

EAST AFR. PROT

081A84

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Nairobi Electric
Power Co.

Amendment to Electricity Supply Ordinance

1919

Dec

Last previous Paper.

Protests against suggestion that there is any existing default. Will welcome suggestion that they be granted licence to operate under Ordinance provided satisfactory to them. Protests generally and notes that charges have not been increased. Requests further interview with Mr McBlain.

11/6/19
6/4

Mr. Burke

Subject to your preliminary objections I propose to go into the general question of Electricity with the Gov. as a common thing moving & if possible to arrange for him to be present at the meeting with the Co.

v.c.s.

2/12/19

Mr. Bottomley -

The first part of the letter raises a question of the question of default. I have already written to Mr. McBlain the fact that some correspondence has been received from his statements - which so far we have accepted. The Council must first & would be most useful.

Personally however I doubt that

subsequent Paper.

70671

THE NAIROBI ELECTRIC POWER & LIGHTING COMPANY, LTD.

TELEGRAPHIC ADDRESSES

U.P.O. GEN. LONDON

TRIC. NAIROBI

4053 AVENUE

CODE-5th Edition

50, MARK LANE.

115

LONDON, 1st December,

1919

E.C. 1

Sir,

We have now had an opportunity of considering the printed amendments to the East Africa Protectorate Electric Power Bill which was forwarded to us under cover of a Colonial Office letter of the 18th November last.

These amendments fully confirm the apprehension to which we ventured to give expression at the end of our Memorandum of the 26th May 1919.

In response to the request contained in the letter of the Colonial Office of the 7th November - that we should express our detailed views upon that letter - we beg to submit the following points for the consideration of the Secretary of State with a view to a full discussion at the proposed interview.

2. While prepared loyally to acquiesce in the policy outlined in the letter of the 7th November, in so far as it is directed to the object of securing one uniform system of electrical supply in the Protectorate, the Company feel it to be due to their shareholders (numbering about one hundred) to maintain the general attitude outlined in

Under Secretary of State,
Colonial Office,
S.W.1.

their Memorandum of the 26th May 1919.

The Company are encouraged in this attitude by the fact that paragraph 2 of the letter of the 7th November would appear to have been written under a complete misconception of the position. No default either past or existing can fairly be laid to the charge of the Company as suggested. In this connection it is to be observed that:-

(A) As pointed out in paragraph 4 of the Company's Memorandum of the 26th May 1919 no notice of default has at any time been given to the Company under clause 21 of their Concession, with the exception of May 1911 when the Government were quite satisfied with the measures then taken by the Company and took no further action. It is to be observed that 1911 was the first year of bad drought, the river falling below the level which the consulting engineers under the concession had advised was the lowest likely to be reached.

(B) As recently as 1914 the Secretary of State was sufficiently satisfied with the manner in which the Company had performed their obligations as to give his sanction to a proposed agreement arrived at between the Protectorate Government and the Company for a new arrangement which would have (inter alia) in effect extended the term of their Concession to 50 years.

(C) Any difficulties which have arisen since, have been due to the failure of the water supply through entirely unexpected and unprecedented drought. In order to deal with the situation the Company have made every effort to supplement such water power as was available by installing a steam driven plant although no such obligation is imposed on them by the terms of their Concession. This plant would undoubtedly have been more promptly installed.

had not its construction and shipment been interfered with by the difficulties caused by war conditions. For example, the steam engine shipped in July 1914 from Hamburg never reached British East Africa at all.

(D) Whatever difficulties have arisen in the past they have been completely surmounted. The Company protest respectfully but emphatically against the suggestion (made for the first time in the letter of the Colonial Office of the 7th November) that there is any existing default. That this is not the case will appear from the fact that the Company have in full working order a water-driven plant with a capacity of 360 Kilowatts and a steam driven plant with a capacity of 240 Kilowatts while a further steam unit of 120 Kilowatts is actually on the way out. The maximum demand at any moment is 340 Kilowatts while the average demand is under 240 Kilowatts. It follows that the supplementary steam driven plant alone will shortly be equal to 360 Kilowatts and will therefore be in excess of the maximum demand.

The Company will welcome the suggestion that they should be granted a licence to operate under the Ordinance provided that the terms of such licence afford them adequate protection. It is submitted that the terms of such licence should be settled with the advice and assistance of the Secretary of State and incorporated in the Ordinance before it receives final approval. The Company feel themselves unable to acquiesce in the terms of a licence being left to be settled by negotiation with the Protectorate Government having regard to what they have been reluctantly forced to feel is the unsympathetic and indeed hostile attitude hitherto adopted by the authorities in the Protectorate and to the wide latitude as to the future conferred by the

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Par. 5 of the letter of the 7th November raises the question of the monopoly conferred upon the Company in the Nairobi District. This question has already been dealt with in the Memorandum of 26th May. The Company submit that in the circumstances Art. 7 of the Ordinance, which confers an unfettered discretion upon the Governor in Council, affords them no protection even in the event which they confidently anticipate of their continuing to fulfil all the conditions referred to in para. 5 of the letter under reply.

The Company regret that they are unable to accept the view put forward in par. 6 of the letter of the 7th November, viz: that it is to the Company's interest to come under the Ordinance. They are therefore desirous of placing their views before the Secretary of State at the proposed interview at the earliest possible moment, in order that they may satisfy him that it is not to their interests that they should come under the operation of the Ordinance or at all events that they ought not in fairness to be called upon to do so without adequate protection and/or compensation. The points of principle to which the Company desire to direct attention have been outlined in the Memorandum of the 26th May 1919 and in the foregoing paragraphs. It is apprehended that until the Company have had an opportunity of presenting their case and of ascertaining the concluded opinion of the Secretary of State upon these points no useful purpose would be served by a detailed criticism of the subsidiary provisions of the Ordinance. This will it is hoped become in the main unnecessary when once the questions of principle have been determined. Briefly the Company's contention amounts to this that the Ordinance will in effect result in the confiscation of the Company's undertaking as authorised by their Concession. We may add that apart from this the position of the Company at

the expiration of any term conferred upon it by a licence issued upon the terms contemplated by the Ordinance will be entirely different under Art. 20 of the Ordinance from that which is secured to them under clauses 22 and 23 of their Concession.

Against both results we enter our most emphatic protest. Their position in this respect under the Concession is still further~~ed~~ endangered by the "Maintenance of Electrical Supply Ordinance" to which we referred in our letter of the 15th October last. To that letter we have had no reply. We should be glad if you could forward us a copy of that Ordinance in your reply to our letter.

(A) The Company are in some doubt as to the precise nature of the complaint which is intended to be embodied in par. 7 of the letter under reply. Possibly increases have been made in isolated cases in which a supply was originally given at rates considerably below the authorised maxima under agreements made with consumers in the early days of the Company's Concession. In such case the Company, in accordance with the practice which has been adopted by Electricity Supply Companies in England would be justified in insisting on rates of charge corresponding to those generally obtaining in their area of supply, as a condition of renewing an old agreement or of entering into a new one.

(B) On the whole question the Company would point out that their charges have been increased neither in general nor in any single instance beyond the maxima authorised by clause 11 of their Concession. In this connection it may be observed that it was not thought necessary by the Protectorate Government to call upon the Company to reduce their maximum charges under the Provisions of clause 20 on the expiration of the original term of 10 years from the time when the Concession came into operation. On the other hand the

Company have at no time asked or suggested that an increase in their maximum charges should be authorised.

(D) If per. 7 of the letter of the 7th November is to be read as indicating that the Company have made or demanded any increase over their general level of actual charges to consumers, whether for power or lighting, they can contradict the suggestion. No such charges have been attempted.

It is possible, however, that the Colonial Office have been informed of certain negotiations with the Nairobi Corporation for a new Street Lighting agreement, for which the Company desire to be paid a total charge of 4d. per unit. This so far as we know is the only case of an increase, and we feel sure the Colonial office will agree that 4d. per unit is not excessive. But we do not know the contents of the Colonial Office telegram nor have we had mail advices from the Protectorate. Obviously the Colonial Office will in the meantime form no conclusions on this point.

(E) While submitting that no legitimate ground of complaint could arise so long as the authorized maxima be not exceeded the Company desire to call attention to the fact that the rise in operative costs has already been recognised by the Protectorate Government in regard to their own undertakings. For example, the Railway rates and charges have been largely increased and the Government is now reported to be proposing further increases which will bring the total increase over pre-war rates to upwards of 100%.

(F) We submit that there is no case for altering the maximum charges provided for under Clause 20 of our concession, now or at any time before the 8th April 1931.

(G) It is observed in connection with the subject of charges made or to be made by the Company that during the 13 years of the Company's existence their average profits

W. J.
12/19/19

[Handwritten signature]

DRAFT.

Lowville Electric Power
Highland Co. Ltd. 12 December 1919

MINUTE.

- Francis G. Dyer
- ~~W. J. Lambert~~ W. J. Lambert
- Proctor 10/19/19
- Grindle
- H. Lambert
- H. Road
- G. Fiddler
- Amery
- and Milner

Letter from the 1st Dec. regarding
the Lowville Electric Power Bill
to inquire whether you will
definite a representative to
attend a meeting at this
office at 3 pm on the 19th of
Dec. at which time he will
be present to discuss the
matter.

I would have the
main purpose of supply to us
and an emergency meeting
which was passed at our office

W. J. G. S. 119 Sub

DRAFT.

Proceeding

The Association 1919

MINUTE.

See with reference to the meeting of the
of the 19th Dec 1919
I am to enquire whether

- Monday 9 Dec
- Parsons
- Wednesday 10-12-19
- Grindle
- H. Lambert
- H. B. B.
- O. F. B.
- Amery
- Milner

We could arrange to hold
a meeting at this office
on the 19th Dec. to
discuss the question of the
Local Electric Power Bill
and the Governor's representation
of this office to the Council
Electric Power & Lighting Co
Ltd.

minutes of the
meeting of the 19th Dec 1919
I am to enquire whether
the Council of the
Electric Power & Lighting Co
Ltd. will be able to
arrange a meeting

I am to take this opportunity
of mentioning that
the contribution of the
with regard to the cost of