

38082

1936

38082

C0533/465
KENYA

East African Power & Lighting Co. Ltd

Managua - Tana & Lower Forests Hydro Electric Schemes.

Previous

297

1935

Subsequent S.F.1

1939

297 11/2/36

(1) Living 1/2/36

(2) Room 309 13/3

Mr Mackin 7/3

Mrs Duncan 27/3/36

Mr Flood 28/3

Sir C. Bottomley 28/2

R. 309 3/3

Mr Oastin 10/3

309 10/3

R. 297 12/3

R. 80 14/3

R. 297 6/4

309 8/4

Mr Flood -

FILE A.

11/11/36
1/11/36

203
Review from
develop.

L Govt. Bygone No. 2. (21) 8-1-36

Summarise explanation regarding the amending
legislation to the Electric Power Ordinance and in view of
the circumstances involved, early implementation thereof
the present position, no further attempt should be made
to persuade local municipalities to agree to the deletion
of Section 3 (i) of the amending Ordinance, 1934.

No. 14
38082/35

(Check 10/11
Revised Edition
of the Laws)

(Copy in
20000/35
2322/34)

(Para. Para 10
of the despatch)

The Secretary of State's despatch of the
5th of November left no room for doubt as to the
attitude of the Colonial Office in this matter. We
felt that advantage should not be taken of a piece
of bad legal drafting in the Principal Ordinance to
endanger the position of the Company's existing
licences. This apparently was the view of the
P.M.G. and the Attorney-General when the draft Bill
was prepared and published under Government Notice
No. 471 of 1934. But it would seem from paragraph 7
of the despatch that it was not foreseen that the
municipalities would raise strong objections.
However, the Mombasa, Eldoret and Nkuru local
authorities were determined that the Company should
not have the benefit of the amending legislation
in so far as existing licences were concerned. It
seems that the Nairobi Council, too, would join
in the opposition to the removal of the proviso to
Section 3(1) of Ordinance No. 37 of 1934.

According to the despatch, electrical
development in the Colony is not likely to be
prejudiced by the retention of the proviso in
question. The Governor considers that it is not
the duty of Government to approach the local
authorities concerned, but if the Company can

succeed

success in winning the consent of all or any of the local authorities concerned, he is prepared to agree that Section 19(a) of the Principal Ordinance should be further amended, either generally or in respect of any local authority which agrees to such amendment.

We can only pass on the contents of the despatch (suitably edited) to the Company.

A. Prossmith

13.2.36.

J. J. Prossmith
7/2

In the circumstances the action proposed by Mr. Prossmith would seem to be all that we can do.

27/2/36 M. L. Duncan

This is distinctly annoying. The municipalities appear to be taking advantage of an admitted drafting error in an Ordinance which conferred upon them "rights" which it was never intended that they should have and which, in my opinion, it is quite improper that they should

should possess. The "rights" in question are the right to apply to revoke the licence granted to a private undertaking or company at any time. The intention was that the electric undertaking should have 42 years clear before it could be taken over but owing to the way a section was drafted this position was not conferred upon them. Instead, the municipalities can apply to suppress them at any time and further, if a municipality does apply the Governor has no power to refuse provided that the area is entirely within the jurisdiction of the municipality concerned.

I can hardly believe that the municipalities really think that they were given these rights or that Government would be guilty of a breach of faith if the law were amended so as to carry out its admitted, avowed and logical intention.

At the same time, in view of the Governor's opinion, it is difficult to see what can be done except to amend the Ordinance as proposed.

W. G. Hand

Mr. Fitzgibbon tells me that the municipalities were objecting to the length of the licence some time ago when they were granted and it was pointed out to them by the Comr. for Lond. but (not the present one) that they had the rights as they got them their objection. So my argument is null & void. It's amazing & could only happen in Kenya but as it is.

J. J. Prossmith

(I have just heard that they want to come & talk) then we had better write, as proposed, & once. The letter will not contain any expression of opinion on the part of the Govt.

W. G. Hand 28/2/36

2 So. S. A. Power Lighting Co. - 541

7 E. A. Power & Light Co. — 7-3-36
Accts. (2) / promises made

DESTROYED UNDER STATUTE

*Put by
E. A. Power with
10/1/36
at once*

4 E. A. Power & Light Co. — 3-3-36

in violation of Chapter 100, Sec. 1
of the laws

Act as in Draft
here with

*Conf. with
8/4/36*

to be made (4 and) - 11/1/36

66, QUEEN STREET.

LONDON, E. C. 4.

30th March, 1936.

RECEIVED

C. O. F. E.

Dear Mr. Flood,

EAST AFRICAN POWER & LIGHTING COMPANY LTD.

Following on the interview which you were kind enough to give me in connection with the above Company, I was informed that the Committee of Enquiry appointed to consider the Company's application for extension of its licences, etc., was to present its final report about the end of this month. In order to obtain an impression of our people's feelings as to the result of the enquiry, I sent the following cable on the 25th instant to the Chairman of the Company -

"WOULD BE INTERESTED TO HAVE YOUR BRIEF TELEGRAPHED
IMPRESSION AS TO PROGRESS ENQUIRY"

and I have received the following in reply -

"REPORT PRESENTED TO THE GOVERNMENT 23RD MARCH IS
CONFIDENTIAL TO THE GOVERNMENT AND THEIR ATTITUDE
DEPENDENT UPON CONSIDERATION EXECUTIVE COUNCIL
FULLSTOP DIFFICULT THEREFORE FORECAST GOVERNMENT
ATTITUDE FULLSTOP LAWYERS IMPRESSION IS THAT AT
THE WORST WE SHALL GET SOME EXTENSION(S) BUT MAY
HAVE TO TAKE FIRM STAND TO GET ALL WE REQUIRE"

As this information may be of some use to you, I thought it
advisable to let you have a copy of the cable.

Yours sincerely,

J. E. W. Flood, Esq., C.M.G.,
Colonial Office,
S.W. 1.

C.O.

Mr. Grossmith.

Mr. Proctor

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuchburgh

Parly. U.S. of S.

Parly. U.S. of S.

Secretary of State.

2/3/36
3/2

ack

Downing Street,

4 March, 1936.

Sir,

D. H. Clarke

I am etc. to refer to the

letter from this Department of the

4th of November regarding Section 19

of the Kenya Electricity Ordinance,

as amended by ~~Kenya~~ Ordinance No. 39

of 1934, and to inform you that the

~~observations~~ comments of the Governor of Kenya

on your letter of the 11th October

have now been received.

2 The Governor points out

that the Bill to amend the Electric

Power Ordinance together with its

objects and reasons are published

for general information in Govt.

Notice No. 471 in the issue of the

Kenya Gazette dated 10th July, 1934,

he understands and ~~it is understood~~ that the

Chairman and General Manager of the

DRAFT.

(13/1931/3)

THE SECRETARY,

THE EAST AFRICAN POWER AND LIGHTING COMPANY.

~~ST~~

copy to Kenya (7 on 38082/1/36)

FURTHER ACTION.

cast

East African Power and Lighting Company Ltd. had both left the Colony for England before that date. ~~The Governor~~ states that if the reference, in the memorandum accompanying your letter of the 11th October last, to an assurance that the amending legislation was to be introduced as a Govt. measure, was intended to suggest that an undertaking was given that the Bill would be forced through Legislative Council, irrespective of any objections, there are absolutely no grounds for such suggestion.

The Bill was read for the first time in Legislative Council on the 24th July, 1934, and representations were received by the Postmaster General just before its introduction from the Mombasa, Eldoret and Nakuru Municipal Boards. In consequence of these representations it was agreed by the Legislative Council to refer the Bill to a Select Committee. It is understood that the Mombasa, Eldoret and Nakuru Local Authorities sent special representatives to appear before the select Committee and that they were

- C. O.
- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bolemanley.
- Sir J. Shuckburgh
- Permt. U.S. of S.
- Perly. U.S. of S.
- Secretary of State.

DRAFT.

and they will have heard this from Col. Maxwell. J.P.

FURTHER ACTION.

were accompanied by the Commissioner for Local Government, Lands and Settlement to whom these Authorities had sent their objections. The Company was represented by the Deputy Chairman, Colonel Maxwell. All these representatives appeared together before the Select Committee and a very full and free discussion of all considerations involved in the proposed amendment of Section 19(a) of the Principal Ordinance took place. ~~The representatives of the three local authorities referred to would, however, not move from their legal position and rights under the law as it stood and the Nakuru and Eldoret representatives stated that their Authorities would have objected to the issue of licences in their respective areas, were it not for the rights which they possessed. It was also represented that Govt. would be guilty~~

guilty of a serious breach of faith with these authorities if the law was amended as proposed. Further, in connection with the right of local authorities to apply, in effect, at any time to take over the Company's undertakings, reference was made to the extent to which the position of the local authorities was strengthened by the existence of this right in their dealings with the Company. The Governor agrees with the Postmaster General, who does not consider that this is a position to which any objection can reasonably be taken.]

4. The Select Committee very fully considered the whole situation and unanimously came to the conclusion that, in view of the attitude of the local authorities concerned, their rights should be protected and the proviso to Section 19(a) ^{shd be} agreed to. The Committee's report was approved by Govt. and adopted by Legislative Council.

8. The Postmaster General and the Attorney-General are very definite in their view that there

Tax
6 p. 8.

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson
- Sir G. Tomlinson
- Sir G. Bottomley
- Sir J. Shuckburgh
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

there can be no question of amending the Ordinance in defiance of the wishes of any local authority affected and the Governor concurs in this view. ^{See p. 11} He states, however, that if your Company can succeed in winning the consent of all or any of the local authorities concerned he is prepared to agree that Section 19(a) of the Ordinance might be further amended, either generally or in respect of any local authority which agrees to such amendment as the case may be.

5/6. While the Government agree that the wording of the original Section 19 (a) was unfortunate

^{he} The Governor suggests that, ^{in so far as an amendment of that section is concerned,} the starting point at the moment must be the law as it stands, under which ^{your} the Company have accepted certain licences and under which the local authorities have, in respect of such licences, certain valuable rights, which, in the case of Eldoret and Nakuru, were taken into consideration when

FURTHER ACTION.

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when these Local authorities decided not to oppose the grant of licences in their areas.

6. The Governor observes that it is suggested in your memorandum that the Company was placed at a disadvantage when the 1934 amending Bill was under consideration, because adequate notice of the objections had not been given to the Company and the latter was therefore prejudiced because the Chairman of the Local Board and the General Manager had left England. It appears however, that the objections had, in fact, not been received until just prior to the introduction of the Bill and it was because of this that the Bill was referred to a Select Committee in order to give time and opportunity for consultation and discussion. The Postmaster General has no hesitation whatever in saying that the Company's case could not have been more effectively or capably put forward to the Select Committee than it was by Colonel Maxwell. The issue was a simple and straightforward one and did not require any elaborate preparation. The Governor cannot

C. O.

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- Sir J. Shuckburgh
- Permt. U.S. of S.
- Perly. U.S. of S.
- Secretary of State.

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FURTHER ACTION.

cannot accept the contention that Govt. should have withdrawn the amending legislation as soon as objections had been received. *In the Governor's opinion* there are no grounds for suggesting that the Local authorities expected their objections to be overruled and that all they expected was to have an opportunity of discussing matters with the Company. The Local Authorities concerned were very clear in regard to their rights and after a very full discussion were not prepared to agree to any modification of those rights. In regard, therefore, to the penultimate paragraph of your letter of the 11th October there was no misunderstanding of any kind. 7. The Governor is advised that electrical development in the Colony is not likely to be prejudiced

by the retention of the proviso in question.
~~The price at which the Company's shares
stand in the market today indicates that
financial interests are satisfied with the
Company's position.~~

*In the circumstances, it is suggested
that the Company should
consider the advisability of
proceeding as proposed in
the fifth paragraph above.*

I am etc.

8. [Insert from 17.4.55], and that
the necessary amending legislation
shd. be introduced by the Govt.
It is however definitely of the opinion
that it is not the duty of the Govt
to approach the local authorities
concerned, but that this is a task
wh. shd. be undertaken by the
Company itself.

Signed J. E. W. FLOOD



GOVERNMENT HOUSE
NAIROBI

KENYA

NO 4

CONFIDENTIAL

RECEIVED

- 8 FEB 1936

C. O. REGY

8 January, 1936

Sir,

With reference to your predecessor's Confidential despatch of the 6th November, 1935, on the subject of the proviso to Section 3(1) of the Electric Power (Amendment) Ordinance, 1934, I have the honour to state that the circumstances in which the proviso was included in the enactment are as follows.

The Bill together with its objects and reasons was published for general information under Government Notice No. 471 in the issue of the Gazette dated the 10th July, 1934, and it is understood that the Chairman and the General Manager of the East African Power and Lighting Company, Limited, had both left the colony for England before that date. The publication of proposed measures is for the purpose of enabling anyone interested in any proposed measure to make representations or objections with regard thereto. If the reference in the Memorandum, forwarded to the London Secretary to the Company on the 11th October last, to an assurance that the pending legislation was to be introduced as a Government measure is intended to suggest that an undertaking was given that the Bill would be forced through Legislative Council irrespective of any objections, I would state categorically/

*Memorandum (on 38082/1/36)
copy to S. Dept. for ...*

THE RT. HON.

J.H. THOMAS, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.1.

categorically that no grounds for such suggestion exist.

3. The Bill was read for the first time in Legislative Council on the 24th July, 1934, and representations were received by the Postmaster General just before its introduction from the Mombasa, Eldoret and Nakuru Municipal Boards. In consequence of these representations it was agreed by the Legislative Council to refer the Bill to a Select Committee which consisted of the Postmaster General (Chairman), the Acting Director of Public Works, the Solicitor General, Major F.W. Clavendish-Mentink (Elected Member for Nairobi North), and Sir Robert de V. Shaw (Elected Member for Ukamba).

4. I am advised by the Chairman of the Select Committee that the Mombasa, Eldoret and Nakuru local authorities sent special representatives to appear before the Select Committee and they were accompanied by the Commissioner for Local Government, Lands and Settlement, to whom these authorities had sent their objections. The Company was represented by the Deputy Chairman, Colonel A. Maxwell. All these representatives appeared together before the Select Committee and a very full and free discussion on all the considerations involved in the proposed amendment of Section 19(L) of the Principal Ordinance took place. The representatives of the three local authorities referred to would, however, not move from their legal position and rights under the law as it stood and the Nakuru and Eldoret representatives stated that their authorities would have objected to the issue of licences if their respective areas were not for the rights which they possessed. It was also represented that Government would be guilty of a serious breach of faith with these authorities if the law were amended as proposed. Further, in connection with the

*There is here a
reference to the
rights of the
Council of local
Govt*

3.
right of local authorities to apply, in effect, at any time to take over the Company's undertakings, reference was made to the extent to which the position of the local authorities was strengthened by the existence of this right in their dealings with the Company, but I agree with the Postmaster General who does not consider that this is a position to which any objection can reasonably be taken.

The Select Committee very fully considered the whole situation and unambiguously came to the conclusion that, in view of the attitude of the local authorities concerned, their rights should be protected and the proviso to Section 19(a) was agreed to. The Committee's report was approved by Government and adopted by Legislative Council, vide page 484 of Legislative Council Debates of the 2nd August, 1934.

5. The Postmaster General and the Attorney General are very definite in their view that there can be no question of amending the Ordinance in pursuance of the wishes of any local authority affected and I concur in this view. If, however, the Company can succeed in winning the consent of all or any of the local authorities concerned I am prepared to agree that Section 19(a) of the Ordinance might be further amended, either generally or in respect of any local authority which object to such amendment as the case may be.

6. It is, I think, agreed on all sides that there was a drafting error in the original Section 19(a), but as an amendment to that Section is concerned, I suggest that the starting point at the moment must be the Ordinance as it stands, under which the Company have secured certain licences and under which the local authorities have, in respect of such licences, certain valuable rights which

in the case of Eldoret and Nakuru, were taken into consideration when these local authorities decided not to oppose the grant of licences in their areas.

7. It is suggested in the Company's memorandum that the Company were placed at a disadvantage when the 1934 Amending Bill was under consideration, because adequate notice of the objections had not been given to the Company and the latter were therefore prejudiced because the Chairman of the Local Board and the General Manager had left for England. The objections had, in fact, not been received until just prior to the introduction of the Bill and it was because of this that the Bill was referred to a Select Committee in order to give time and opportunity for consultation and discussion. As I have previously stated, representatives of the Municipalities appeared before the Select Committee together with the Deputy Chairman of the Company, and the Postmaster General has no hesitation whatever in saying that the Company's case could not have been more effectively or capably put forward than it was by Colonel Maxwell. The issue was a simple and straightforward one and did not require any elaborate explanation.

8. I cannot accept the contention that Government should have withdrawn the amending legislation if adequate objections had been received. The objections were, as I have already stated, fully considered by the Select Committee in conjunction with the Company's representations thereon and, as a result, the proviso to the revised Section 19(a) was unanimously adopted as reasonable.

Further, one of the reasons advanced by the Company for an amendment of the section was the fact that they contemplated development in new areas and it was, in the circumstances, deemed desirable to amend the law without

delay.

delay in regard to future licences.

There are no grounds for suggesting that the local authorities expected their objections to be over-ruled and that all they expected was to have an opportunity of discussing matters with the Company. The local authorities concerned were, I am advised, very clear in regard to their rights, and after a very full discussion, were not prepared to agree to any modification of those rights. In regard therefore to the penultimate paragraph of the London Secretary's letter of the 11th October there was no misunderstanding of any kind.

12/28 82

9. As regards the concluding part of paragraph 2 of the despatch under reply I am advised by the Controller General that electrical development in the country is not likely to be prejudiced by the retention of the proviso in question. The price at which the Company's shares stand in the market today indicates that financial interests are satisfied with the Company's position. As to the final paragraph of the despatch, it is not, I consider, the duty of Government to approach the local authorities concerned. This, I feel, is a task which the Company itself should undertake and it can, as a result of consultation with the local authorities, persuade these authorities to change their views. I consider that Government should introduce the necessary legislative provision.

10. Although the Nairobi Municipal Council has no objection to the 1934 proposed amending legislation I would add that the Company has recently applied for the renewal of all its generating and distributing licences in respect of the Nairobi area, from the retrospective date of termination thereof until the 20th May, 1972, vide page 119 of the Gazette for 1935. The Nairobi Municipal Council, and

16/38082/15

other

6.
other bodies, have objected to the proposal and it is understood that its attitude towards the application made by the Company would be more hostile if the further amendment of Section 19(a) of the Electric Power Ordinance were carried through.

The application of the Company will be brought before my Executive Council after the 12th February next by which time the period for the submission of objections will have lapsed and all objections received will be before my Executive Council. I have already concurred in the advice tendered to me by my Executive Council that I should appoint a Committee to enquire into any objections before my Executive Council gives its final advice regarding the Company's application.

11. In all the circumstances I trust you will agree that this Government should not at the present juncture attempt to persuade local authorities to agree to a further amendment of Section 19(a) of the Electric Power Ordinance by the deletion of the proviso to Section 3(1) of the Electric Power (Amendment) Ordinance, 1934.

4/23/34

I have the honour to be,

Sir,

Your most obedient, humble servant,

BRIGADIER-GENERAL
GOVERNOR