied is a question
of fact, [& I have been looking for evidence on the

A
B

Subject. There have been no complaints

but nothing to show any dissatisfaction.

It occurred to me that the new concession might have originated out of the dissatisfaction of the Joint with the Contractor's performance under the old one & of a determination to hold that the 1906 Concession unless the Contractor agreed to new terms.

I have read the whole of the papers relating to the proposed new concession - & the position seems to be quite the contrary.

The Contractor pressed for a new concession owing to the insufficiency of water in relation to the growing needs of Nairobi, & the Joint seem to have been chiefly influenced by the desire to use the water at present within the Contractor's powers for other purposes.

No dissatisfaction is expressed. On the contrary the CO Committee reported in favour of preserving the status quo.

Accordingly I think that the 1906 Concession is not valid until 1931.

To Decree and the Company's
the same the desire to be placed

x The de
1906 - 191
The Joint
"and 192

Subject. I have seen some ~~of the~~ Complaints
but nothing to show any grounds for a concession.
It occurred to me that the new concession
might have originated out of the dissatisfaction
of the Govt with the Contractor's performance under
the old one, & of a determination to bind the
1900 concession under the Contractor agreed to new
terms. I have read the whole of the pp relating
to the proposed new concession - & the position seems
to be quite the contrary.

The Contractor pressed for a new concession
owing to the insufficiency of water in relation
to the growing needs of Nairobi, & the Govt seem to have
been chiefly influenced by the desire to use the
water at present within the Contractor's powers
for other purposes.

No dissatisfaction is expressed. On the
contrary the CO Committee reported in favour
of preserving the status quo.

Accordingly I think that the 1900
concession is now valid until 1931.

to understand the Company's
the Govt's desire to be placed

x The
case -
the Govt
said

C

Subject. I have been ~~some~~ ~~of~~ ~~the~~ ~~Complaints~~
but willing to show ~~any~~ ~~of~~ ~~the~~ ~~disposition~~
It occurred to me that the new concession
might have originated out of the dissatisfaction
of the Govt with the Contraction fee payment under
the old one & of a determination to hold that the
1906 concession unless the Contractor agreed to new
terms. I have read the whole of the proceedings
to the proposed new concession - & the position seems
to be quite the contrary.

The Contractor pressed for a new concession
owing to the insufficiency of water in relation
to the growing needs of Nairobi, & the Govt seem to have
been chiefly influenced by the desire to use the
water at present within the Contractor's powers
for other purposes.

No dissatisfaction is expressed. On the
contrary, the CO Committee reported in favour
of preserving the status quo.

Accordingly I think that the 1906
Concession is now valid until 1931.

To Decree and the Company's
the same to desire to be placed

& The
...
The
"and"

C

For all purposes outside the lines they ^{are} where
it conflicts with or adds their burden under the Concession.
I have not had time to read the bill

is primarily
concerned
with the
to the
concession
and.

Let (I will keep a copy for Sunday afternoon recess) but
the points with respect to which it affects the
Log's Set out in Mr. Rider's letter.

It is necessary to see to what extent the Log's
claim to exemption is for assuming that the
old Concession remains.

No one seems to have referred to clause 15 -
which expressly provides that the Contractor shall
not be exempt from future legislation.

What exactly does that mean? I do not think
it ~~means~~ contemplates their liability to
legislation which takes away a fundamental
right given them by the Concession, but I think
it would include legislation providing for
general rules as to the conduct of business by
the electrical undertakers, & would include
any reasonable & necessary burdens which
might be imposed with a view to ^{the} benefiting
the public.

Applying these principles, it seems to me
that the Log should not be prejudiced in respect

to their monopoly in the Niagara District, or
 in their right to use the water falls as provided
 in their Concession, but, as at present advised,
 I do not see why they should be exempted from
 the regulations relating to the safety of the Public, for
 securing a regular supply of power, to the former
 of accounts, to the testing of measures, & for the
 execution of new works.

Before coming to a definite decision we would
 like to hear exactly what the Coy have to say - &
 they should supply a statement showing exactly
 how they suggest they are prejudiced by the
 Ord^s in relation to the 1906 Agreement.

A.G.B. 7/3/19

Mr. Guide.

I have not reviewed a summary all the
 relevant papers (the bundle came to office after
 leaving her books), but the above minutes
 will serve to give you the outline of the
 position.

I write to the C^o as he asks further.
 We respectfully have no need to feel that
 that we are advised that the retention of
 the 1906 agreement is in effect, but that
 is "concomitant with the Ord^s" we must
 call them so. I expect that the obstruction
 of the various local officials towards
 the execution of the Ord^s will change

Collection
 General
 Minutes
 4030/11
 1000 x 1
 1000 x 1
 the 2000
 Concom

to their monopoly in the Niagara District, or
 in their right to use the water falls as provided,
 in their Concessions, but, as at present advised,
 I do not see why they should be exempted from
 the regulations relating to the safety of the Public, for
 ensuring a regular supply of power, to the former
 accounts, to the testing of turbines, & for the
 erection of new works.

Before coming to a definite decision we would
 like to hear exactly what the Coy have to say - &
 they do so by a statement showing exactly
 how they suggest they are prejudiced by the
 Ord^s in relation to the 1906 Agreement.

A.G.B. 7/3/19

Mr. Girdler

I have not reviewed in summary all the
 relevant papers (the bundle came to him after
 leaving his office), but the above minutes
 will serve to give you the outline of the
 position.

Collect
 4000
 4000
 4000
 4000
 4000
 4000

I write to the C^o as he made further.
 We would be grateful to have as much to tell them
 that we are advised that the intention of
 the 1906 agreement is in effect, but that
 in consequence with the Gov^t we must
 call them so. I expect that the obstruction
 of certain local officials towards
 the Government of the Province will change

NAIROBI ELECTRIC POWER & LIGHTING COMPANY, LTD.

ADDRESSES:
"EN. LONDON"
"NAIROBI"

4053 AVENUE

5TH EDITION.

60, MARK LANE

LONDON

26th February, 19

12729

REC'D

26 FEB 19

351

With reference to our request that an opportunity might be afforded us to make any necessary representations on the proposed new East African Protectorate Electricity Ordinance, we have the honour to inform you that we have submitted a copy of the Ordinance together with our concession to eminent Counsel with a request that we be advised as to its effect upon the same.

We now beg to enclose a copy of the Opinion as received from him and would respectfully request that a clause effectively safeguarding the Company's interests may be inserted in the Ordinance in the manner he suggests.

2. Until they are assured that their future position under their first Contract will not be prejudiced by the legislation of the Protectorate Government it is impossible for the Company to consider the possibilities of, or what their

Secretary of state
for the Colonies,
Colonial Office,
London, S.W.1.

50 MARK LANE

1920

This is to certify that the above named
 person has been appointed as a member of the
 committee for the purpose of...
 and to have the honor to certify that he has
 taken a course of the studies...
 to which he has been appointed...
 in the month of...

We have the honor to certify that the above
 named person has been appointed as a member of
 the committee for the purpose of...
 and to have the honor to certify that he has
 taken a course of the studies...
 to which he has been appointed...

We have the honor to certify that the above
 named person has been appointed as a member of
 the committee for the purpose of...
 and to have the honor to certify that he has
 taken a course of the studies...
 to which he has been appointed...

WALTER ELLIOTT & LITTLE COMPANY
 50 MARK LANE
 LONDON, E.C. 3

50 MARK LANE

1919

352

These matters will be under, any further arrangement between themselves and that Government.

It is the honor to be

Sir,

Your obedient servants

For and on behalf of

NATIONAL ELECTRIC POWER & LIGHTING CO. LTD.

J. A. Niglett

Secretary.

C. O.
12729
REC:
REC: 26 FEB 19

...the Government ...
 ...the Government ...
 ...the Government ...
 ...the Government ...
 ...the Government ...
 ...the Government ...
 ...the Government ...
 ...the Government ...
 ...the Government ...
 ...the Government ...

...the Government ...
 ...the Government ...
 ...the Government ...

The proposed ordinance is an amazing breach of faith by the Government which if it were a Bill, would not be permitted by a House of Commons Committee.

By the Concession the Company were granted a certain area with exclusive rights in that area for a certain period of time. The ordinance radically alters those rights and in effect proposes to take from the Company privileges of great pecuniary value without any compensation.

A House of Commons Committee assuming it passed the preamble would undoubtedly insert a clause for the protection of the Company whereby the rights and privileges of the Company as defined by the Concession would be saved intact. No other course is consistent with good faith on the part of the Government who granted the concession and license to assign upon the faith of which the Company invested their money.

If the Government desired compulsorily to expropriate the Company on payment of fair compensation on the ground that the Company were not satisfactorily supplying the area, it would be proper for the Government to introduce an ordinance saying so in express terms.

Under the circumstances I advise that the Colonial Office be pressed to insert an effective protection clause: and that if they refuse the matter be raised in Parliament.

(signed) LESLIE SCOTT.

Goldsmith Buildings,
Temple,
E.C.

20th February, 1919.

24th February.

SIR,

With reference to our request that an opportunity might be afforded us to make any necessary representations on the proposed new East African Protectorate Electricity Ordinance, we have the honour to inform you that we have submitted a copy of the Ordinance together with our concession to eminent Counsel with a request that we be advised as to its effect upon the same.

We now beg to enclose a copy of the Opinion as received from him and would respectfully request that a clause effectively safeguarding the Company's interests may be inserted in the Ordinance in the manner he suggests.

2. Until they are assured that their future position under their first Contract will not be prejudiced by the legislation of the Protectorate Government it is impossible for the Company to consider the possibilities of, or what their

Under Secretary of State
for the Colonies,
Colonial Office,
London, S.W.1.

The Under Secretary
of State.

24.2.19.

their position would be under, any further arrangement
between themselves and that Government.

We have the honour to be

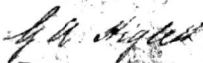
356

Sir,

Your obedient servants

For and on behalf of

THE NAIROBI ELECTRIC POWER & LIGHTING CO.-LT



Secretary.

The is a brief note of the Company's history & is merely a condensed account of what has taken place & is not a copy of the original document.
9.2.19
Admiral Nelson

The Nairobi Electric Power & Lighting Company Ltd, who supply electric light and power to the Nairobi district of the East Africa Protectorate under a contract between them and the Government, commenced operations in 1906 completing their plant to the satisfaction of the Government in 1908, in proof of which their deposit of £1500 under the terms of the contract was returned to them.

357

2. The Company, which develops its electric energy by water power, saw that the falls set aside for their use would be insufficient for the growing needs of the district and made representations to the effect forthwith, but without result.

3. In 1912, however, the Government realised that what ^{the Company} they had ^{long} ^{ago} was correct and accordingly entered into negotiations with them to the view to an alteration of the contract under which the Company was to move to larger falls further away and to extend the term of its operations from the 25 years of the original contract, to 50 years.

4. These negotiations were, the Company imagined, completed in ^{early} 1914, when the Company received a letter stating that the Secretary of State for the Colonies approved the alterations agreed between the local Government and the Company, and that the (R.A.F./) Crown had been instructed to prepare a draft agreement to embody

While awaiting this draft contract the Company, as they had ^{been} ^{used}, proceeded forthwith to do everything possible to accelerate development and use of the new falls (the Nairobi district by now feeling the effects of shortage of power) and by July 1914 they

in the position that their finance was arranged & their plans & specifications for the use of the KALAs were prepared & tenders for necessary plant were called for and had been received and were sitting ⁱⁿ ~~in~~ ^{ready} ~~ready~~.

6. The outbreak of war brought about a cancellation of the tenders & the market was still open and the Treasury restriction on the raising of 358 million finally prevented any further action.

In the meantime, to meet the immediate shortage of supply, the Government sent out an auxiliary steam engine by a second ~~to~~ to try and tide over.

In 1915 they sent their Consulting Engineer Mr B.W. ~~to~~ to see what steps could be taken to help carry on and they requested the Government to furnish him with the necessary ~~information~~ ^{information}.

Also a draft contract was ~~sent~~ ^{sent} to the ~~Government~~ ^{Government} ~~in~~ ⁱⁿ 1916.

While they have received ~~information~~ ^{information} of all kinds ~~and~~ ^{and} already agreed terms which were made by the local ~~Government~~ ^{Government} have heard no further word about the draft contract.

It has thus remained in oblivion the local Government have ~~not~~ ^{not} electricity ordinance, which if it became law, would render ~~void~~ ^{void} out of the very agreement they themselves presented to the ~~Government~~ ^{Government} and which contained the terms which had received the approval ~~of~~ ^{of} the Secretary of State, illegal, and thus impossible.

As if this were not sufficient, in framing the new ordinance, the Government are also proposing to legislate in such a manner as absolutely alter the basis upon which the Company have worked under their old contract, which will throw their whole business into confusion and will render the contract ^{on the strength of} ~~under~~ which they ever embarked upon their various responsibilities in E.R.A. to all ^{practical} effects null and void. 359

The new ordinance, which consists of some 152 clauses, goes into minute details such as are, in England, only inserted, as and where necessary, in each Company's private bill, according to the nature of the case, is so complex that it is impossible briefly to set out details of how it prejudices the Company but the Company has submitted it together with a copy of its contract to Mr Leslie Scott, K.C. M.P. for his advice as to how it affects them, and his opinion (enclosed), in reply, is sufficiently illuminating, coming as it does from an independent person who had no previous knowledge of the Company's existence, merely on the perusal of the two documents placed before him.

OPINION.

369

The proposed ordinance is an amazing breach of faith by the Government which if it were a Bill, would not be permitted by a House of Commons Committee.

By the Concession the Company were granted a certain area with exclusive rights in that area for a certain period of time. The ordinance radically alters those rights and in effect proposes to take from the Company privileges of great pecuniary value without any compensation.

A House of Commons Committee assuming it passed the preamble would undoubtedly insert a clause for the protection of the Company whereby the rights and privileges of the Company as defined by the Concession would be saved intact. No other course is consistent with good faith on the part of the Government who granted the concession and license to assign upon the faith of which the Company invested their money.

If the Government desired compulsorily to expropriate the Company on payment of fair compensation on the ground that the Company were not satisfactorily supplying the area, it would be proper for the Government to introduce an ordinance saying so in express terms.

Under the circumstances I advise that the Colonial Office be pressed to insert an effective protection clause: and that if they refuse the matter be raised in Parliament.

(signed) LESLIE SCOTT.

Goldsmith Buildings,
Temple,
E.C.

28th February, 1919.

Downing Street,

14/3 March, 1919.

DRAFT.

Secretary,

NAIROBI ELECTRIC POWER
AND LIGHTING COMPANY, LTD.

MINUTE.

Mr. Bottomley, 14-3-19

- Mr. Grindle.
- Mr. H. Lambert.
- Mr. H. Road.
- Mr. G. Pildes.
- Mr. Amery.
- Mr. Milner.

Sir,

I am etc. to acknowledge the receipt of your letter of the 24th of February enclosing a copy of an opinion by Mr. Leslie Scott, K.C., W.P., regarding the effect on the constitution of the Nairobi Electric Power and Lighting Company of the draft Electricity Ordinance, which it is proposed to pass, the E.A.P.

2. Lord Milner will give consideration to the matter, and in the first place he will be glad to be informed more precisely of the views of the Company, and for this purpose to receive from you a statement showing exactly how the Company suggests that they would be prejudiced by the draft Ordinance in relation to the agreement of July 26th, 1906.

I am, etc.,

GH