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Nairobi Electric
Power Co.

Maintenance of
Electrical Power Supply
Ordinance

1919
15 Oct

Last previous Paper.
58642

Submits representation protesting
against

Sir H. Read,

Mr. Rushe and I are going to discuss the
general question of the Electric Power Ordinance and
the position of the Mombasa Company under it with
Mr. McClain and Mr. Rider on Monday. It is impossible
to say anything on this point to the Nairobi Company
yet.

As regards the Maintenance of Electrical
Supply Ordinance, we have nothing from the Gov. but
you will see the history of it from 54509 ^{below}.
The Nairobi Company have no real reason to object
to the Govt. taking powers to deal with the public
emergency which would be caused by a deliberate
failure to supply electric current, and they have not
much case for making a fresh grievance in this matter.

? Acknowledge receipt of their letter
relating to the Maintenance of Electrical Supply
Ordinance, and add that the question of the Electricity
Ordinance and the Nairobi Company's position and r
it are still under consideration.

Under of 10

Next subsequent Paper.
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64415

10 once
H. J. 17/5/19
Oct 17 1919

THE NAIROBI ELECTRIC POWER & LIGHTING COMPANY, LTD.

TELEGRAPHIC ADDRESSES:
"NIRELPO, PEN, LONDON"
"ELECTRIC, NAIROBI"
PHONE NO.
4855 AVENUE
CODE-5TH EDITION

50, MARK LANE.

LONDON, 15th October, 1919
E.C.1

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Recd
R: 16 OCT 19

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Sir,

We have received from East Africa copies of local papers dated August 23rd in which it is reported that a "Maintenance of Electrical Supply Ordinance" has been passed by the Legislative Council.

On account of the fact that this Ordinance does not appear to have been previously published in the Official Gazette we are forced to rely upon the press report which may or may not be correct, because the Ordinance, as reported to be passed would appear to have effects which could hardly have been intended, thus rendering it necessary for us to submit a representation on the subject without delay.

We understand the Ordinance to be an emergency measure introduced by the Protectorate Government in order to obtain power to enter upon and take possession of the works of the Mombasa Electric Co, that Company's Concession having apparently expired by effluxion of time and the Government having failed to come to terms with that Company for the supply of electricity in the future.

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

The Mombasa Company having given notice to its consumers of their intention to discontinue their supply as from the 15th September 1919, the legislation which has now apparently been passed by the Legislative Council is reported to provide that should a supplier of electricity cease to supply, whether he ceases on account of the fact that his contract with Government to supply has concluded, or for any other reasons, the Government shall have the right to take possession of and use his plant paying him interest upon its then value at the moment, as assessed by valuation, together with depreciation.

While the Ordinance is presumably designed to meet the situation arising out of the circumstances above referred to, it is framed in general terms and would apply to the undertaking of the Nairobi Company. It would entirely abrogate the rights secured to that Company under the terms of its existing Concession dated the 26th of July 1906, in the event of the Concession being determined either by the effluxion of time at the expiration of 25 years from the 8th April 1906, or from any cause during such period. Both these contingencies are provided for by clauses 22 and 23 of the Nairobi Company's Concession, which confer upon the Protectorate Government an option to take over the Company's undertaking at a "prescribed price" to be ascertained by arbitration, if necessary, upon the basis of the market value of the Company's property at the time of requisition, with the addition in the former contingency of 25% by way of allowance for compulsory purchase, goodwill and profits.

The rights of the Protectorate Government to ensure continuity of supply is thus amply secured on equitable terms. The substitution of a right to take possession of the Company's undertaking without making compensation, the Government merely

paying interest on the valuation of works at the time of taking possession together with depreciation while under Government control is, it is submitted, in derogation of the rights secured to the Company under this Concession and wholly unnecessary having regard to the provisions of the Concession above referred to.

The Government are therefore, in effect, taking powers enabling them to avoid the payment of the price agreed by the contract if they desire possession of the works, and we would respectfully submit that the necessary amendment may be made in the Ordinance to preserve the sanctity of the contract entered into with us by the Government themselves on the faith of which shareholders in England invested their money in the Protectorate.


We venture respectfully to request that early consideration be given to this urgent matter and to observe that it affords a further ground of complaint additional to the matters referred to in our Memorandum dated the 26th May 1919.

We have the honour to be,

Sir,

Your obedient servants,

for THE NAIROBI ELECTRIC POWER & LIGHTING COMPANY, LTD.


Secretary.

MOMBASA'S LIGHT Government will Take Works Over EMERGENCY BILL

(From our Special Representative.)

Mombasa, Saturday.

The Mombasa session of F.E.A. Legislative Council concluded to-day and the Council meets again at Nairobi in November. Not before rising the Council took in hand the solution of Mombasa's threatened plight when the Electric Light and Energy Co. come to close down their works on September 16, according to the public notice they have issued.

The Governor announced that a state of affairs had arisen in Mombasa which necessitated his signing an emergency certificate authorising the introduction of a Bill designed to ensure the continuance of public lighting, that the town might not be left in darkness. His (General Sir Edward Northey) had been in touch with the Electric Company, and their demands for terms under which they would be willing to supply light after September 16 were such that no Government could accept them. Therefore the Emergency Bill would make provision for the maintenance of electric light and energy.

The Attorney-General thereupon moved the suspension of Standing orders while the Council passed the readings of the Bill. This was formally agreed to.

Mr. Barth then read a brief Bill, the effect of which was to empower the Government by its agents to enter upon the premises of the Company to take over the electric plants as it stood, and to maintain the town's supply, allowing the Company compensation for the use of their property and for depreciation, as determined by arbitration.

Mr. MacGregor Ross introduced the first reading of the measure, and remarked that it was entirely competent for the operations (the Company) to close down and throw the town into darkness at any moment they chose. So it was necessary the Government should act in order that no lapse of lighting could occur.

PROMPT MEASURE

The Bill was read a first time and on a subsequent motion (seconded by Sir Charles Dering) was read a second time. Then the Council went into Committee to consider the clauses for the third reading.

Mr. McLehann Wilson said he was gratified at seeing the Government take this very prompt measure, and he hoped in future it would apply this principle to certain other matters.

Mr. Redwell said the F.W.D. rightly declared that had the Electricity Ordinance not been hung up (in London) the problem would not have arisen. At some time full discovery should be given so as to see fair play given to the Company.

In answer to a query, Mr. MacGregor Ross explained that the term "works"

included the Company's buildings and land.

Mr. F. Wood, who was in official view this morning, had a hold of the Bill in such a manner that it was not possible to see the chance of the Bill as it came on. He confessed he knew nothing about the affair personally.

Mr. MacGregor Ross: All the Government and public are concerned about it means to maintain a sufficient and regular supply.

In answer to an invitation, Mr. Wood said he was not prepared with an amendment, but he was not sufficient of a Socialist to take the view that the individual should be crushed out of existence for the public interest. He admitted he knew nothing about the company.

FRIENDLY AFFAIRS

After further technical discussion, mainly initiated by Mr. Wood on the score of preventing any possible litigation to the company, Mr. MacGregor Ross said: "As a matter of fact the company does not light Mombasa to-night—that is the law. Your Excellency has a letter from the directors; they have no desire to embarrass the Government; their action is a commercial development."

Mr. Wood took further exception to a clause imposing penalties up to Rs 15,000 in case of obstructing the Government, and again to the phrase "The Government may continue the works until such time as seems expedient."

"You know what happened during the war—" began Mr. Wood, in this connection.

His Excellency (interrupting): I hope we are not at war with these people. (Laughter.) I said they did not wish to embarrass the Government.

Mr. Wood further objected to the appointment of a single arbitrator, because it seemed too arbitrary.

Mr. Barth: It has worked very satisfactorily in this country.

Mr. MacGregor Ross: The arbitrator has power to hold an enquiry and to examine witnesses on oath, and there seems little likelihood of the company being seriously harmed.

NO PROFITS

Mr. Wood again asked why there was no provision for giving the company a share of any profits made by the Government. Coming from Nairobi, he remarked: "It seems to me that the Mombasa Bill is intrinsically superior to Nairobi's, and there is a much better probability of success."

Mr. Barth said the Bill certainly meant should get nothing beyond compensation for wear and tear, for depreciation, and no profits.

Mr. Wood: If I use another man's capital, for nothing—

His Excellency: They close down, because there are no profits—I don't see why in that case they should get profits. They are getting compensation. The reason given me for closing down is that they make no interest on capital.

The Bill was passed through all the stages, and the Government will thus secure Mombasa its light whatever happens.

ELECTRIC BILL

Applies Anywhere in
B. E. A.

DETAILED TEXT

In answer to enquiries concerning the Maintenance of Electrical Supply Ordinance, based on the fact that it applies to the whole of the Protectorate though immediately concerned with Mombasa, we quote in detail the Ordinance passed by the Legislative Council, as amended:

If at any time whether at the termination of any license or agreement or not any public or local authority or any company or person hereafter called the operator engaged in the supply of electrical energy to the public shall, without any license being first had and obtained from the Governor in writing, and then only upon such terms as the Governor may prescribe, discontinue or make default in or have given notice of an intention to discontinue such supply as aforesaid or for any other cause or reason whatsoever shall make, or continue to make, such default in the supply of electrical energy as to cause or be liable to cause damage or loss to the public, the Government may authorize an officer of the Government to enter upon the works of the operator, to suspend his operation, and forthwith to do all such things, goods, and works as he may consider necessary for the maintenance and continuation of the supply of electrical energy from the works, plant, and apparatus of the operator.

NO DIRTY WORK

Any person obstructing, or causing obstruction to, an officer so authorized by the Governor in the carrying out of such duties and works shall be liable on conviction to a penalty not exceeding fifteen thousand rupees.

In any case where the Governor takes action under this section, the operator's license or other authority to operate together with all rights, powers, authorities, duties and obligations of the operator in the area concerned shall forthwith cease and determine, or otherwise as the Governor thinks fit.

The Governor may continue the operation of such works, plant and apparatus for such period as he deems expedient and any compensation to which the operator shall be entitled shall be determined in the manner hereafter provided.

There shall be payable to the operator by the Government, in such manner as he may determine, such compensation for the employment of the ex-operator's works as may be agreed, or failing agreement as may be prescribed by the High Court for the purpose.

ARBITRATION.

Such arbitrator shall hold any such enquiry (as he may deem necessary) in public and any person interested in the matter may appear at such enquiry either in person or by agent.

The witnesses at any such enquiry as aforesaid may if the arbitrator thinks fit be required to make their statements on oath, which oath the person holding the enquiry is hereby authorized to administer.

The costs of such arbitration shall be as the arbitrator may see fit and prescribe.

The arbitrator may compel the production of papers, records and material which he considers might elucidate the value or validity of any evidence before him.

The decision of the arbitrator shall be final and binding on all parties.

In the event of the use of an operator's works under this Ordinance extending to a term of more than three months, the operator shall render his claim quarterly in respect of each three monthly period or part thereof of such continued use.

In any case where action by the Governor under this Ordinance is necessitated by cessation of the supply of electrical energy by an operator or by a notice of an intention to discontinue such supply no claim for compensation shall lie in respect of any non-receipt of profits subsequent to the date of such cessation or notice or the case may be which over might be the case.

COMPENSATION

If the Governor exercises the power given to him under section 2 hereof compensation shall be paid to the operator as follows:—(a) interest on present valuation as ascertained by valuation of works and plant taken over at the time power is entered the works was exercised by the Government.

Any diminution in value of the works and plant taken over at the time of the power to enter the works was exercised by the Government upon such time as the works and plant are handed over to the operator.

The Governor may appoint such persons as he sees fit, being in his opinion competent and impartial persons, to be Electric Inspectors and may determine the remuneration to be paid to such electric Inspectors.

The duties of Electric Inspectors under this Ordinance shall include the inspection of operator's works and operations and of the supply of electrical energy given by such operations.

Such other duties as may be required of them under any regulations made by the Governor in Council.

The Governor in Council may make Regulations under this Ordinance for the better carrying out of the full object and intent of this Ordinance.

Ans
57364/19 HAP.

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DRAFT.

The Nevada Electric Power
Shipping Co Ltd.

20th October 1919

MINUTE.

Mr. [unclear] 1908
Mr. [unclear] 2075.

- Mr. [unclear]
- Mr. H. Lambert.
- Mr. H. Read.
- Mr. G. Piddis.
- Mr. Amery.
- Mr. Milner.

Dear Sir,

Let me to advise the rate
of the letter of the 15th Oct
relating to the Maintenance

of Electrical Supply Office,

to inform you that the

position of the

of the Nevada Electric

Power & Shipping Co Ltd

is still receiving from

52509

(Signed) H. J. READ.