

1736

Kenya

N38082/1

SUBJECT

CO 533/465

East African Power and Lighting Co. Ltd.

Development of Maragwa Area Power Stations

Previous

SEE MAIN FILE

Subsequent

S.F. 1A (MEMORIAL BY THE
MARAGWA ASSN.)

1937

Ernest Campbell 2/3/35
Sir C. B. Stirling 13.3

Mr. Shearer and Mr. Brook of the East Africa Power and Lighting Company (London end) called on me this morning.

They represented that the East African Company is now considering extensive developments to supply the growing demand for power in Kenya. At present they hold various licences for the distribution of power in Nairobi etc. which were granted for 25 years from 1922 and therefore are due to expire in 1947. As required, they have given notice of their intention to apply for extension of the licences and these notices have been published in the Gazette. Govt., however, has appointed a committee to consider the application and the committee consists of five unofficial representatives from Nairobi Town and Nairobi District, a

one of the K.U.R.
(as chairman)

representative of the sisal growers, the attorney-General and, of course, the Postmaster General. The Company thinks that the committee starts off with a definite bias against them. In the case of Nairobi Town, and still more Nairobi District, there is good reason to think that this is so and that the inhabitants are rather jealous of the Company, partly because it has succeeded in making profits during the depression. The sisal growers have been for some time urging that they should be supplied with cheaper power (the rate is 8 cents, which is under 1d., per unit and, considering all things, is, I should think, fairly cheap). They surprised me, however, by saying that they thought the Postmaster General was also on the hostile side to the Company at large and said that their relations with him had

of late not been at all cordial, which is a pity as he is in charge of the Govt.'s electric policies.

What they are aiming at is a pretty big extension of their power plants in Kenya. This may be the Maragua-Tana water scheme or steam or oil plants. In any case the capital expenditure involved will be in the neighbourhood of £500,000. It is obvious that they would have to raise this sum by a fresh issue, but they could not go to their own shareholders or to the public to put up the money if their only security was a licence coming to an end in 1947, at the end of which the only prospect the shareholders would have would be what they would get as an approved price on the undertaking being wound up, and what that approved price would be is a matter of considerable doubt. Accordingly, the position is this. If they are to go in for development, which is the only chance of their being able to increase the supply and reduce rates, they will have to raise fresh capital: they cannot raise fresh capital unless their licences are extended: they think the committee will come to conclusions which may be definitely adverse or, failing that, may impose impossible conditions. Should it be decided to let their licences come to an end, then, in order to safeguard the shareholders, they would have to proceed to put up charges, pile up

reserves

reserves, do no development work and keep maintenance down to the minimum necessary to maintain the plant. This would hardly be to the good of Kenya.

They wanted to know what they were to do about it. They do not wish to do anything to put up the backs of the local committee and they have instructed their local representatives (Major Ward and Colonel M. Maxwell) to be very quiet and conciliatory, but they cannot face the prospect of a definite adverse decision. I said I thought the best thing they could do at this stage was to put in a memorandum confidentially to the Secretary of State which he could communicate confidentially to the Governor, if he thought fit, setting out their position. This they will do.

J. G. Hand

12.3.39.

I agree. When we get the memo., it might be sent before sending on--to London to the Director in the matter.

2. The root of the trouble is I think the short-term agreement. My recollection is that, for all words of this kind, it is now generally recognised that one must, if the thing is to go fairly and decently, have a quite long period--say 50 or 60 years. I imagine that the C.A.S. would be likely to stress this point; and their opinion--coupled, of course, on that or their eminent consulting engineers--would probably influence materially

a local committee which doubtless has very little or no experience of such matters, in their wider and more important aspects.
 The 15th March, 1936.

19/3/36
 I should expect little of this local committee than extreme short sight. I agree that the same should go to the L.A., but I would send it out at the same time.

13.3.36

1. To Elcan - 310 12.3.36

2. To Elcan (E.A. Power & Lighting Co) - 13.3.36

DESTROYED UNDER STATUTE (- expresses thanks for assistance afforded.)

3. East African Power & Lighting Co - 13.3.36
 Draws attention to treatment - Kenya of their application for extension of the Mangrove - Tana power station. Attitude of committee appears to hinder the matter requests news to not confidentially

No 2 ! Put by

No 3. This is the anticipated memorandum.

2 Write to Mr. C.A. & the Company as in draft herewith
C. P. Smith
 18/3/36

The Company's letter is very condensed and the action to be taken upon it is clearly as in the accompanying drafts. At the same time it might be as well if I were to reinforce it by sending a private letter to the Governor as per draft herewith.

J.S.O. Hand

21.3.1936

To L.A. 23.3.36

4 To E.A. Power & Lighting Co 3 incl. - 30.3.36

5 To Genl. Bygone - 4/2 - 30.3.36

6 To E. A. Power & Lighting Co - 30.3.36

7 To Kenya, Conf - 30.3.1936

(1/2 on 38082/36 & 3 on file)
 1 on 38082/36 answered

R. 298

8. Copies of cables received by E.A. Power & Lighting Co. Ltd. from Nairobi Branch on 15th March & 16th March (copy sent to Mr. Bygone).

Am to Mr. Bygone's suggestion I have suggested a meeting between him & Mr. Elcan, before anything is done on road.

J.S.O. Hand

G. Fitzgerald

Suggest Friday 20th for interview with Shearer

18 April

10 to Shearer

lit

1. Shearer a/o 22nd April, 1936.
Acknowledges No. 14; will attend at the Colonial
Office on Friday, 24th April, 1936.

DESTROYED UNDER STATUTE

Mr. Shearer was ill and could not attend on Friday, but he got up this morning and had a two hours discussion with Mr. Fitzgerald. The discussion was certainly marked by complete frankness on both sides. Mr. Fitzgerald took the view that the Company was looked upon with some suspicion by people in Kenya, and that that suspicion could only be removed by the Company going in for sane development and showing to the unofficial community that they were anxious to give a fair deal to their consumers. If that could be done Mr. Fitzgerald was confident that the Company need not fear any risk of expropriation by municipalities, either during the currency of the present licences or at the end of them.

With regard to the vexed question of the error in the Ordinance under which a municipality can take over an undertaking on giving six months notice at any time, Mr. Fitzgerald pointed out that, although it was admittedly an error, yet when it came to granting licences for Nakuru and Eldoret the exact legal position was quite well known, not only to the Company but to the municipalities who would

would not have agreed to the licences had it not been for that power. At least, that is what they said. Mr. Fitzgerald thought that the best thing that the Company could do was to go ahead with the Maragua-Tana scheme, thereby putting their undertaking on a big footing and showing that they were prepared to go in for comprehensive development of their power resources.

Mr. Shearer pointed out that this Company would have no security, that as it was their licences were due to expire in 1947 and were held at a six months' notice even at that. He did not think very much of the six months' notice but he did think a lot of the fact that they only had 11 years to run. He said that in their recent development in Tanganyika, they had a 60 year licence and therefore could go ahead and raise the capital which they did among their shareholders by the issue of further shares well above par. In the case of Kenya they could not do this because of the short tenure. Mr. Fitzgerald countered this by saying that the main asset of the Company, as everybody knew, was Nairobi and that if they could raise the capital for Pangani in the way they did a couple of years ago when they had under 15 years to run in respect of their most remunerative undertaking, they should have no difficulty if they accepted the five year extension when they would have 16 years. Mr. Shearer would not agree. He said that he would have to go to the city to get the money and could not get it on any kind of short basis as was proposed. Round this argument proceeded but with no kind of conclusion on either side. Mr. Shearer finally said that he thought the best thing to do would be to withdraw their application for an extension before it was definitely refused and

proceed

proceeded to negotiate further. Mr. Fitzgerald expressed his readiness to help if he could.

Mr. Fitzgerald let it be clearly known that the local management of the Company was not altogether satisfactory in its relations with either the Government or the consumers. He thought that if they would only set their house in order they would go a long way to disarm the suspicion which is felt towards them and in the end would get what they wanted.

Mr. Shearer said that he would be quite content with a lease of the Maragua Falls up till 1965 if he could not get any more, but even that, he said, didn't take enough account of the pioneering nature of the undertaking.

Mr. Fitzgerald said he thought the conditions offered by Government were ample. There they parted.

*I am inclined to accept the
Company's view that they could
not get the money on their
present prospects.*

*But we must now wait till
we have the firm views on the
Committee's views.*

WRS 28/4/56

X So, indeed, but the Kenya argument goes thus:

- a) The Co. had no difficulty in getting the money for Pongani
- b) They got the money on the strength of their Kenya business. The fact that they had 60 plans for Pongani was not in point. What the Company says.

6
y) If ~~they~~ they could raise £20 for a speculative enterprise elsewhere when their only security was really the Nairobi business which had only 15 years to run on its present license, they should have no difficulty in raising £7 for a solid enterprise in Kenya (viz. Maragua Falls) when they have 16 years to run (as they will deal with five years extension)

Mr. Fitzgerald says this is the ~~view~~ ^{view} that in present circumstances the unofficial would not oppose any further extension. If the Company will, by lower rates (the settlers think these too high but they're not) and development work, conciliate local opinion then Mr. Fitzgerald thinks they should have no difficulty in getting a further extension for as long as they like. But in present circumstances? No!

Now this is all very nice but it overlooks the fact that if the Company had not got a 60 year lease of Pongani they would never have tried to raise the money and would have felt justified in so doing. Therefore, unless they can get longer leases for Nairobi they would not be justified in going ahead & raising £200,000 or £300,000 for the Maragua scheme.

So it stands! Mr. Shearer will think it over for a day or two. I think the Kenya attitude is very short sighted but the S. ops. can hardly overrule Govt. and unofficial opinion in what would be represented as the interests of a greedy monopoly. (In fact it would be the interests of the whole community but you can't get through the skin of a Kenya settler!)

WRS 28/4/56

28/4/56

WRS 28/4/56

12. Byrne. a/o 2nd April 1936.
Aoks. No. 5; Report of the Committee was laid before
the Executive Council on 3 April, and explanatory
despatch will follow shortly.

Sir J. Campbell

No action is called for on this but you may
like to see the last minutes on this paper. I think
the Kenya Govt. are on the wrong lines.

J.S.W. 7/5/36

So do I. The initial term was far too short, and
all the trouble flows from that. I am not at all
impressed by the local arguments, as summarised
in the preceding minutes; and it looks to me--
on the evidence as we at present have it--as if
Kenya were making a serious mistake. I hope that
the reference to the O Ags. may produce something
of value--impartial and reasoned stuff.
Perhaps there is something of a local case, on
minor points; but on the big essential point
it looks to me as if they were entirely wrong.
At the same time, one recognises how very difficult
it would be for the S/S to interfere, effectively,
in a matter of this kind, if the local Govt.
and local opinion is resolutely determined on
their course of policy, after what could be
represented as full consideration of the issues
involved. (The plebiscite form seems to me
rather a ~~trick~~: one side only is stated, and
that in a most partisan way.)

The 7th May, 1936.

Partly for the present
J.S.W. 7/5/36

13. Crown Agents. 8th May 1936.
Ref. No. 6. Transmits copy of letter from the Consulting
Engineers who have been approached in the matter; have
nothing to add to their comments, but would like copies
of the Co.'s existing licence if further reference is
likely.

This report is rather more favourable
to local opinion. But the Consulting
Engineers agree, on the whole, that
if the licences are limited to
the existing periods, the
Company's chances of securing
further capital will be badly
prejudiced.

? Copy sends to Mr. Keenan
Ref. 7. Officers with
2/17/36

J.P. Bann
13/5

I attach copies of the Ordinance and the
various amending ones. The only Ordinances which
are in point are the Principal Ordinance, Section 119,
and the 1934 amendment.

Under that amendment the distributing and
generating licences are subject to application for
renewal not more than 5 years from the end except if
the Governor-in-Council gives permission in any
particular case. In this case the licences were
due to expire in 1947 or 1951 and special permission
was given by the Governor allowing the Company to
apply for renewal now. The Company applied for
renewal and all that Government is prepared to give
them

(then is a five-year extension (or one year) making all their licences end in 1952. They asked for renewal up to 1972.

The Consulting Engineers point out that if a licence is not renewed then there are various possibilities under Section 119 of the Ordinance. The local authority may apply for a licence to carry it on in which case the licensee is bound to sell at a valuation. But the local authority is not bound to carry on the undertaking nor is Government, though under Section 119(e) the Governor may take such other measures as he thinks fit for the disposal of the rights, powers, etc. Under Section 119(g) where no sale has been effected the local authority, and anybody else who may be involved, may remove the works at the expense of the licensee, but there is no compulsion on anybody to do so, so that presumably in the last resort the whole undertaking could be left derelict, which I take it is not in the least what anybody in Kenya wants. However, it seems that it is what they are likely to get.

The Consulting Engineers point out that the risks under a distributing licence are small but under the generating licence (which, of course, covers the plant) there is no brand of security whatever, and the fact that there is no security that the local authority or the Government would have to purchase would have a prejudicial effect upon finance. I don't think it requires the Consulting Engineers to point that out.

In practice some one probably had to be made to buy. But you cannot say so because if an undertaking had been given it might pass up the price.

They

They do, however, take a view which I should hardly have expected, in paragraph 11 of their letter where they say that though the periods of the existing licences are too short for the purposes of finance, in view of the uncertainty as regards taking over at the end of the time, yet if the Ordinance contains something requiring the municipal authorities to take over at the end of the licence, and if the price were always to be determined by arbitration under Clause 134, then an extension up to 1972 would be too long. That might be so, but I don't think that 36 years - which is what it comes to - is too long for an undertaking like this in a place like Kenya. In any event we know that the Company would agree to a thirty-year licence expiring in 1965, and that is, I think, a reasonable minimum if they are going to put in a large water power plant on which they will have to spend about a quarter of a million. A quarter of a million is a lot of money to be raised with a whole series of dogs in the manger, and I think the Company is right in suggesting that they must have a reasonably long tenure.

At the moment I think we can wait for what Kenya has to say - which is coming - but I send this on for information. We shall have to send it out to the Governor in due course when the answer is despatched.

There is one point which rather bothers me. I am not quite sure whether a renewal of a licence, whether distributing or generating, would be regarded as simply an extension of an existing licence or a fresh one. The point is of some

considerable

11 years to run
... the time it takes they have so complicated that they are not to have expected something more serious.
"This is too long, what is too long, does not tell any more."
H. J. / 26

considerable importance because if it is really a renewal of the existing licence then it would still remain subject to the original form of Section 19 of the Ordinance and the local authorities would have power to descend upon the unfortunate undertaking at any time. If, however, it can be regarded as a new licence then it will come under the 1934 Ordinance and the local authority would have no power to descend upon the undertaking at too early a date. We might ask Kenya what they think about this in due course.

S. C. Bottomley

19.5.36.

Just one more point - which occurred to me at 3.0 a.m. this morning. The terms of the Ordinance and the C.C. letter and the Kenya outlook are all - or may be - based too closely on conditions in this country. Now this is not really parallel. Here municipalities are big things in many places and can run electric power works. But in Kenya they are small - even Nairobi - and it is not quite right that they should have the same powers of taking over as say the Corporation of Leicester. Nor is it right to lay down equally short terms for the period of licences in Kenya as here. The whole thing in Kenya is very much of a pioneer enterprise and it is only fair that the "costs" should be taken into account and the Company given a much longer run for its money.

S. C. Bottomley
N.S.

I think we shall have to wait for Kenya's remarks - though it looks far from hopeful. The C Engrs' comments do not seem to me very helpful. They say "This is too long, that is too short", but the limits remain very wide, and they don't indicate what would in their view be reasonable. My own view remains unaffected.

2. Renewal would I think be regarded as prolonging an existing period, not as conferring a new license. The renewed license would be subject to all the conditions of the original license - except the original time limit.

3. Further discussion of the merits seems of little use at present. We must wait for the Kenya reaction and, when it comes, I'm afraid we must in practice agree to what they propose - unless very strong reasons to the contrary can be adduced. I doubt whether they can be.

The 19th May, 1936.

[Handwritten signature]
17/5/36

Sir C. Bottomley -
you should see: it is the old title of the fence and the post - be most clearly writ.

S. C. Bottomley
N.S.

If there is a satisfactory solution it is likely to be found in the view of Mr. Fitzgerald's report on the final phase of the Works, viz. of 27/4 - that the C.C. should be run separately showing sufficient capacity to supply water to the customers in supply water. *[Handwritten signature]*
17/5/36

[Handwritten signature]
17/5/36

14. Governor No. 236. ----- 8th. May, 1936.
Comments in detail on the application of the
Company for acquisition of further land in the
Kikuyu Native Reserve, and sets out for approval
terms on which it has been decided to take over
the land in question.

15. Governor Conf. 51. ----- 14th. May, 1936.
No. 7 and transmits Report of the Committee
appointed to consider the Company's application
and subsequent corres. with them, and comments on the
various questions raised.

116. *Extract* s/o ----- 29 May 1936
Enclosure of sketch notes of Enquiry in Nairobi
to arrange meeting in near future

No. 14. It will be recalled that the
Maragua-Tana hydro-electric scheme was devised
to meet the growing demands for electricity in
Nairobi and the surrounding districts and that
the scheme involves (a) the flooding of
approximately 1400 acres of land situated in the
Native Reserves on both sides of the Tana River,
and (b) the exclusion of that area from the
Native Reserves.

The conditions governing the exclusion
of land from a Native Reserve required for public
purposes are set out in Section 15 of the Native
Land Trust Ordinance, and para. 8 of the despatch
shows that those conditions will be fulfilled.
At the expense of the E.A.P. & L. Company 3826 acres
of land will be added to the Native Reserves in
exchange for the 1400 acres of land to be
flooded and adequate compensation will be paid to
the natives.

There is the point, however, that the
land to be added to the Reserves adjoins certain
European owned farms on the Maragua Ridge, and
the

the occupants have petitioned the Secretary of State
that the settlement of natives in that area will
render their farms practically valueless and involve a
danger from the spread of disease through the trespass
of native cattle and the insanitary habits of the
natives themselves. They suggest also that there will
be a danger to the European women and children.

The petitioners ask that if the Maragua-Tana
scheme goes through, Government should settle the
natives in some area which would not detrimentally
affect their farms, or that the Company should be
obliged to purchase the entire Ridge.

The Governor does not comment on the
petition at this stage, since it is hoped that
discussions locally may lead to a settlement. (28. It
is a condition of the exclusion from the Reserve "that
the Company should indemnify Government against any
damages or costs or other expenses which Government
might incur in respect of any claims which might be
made by the occupiers of the farms in the vicinity in
connection with the alteration of the Native Reserve
boundaries").

However, all this seems premature, because
if the Company cannot get the extension of their
distributing licences for which they have applied (see
Nos. 15 and 16) it is doubtful whether they will proceed
with the Maragua-Tana scheme.

In the accompanying notes I have attempted to
show the position with regard to the Company's
application for the extension of their licences.

C.F. Jones with
7/6/36

18 *Sol. Gen. Kemp* *Let. 147* *9th June 36*
(15/2/36)

(See also the
Sketch from
the Company
No. 3
350 5/11/26)

Side para
to the
despatch

It is, I think, possible to disentangle the Maragua-Tana power application from the other question of the extension of the Company's licences. The power scheme can be left out of account for the moment, because, if the Company's licences are not extended, there will be no question of their proceeding with the development of the Maragua scheme. This matter of the licences is dealt with in the Governor's despatch, No. 51 Confidential, of the 14th of May, and the first part of that despatch deals with the Company's objections to the composition of the Committee and the proposals of the Government. In the first place the Company has not accepted as final the refusal of the Government of Kenya to amend the Electricity Ordinance so as to correct the error made when it was originally drafted. That, however, is neither here nor there, because though the Company do not accept it they are prepared to take the situation as it is.

As regards the composition of the Committee, to which the Company took objection, the Governor is at pains to point out that it was as good a Committee as he could have got together. In particular, I agree with him that the Postmaster-General must have been a member of the Committee because he has been in charge of electric affairs for years past. It is also difficult to see why the Nairobi Municipal Council and Nairobi District Council should not be represented on any Committee formed to consider an application for the extension of the Company's

Company's licences. To try to get the Committee composed of people who are not interested would have been impossible, and if it had been possible, could, I think, have served no useful purpose. I am afraid, however, that there is some substance in what the Governor produces in paragraph 6 of the despatch, and that the Company did take the view that the Committee was deliberately biased against the Company. It is quite true that the Committee consisted of persons whose object lay in ^{getting} increased facilities at a reasonable rate, but the question arises, "What is a reasonable rate?", and the consumers in Kenya habitually accused the Company of over-charging. In the circumstances it could not be wondered that the Company thought that they would not get a fair deal and that the people who think they are charging too much would naturally welcome the opportunity of taking revenge by opposing their projects. The same sort of thing used to happen when railway companies were promoting Bills before Parliament in this country, when anybody with nothing to risk used to oppose the Bills, sometimes in the hope of being bought off and sometimes as a sort of blackmail.

The Company wants to develop the Maragua-Tana scheme and to do that they will have to spend a good deal of money. The exact amount they will have to spend is not particularly in point. It was put at £300,000 by the Company, and the Committee, on pages 15 and 16 of their report, start arguing as to what the cost would be, coming to the conclusion that there is as yet no firm and final estimate of the cost of the scheme. In my

*If the Gov. says
the Co. was
unbiased,
I was, but
I'm not blaming
the Co. for taking
the other view.
Wep*

*But Parliament
was not local.*

mind this is sheer quibbling, because it is generally admitted that the scheme will have to cost quite a large sum, and such a sum as would involve going to the public for further capital. The Company's London financial advisers have stated quite definitely that there is no chance of raising the extra capital unless a substantial extension of the period of the lease is granted.

The Nairobi Municipality and their District Council objected to the Company's application, and the objections are discussed on pages 17 and 19 of the Committee's report. The main grievance ^{was} ~~was~~ ^{was} that the application was premature and that ^{the Co} ~~they~~ could get additional capital even if the licence was not extended, pointing out that when the Company last needed capital, it had no trouble in getting it. This, however, was for the Pangani scheme in Tanganyika and that had a 60-year lease to run, even though the Nairobi profits probably formed part of the inducement to investors to participate. The Council, in short, considered that the Company could get this money even though it had only 11 years to run on its licences, but needless to say, could not produce anything more than assertion in support of this.

The second main objection was that the Municipality would not be able to exercise the power accidentally conferred upon it by the idiotic mistake in the drafting of the Law as it stands at present. The overwhelming

majority

The Ordinance laid down that
 the local authority might apply to
 come over on undertaking "at least
 six months before" the cooling
 certificate expires (2) of any
 term after the notice was granted.

It has been amended but
 without retrospective effect
 on licences already granted

majority of the rate payers who were circularised, supported the Municipal Council's suggestion, but apparently nobody attached any particular importance to this.

The Committee's findings are to be found on pages 20 et seq. of the report - ~~unrepealed~~ ^{majority they gave} conclusions as to the urgency of providing more generating capacity and that the Mareguá-Tana scheme was the best way of doing it. As regards capital, they took the view that since the Company had been able to issue 195,000 shares to develop the Pangani Concession and that ~~the~~ capital had been raised on the strength of the Company's whole undertaking, including the profits from Nairobi, then if they gave the Company an extension of five years it would have a correspondingly longer time to run than it had when it raised the money for the Pangani Concession and should therefore be able to raise money just as easily. The Committee wound up by saying that the time between the present and 1952 should serve as a further period of probation during which the Company would have an opportunity of proving that they were fitted to serve the public. Mr. Evans, who represented the sisal industry put in a minority report in which he urged that the Company's application should be granted and said that he was not favourably impressed with the objections, that the Company deserved every credit for its enterprise, that most of the views brought before the Committee were extraneous and irrelevant, and that the Company had at any rate treated the sisal industry generously.

In paragraph 9 of the despatch, the Governor states that the Company has raised a considerable degree of public opposition. It is admitted that much of it is prejudiced, ill-informed and unjustified, but the Committee still came to the conclusion that it could not be ignored and accordingly they made their recommendation for only a five years' extension. The Company have stated that this is not good enough and that they wish to withdraw their application and the Governor says that he undertook to forward to the Secretary of State certain further representations made by the Company, which he now does. The Governor finishes up by saying that, if the Secretary of State wishes to direct that his decision should be reconsidered, he would want reasons and permission to publish them. The letter from the Company, dated the 5th of May, says that "His Excellency instructed us to treat the whole subject as being in abeyance until he receives the final decision of the Secretary of State".

Mr. Shearer, accompanied by Mr. Brook, the Secretary, called on me this afternoon (9th June). They do not like the idea of an extension for five years and do not want to accept it, because they said if they do, they are saddled with the thing till 1952. Accordingly they want not to accept. At the same time they have got the idea into their heads that if they do not accept they are precluded from asking for any further extension at a later date. I can see nothing in the

Ordinance

13
Ordinance to justify such an apprehension, hence the wording of the telegram which, as an interim measure, I have sent to the Governor. The necessity for a telegram at all is that the Ordinance prescribes that if an application is made for an extension, then within six months the Governor may pronounce upon it. The six months is up on the 14th of June, and knowing Kenya as one does, if the Governor delayed till the 15th of June, it would probably be turned into a constitutional question of the first water by the people who do not like the Governor. A copy of the shorthand notes on the enquiry before the Committee was sent to me by the Company and will be found attached to No. 16. It is worth looking at.

My own opinion on this has never wobbled and I think that the Company has a perfectly good case for its application. They are quite prepared to consider a reasonable extension less than the full period up to 1972, for which they had asked, but five years they regard as simply derisory. I must say that I agree. The argument that because the Company was able to raise £195,000 two years ago for the Pangani scheme ^{change} that they should have no difficulty ^{at all} in raising money now, on the security of Nairobi, when their licences will have sixteen years to go, is simply childish. If you can raise money on a certain security at one time, it by no means follows that you can raise a further larger sum on the same security next week, which is what the Committee have been getting at. I think, then, that the Secretary of State would be fully justified in sending a despatch to Kenya saying that, in his opinion

opinion, the Committee is entirely wrong in its attitude, that it is necessary to look at the thing from the broadest aspect, dismissing such matters as meter rents and other trivialities, and especially not seeking to take advantage of the error which ^{is not in} ~~is~~ the original Ordinance. Looked at from this aspect, it is advisable that the Company shall have the greatest possible security, subject, of course, to the interests of the consumer being duly safeguarded, as is provided in the Ordinance, ~~in~~ that in a country which is developing rapidly like Kenya, it is essential to encourage enterprise. ~~But~~ The Company is admittedly the only organisation which can tackle the question of supplying electric power and light and ~~that~~ they are entitled to reasonable consideration. Say that, because the Company was able in 1934 to raise a certain amount of capital on the security of its existing undertaking, ~~there~~ is no reason why it should be able to go on raising capital indefinitely on the same security, especially when that capital is destined to be used in a hydro-electric undertaking which ought to have a long life if any reasonable return is to be secured. And finish up by saying that that is the advice of the Secretary of State, that such matters are, in his opinion, properly dealt with by the Government and the local representatives of the Company and that the Secretary of State ought not to be bothered. I suspect that Kenya is only too glad to have the chance of passing the buck to the Secretary

of

of State on this matter.)

J.L.G. Hunt

11.6.1936

DESTROYED

19. I attach copies of ~~copy~~ ^{copies} received from the Company, and also copies of the relevant Ordinances. The 1934 Ordinance is ^{important} ~~not~~ ^{of} ~~the~~ ^{the} ~~same~~ ^{importance} as the 1936 Ordinance.

This is a case where we shall clearly have to walk warily. Under the Ordinance, the power to take a decision rests with the G in Council. He has exercised that power. In No. 10, the Govt. intimates that he is prepared to reconsider the matter, "in the light of further technical advice available in the United Kingdom". As I read the despatch, the Govt. is confident that, on the information available, the G in C has come to a correct decision; he is not prepared to modify that decision unless a strong case, based upon technical advice available here, can be made, in a convincing form suitable for local publication.

2. The broad facts seem clear. More bulk power is necessary in the interests of consumers, and the Mwarua-Tana scheme is admittedly the most suitable and the most economic source of such power. ^{It} ~~That~~ cost will be somewhere in the region of £ 300,000, probably. The Govt. say they will not proceed with that scheme-- a hydro-electric project-- unless they can get the extension they have applied for. They do not consider it would be sound, or right ^{for them to raise this} money, while the ~~whole~~ ^{whole} future of the undertaking as a whole is ~~wholly~~ ^{entirely} uncertain after 1947 or 1952. They have been told that such an issue

opinion, the Committee is entirely wrong in its attitude, that it is necessary to look at the thing from the broadest aspect, dismissing such matters as meter rents and other trivialities, and especially not seeking to take advantage of the error which ^{is not} ~~is~~ ^{created} ~~created~~ by the original Ordinance. Looked at from this aspect, it is advisable that the Company shall have the greatest possible security, subject, of course, to the interests of the consumer being duly safeguarded, as is provided in the Ordinance, ~~in~~ that in a country which is developing rapidly like Kenya, it is essential to encourage enterprise. ~~But~~ The Company is admittedly the only organisation which can tackle the question of supplying electric power and light and ~~more~~ they are entitled to reasonable consideration. Say that, because the Company was able in 1934 to raise a certain amount of capital on the security of its existing undertaking, ~~there~~ is no reason why it should be able to go on raising capital indefinitely on the same security, especially when that capital is destined to be used in a hydro-electric undertaking which ought to have a long life. Any reasonable return is to be secured. And finish up by saying that that is the advice of the Secretary of State, that such matters are, in his opinion, properly dealt with by the Government and the local representatives of the Company and that the Secretary of State ought not to be bothered. (I suspect that Kenya is only too glad to have the chance of passing the buck to the Secretary

of State on this matter.)

J.E.W. Hunt

11.6.1938

19

I attach copies of ^{the} ~~the~~ ^{relevant} ~~relevant~~ ^{Ordinance} ~~Ordinance~~ received from the Company, and also copies of the relevant Ordinance. The 1934 Ordinance is ^{important} ~~important~~ ^{attached} ~~attached~~.

DESTROY

21

STATUE

11.6.1938

This is a case where we shall clearly have to walk warily. Under the Ordinance, the power to take a decision rests with the G. in Council. He has exercised that power. In No. 19, the Govt. intimates that he is prepared to reconsider the matter, "in the light of further technical advice available in the United Kingdom". As I read the despatch, the Govt. is confident that, on the information available, the G. in C. has come to a correct decision; he is not prepared to modify that decision unless a strong case, based upon technical advice available here, can be made, in a convincing form suitable for local publication.

2. The broad facts seem clear. More bulk power is necessary in the interests of consumers, and the Mbaraka-Tana scheme is admittedly the most suitable and the most economic source of such power. That cost will be somewhere in the region of £ 300,000, probably. The Govt. say they will not proceed with that scheme-- a hydro-electric project-- unless they can get the extension they have applied for. They do not consider it would be sound or right for them to raise this money, while the ^{whole} ~~whole~~ future of the undertaking as a whole is ^{wholly} ~~wholly~~ uncertain after 1947, or 1952. They have been told that such an issue

cannot be underwritten.

3. My sympathies are entirely with the Co. The original period of the licenses was for 20 years--far too short a term, as is now most fully recognised in general practice. The 20 years extension they asked for seems to me reasonable, and necessary. There is the further consideration that, under the law as it stands, their undertaking exists on sufferance--an obviously and admittedly absurd position, which cannot be disregarded when it is a question of raising further capital. Hydro-electric schemes, as we all know, involve, relatively to steam projects, heavy initial capital expenditure; the dams, canals, turbines, and so on, must be installed, even if the load is not there, and will not materialise for years. They are projects which come slowly to commercial fruition. I cannot see why an sensible man should spend £300,000 on such a scheme, with no full load in sight for possibly twenty years, when he can be bought out at any time, and when his licenses will--unless satisfactory arrangements can be made later--certainly end firmly in 1947 or 1951. If he is bought out, in the immediate future or in 1947 or 1951, he gets something determined--~~apparently~~ by the provisions of art. 134 of the Ordinance. In practice, that means something determined by arbitration. One has only to read the section to appreciate how extremely uncertain it may prove to be in its practical operation. "The suitability of the works for the purposes of the license" comes into the thing; nothing is allowed for compulsory purchase, or for goodwill, or for profits "which may or might have been made".

Without being ^{with the Board} cynical, I think one may fairly say that what the Co. would get is largely a gamble. There can be no certainty, anyhow. Why, in all these circumstances, sink £300,000 now? The Co. can obviously fulfill its obligations by much cheaper methods--to it, it can provide small hand-to-mouth steam units as required, keeping just a shade in excess of the probable demand. It can forego all idea of sound, ~~for~~ ^{for}seeing, plans to meet demand in a fair, distant future; and, by doing so, it can conserve, as far as possible, its own interests, while sacrificing all idea of planning development on lines advantageous to it, and to the country. It is a ^{most} shortsighted policy, from Kenya's point of view; and it is a policy which cannot possibly be to the advantage of the consumers in Kenya.

4. It seems to me that this aspect of the matter is so important that, despite what has happened, and despite the strength of the local feeling, the S/S cannot and ought not to ignore it.

5. If that view be taken, probably only one course is open. We should, I suggest, consult the C.Ags. in the matter, and ask their advice. What I should like would be to lay the whole thing before some unquestioned authority in such matters--if the C.Ags. can find one for us. I would then send the opinion of that authority to Kenya, with such comments as may then be considered advisable. I do not think it is any use--in the peculiar circumstances which exist here--for the S/S to act on the advice of his ordinary advisers. Kenya is too prejudiced, and too "cocksure", for that to be effective. They must I think be overwhelmed by authority before they will change their views.

The opinion of the C.Ags: on the financial point involved should however be specifically sought; and if they could support their view in that matter by reference to extraneous sources of authority, so much the better. I have already given my opinion, but the C.Ags: are in much closer contact with the City than we here are.

I have gone through all the papers (a weary task) and am prepared to discuss at any time if that is considered advisable.

The 12th June, 1936.

Sir John Maffey

I have prepared a note (as concisely as possible) on this case in the hope that it may be useful. It is not necessarily for record.

I doubt if we have much to expect from the Crown Agents. The main question, whether the Company can reasonably go to the public for £300,000 on the strength of rights which have only 11 years to run, and may be terminated before that, answers itself, but it will no doubt be useful for us to quote some legal authority, and I should have had this referred to the Crown Agents without troubling you at this stage if it had not been for Sir J. Campbell's suggestion that the Crown Agents should find us an unquestioned authority in such matters, to whom the case should be referred.

Personally, first of all I should like to ask the Crown Agents officially for their

their views and to accompany it with a private enquiry whether there is any such authority who can help us if it is decided to ask him.

The crux of the whole thing, I feel sure, lies in the matter of rate adjustment, and if we could in any way arrive at an agreed arrangement for the periodical examination and adjustment of rates, probably the local jealousy of the Company would lose its force. I do not know how it is to be done, but if we could reassure public opinion on that point, there would be much to be said for giving orders from here for a substantial extension of the periods of the licences and for legislation giving retrospective effect to the correction of the blunder in Section 19 of the Electric Power Ordinance.

15.6.1936

23 Record of interview with Mr. Moore dated 16 June 36

24 To Sir L. Fleming (20) 25 June 36

25 To C.A. (re 15 records orig. with Mr. Moore) 25 June 36

1880 16.5.19

26. Shearer
No copy of further comes to complete records and states he is ready for a further discussion when convenient.

Sir J. Campbell

Lord F. Scott has spoken to Sir J. Maffey suggesting that he should see Mr Shearer. Lord Francis seems to think that it is to blame somehow and not the impossible attitude of the unofficials.

The Maffey scheme is hung up because the Co. will not go ahead until they have some more security.

We are awaiting the views of C.O. I heard they were considering it.

When we get their views it might be well if you would have a talk to Mr Shearer. I don't see what use it will be because he, you, & I all agree, but it may clear the air.

Mr Maffey can reply that we are awaiting for views from our advisers.

J. W. Ford
10.7.

Lord Francis Scott is a very charming person; but he is not much good at questions of this kind. It might do some good if Mr Shearer saw Lord Francis--but there seems no need for us to come into such an error: I don't think there is any need for Sir J. Maffey to see Mr Shearer, or for me to discuss matters with him either--at this stage, anyhow. I am rather disposed to avoid seeing any of them, in fact--because Kenya seems so highly suspicious. (Mr Fitzgerald was to me a distinctly unpleasant revelation--passionately prejudiced, I thought, and impervious to all reason and argument.)

Simply ack; this last letter, and say that

we were consulting our advisers.

The 10-7-36.

Handwritten signature
10/8/36

Draft herewith to Mr. Shearer. I think he has seen Lord Francis Scott and on more than one occasion, but Lord Francis appears to look at it as another instance of suitable development in Kenya which is being held up by a wicked and obstructive Colonial Office, whereas, in fact, the whole trouble has been due to the childish attitude of the unofficials in Kenya, supported as it has been by Mr. Fitzgerald and through him by the Government. I don't altogether agree that Mr. Fitzgerald is prejudiced and impervious to reason. He has taken the line that there is a good deal of foundation for some of the grievances which the unofficials have against the Company and he wants to see those grievances remedied. He therefore is inclined to adopt the unofficials' view and to support their tactics in dealing with the Company, probably in the hope that in order to catch the whale the Company will be prepared to use a whole lot of sprats in the shape of concessions regarding charges and so forth to bring about a better frame of mind on the part of the consumers. For this end he feels bound to urge the unofficial case which, as I say, has been adopted by Government, and it must be remembered that Mr. Fitzgerald can only be the mouthpiece of the Government, and has no voice to speak other than as he is commanded.

All the same, I cannot help thinking that the attitude taken up is stupid to a degree transcending the ambitions of the most obstinate mule.

10.8.36 170

I had hoped the draft which
will serve until we hear
from the U.A. It will be
time enough then to ask Sir
J. Shearer if he would like to
see the Shearer.

W.C.S.
14.7.36

27 To Shearer - s/o - 26 Aug. 16 JUL 1936

28. Envis (C.A.) s/o - 15 July, 1936.
Ref. N° 24; as of course, with Mr. Scammon
regarding suitable advice on the matter, &
suggests two alternatives on this kind of point.

Sir William Gowers' idea of
consulting somebody like Lord Plender or Sir
William McClintock is, I think, quite a good
one, and either gentleman would undoubtedly
command the utmost respect from Kenya. I
think then that the Crown Agents should be told
that we agree to consultation, but before doing
so it would be as well to get the Governor's
agreement to paying a fee, and to do that we
should have to have some idea of what the fee
would be likely to be. Kenya has to look two
or three times at every shilling and a sum of
a hundred guineas or so, which is probably as
small an insult as could be offered to people
of such eminence, might be too much for the
Kenya exchequer. Draft air mail letter herewith.

J. I. G. 20

18.7.36.

C.A. have no idea
at all. It might be more
than 100 guineas - but more

K80-26

W.C.S.
20/7/36
20.7.36
air

29

20. Sir J. Byrne s/o - 23/9. was 20 July '36

30 Shearer s/o - 21.7.36

Ackd. 27 with thanks.

Put by Ad. H. at
abovce 22/7/36.

K80-26, 30. G

31. Byrne. ----- s/o ----- 2.9.36.
29 and; unwilling to agree to payment of a fee of £100;
enquires whether withdrawal of the application would
solve the matter for the present.

I would like
to see for once!
15/7/36

Sir John Campbell.

You are as familiar with this as I am
and I think that for once we are in agreement as to
the stupidity of the attitude adopted by the Kenya
Government at the behest of unofficals. It now
appears that although the mess has been caused by
the said Government they would not look at the idea
of paying a fee for advice which might carry
conviction to them.

I am afraid that the trouble will not
solve itself by being left alone, as will be seen
from Mr. Shearer's letter of the 21st of July.
We know that Mr. Shearer wants to come along and
talk

talk about the matter further, and he knows that we are trying to get authoritative advice on the subject.

In paragraph 12 of his despatch of the 14th May, the Governor said that the local decision was made in the light of such technical advice as was available in the Colony, but that if, in the light of further technical advice available in this country, the S. of S. thought fit to direct that the decision should be reconsidered, then full and detailed reasons would have to be given for publication. This does not hold out very much hope, because we can't get the technical advice unless we are prepared to pay for it. Colonel Fleming put the matter fairly and squarely to Scrimgeour, who was definitely of opinion that the Company's application for the extension of their licence until 1972 is reasonable. They thought that the shortest period would be about 25 years, though not being experts they could not advise. Sir William Gowers thought that the opinion of brokers and issuing houses was not enough - and there we are.

The position is, as you and I see it, that the Company is faced with the necessity of extensive development. They want to set up a hydro-electric works involving a largish capital, at any rate, something in the order of £200,000 or £300,000. Before they can spend this they naturally want a reasonable tenure. ^{By} ~~But~~ this I take to mean tenure of the site of the power station - quite a different matter - but tenure

for

for their distributing licences without which the power station is useless. As at present advised, these distributing licences end in 1947. The Company applied for an extension to 1972, and the Kenya Government has offered them an extension of 5 years to 1952, on the alleged ground that if they could raise money for their Tanganyika undertaking when there was only 15 years to go on their Nairobi undertaking, they should have no difficulty in raising more on the security of their Nairobi undertaking when it had 16 years to go. As you and I have both told Mr. Fitzgerald, this is equivalent to pawning a watch and then going round to the pawnbroker and trying to raise more on it without having redeemed it. The Tanganyika undertaking is quite separate from the Nairobi one and will at any rate go on, and though there can be no doubt that the Nairobi profits pay most of the interest and are responsible for the company's ^{own} financial position yet they are not ^{unlimited} omnipotent and cannot furnish security for everything. Another point is that unless the Government is prepared to meet the Company somehow the situation will rapidly become hopeless. The Company dare not take anything for granted; no assurance can be given to them in the face of this last effort of Kenya's, since they will argue that the temper of the people is such that they can have no security after 1947 unless they get it in writing and unless the Ordinance is amended. In fact, the attitude taken up must have made the Company definitely more suspicious. I know it would me. Then the Company will inevitably refrain from doing anything more than it can be held

This is the really financial point.
18/7/46

on which to base the reasons (though we can give our own views)

do by law. I will screw up its charges to the highest possible, and do nothing in the way of putting down fresh plant or maintenance. In fact it will exert itself to pile up all the money it can so as to have it for the shareholders when the stoppage comes in 1947. Meanwhile, Kenya will be getting a bad and increasingly inefficient electric service. Now it must be remembered that Kenya is pretty well electrically minded when it comes to power, and a good many of the sisal estates use nothing but electric power.

[It will be noted that the sisal grower was not so much down on the Company as the others were.]

If things develop as we hope they may in Kenya, then the position will be that with increasing demands for more and cheaper power, the Company in its own interests will be forced to provide more expensive power, and in increasing it let the rate for power go down to the minimum required for existence. I do not think that Kenya quite realizes the fact. The question of the Company's charges and lack of sympathy with consumers has really nothing whatever to do with the case.

There is the Company. It is the only undertaking which is capable of doing the job. If it collapses there is nothing to take its place, because I am dead sure that the Nairobi Municipality wouldn't, and the Government couldn't. And accordingly, for the sake of cheaper debating points and what really amounts to a schoolboy desire to score off the Company, Kenya is getting itself into an awkward position. I think I might reply to the Governor that there is no justification for asking the

if it is not going to close in 1947 but has a reasonable life in view, will, in

the Company to pay the fee for getting an expert opinion on proposals produced by the Government of Kenya, which to us appear beneath contempt, and that the Company is certainly not going to let the matter slide, but may be expected to return to the charge at any moment.

J. F. O. 76

14. 9. 36.

Kenya is, as usual, very "difficult". I agree with your minute.

2. I think we must get this settled, somehow. The legal position--as I understand it--is stated in para: 1 of my minute of the 11-6-36. That obviously complicates the position materially. The local attitude is so strong--and to my mind so perverse--that I think it quite possible that the G. A. C. may decide to stand pat, politely of course, whatever the S/S may say, unless--as I said before--Kenya is overwhelmed by authority of a specifically technical kind, which they cannot but recognise. We cannot get that authority without paying for it; and Kenya refuses to pay.

3. In the circumstances, it would seem that we have got to try every way of breaking the deadlock. I would therefore be inclined to ask Shearer--s.o. or privately--if the Co. would agree to pay the fee required to get the opinion of Mr. Clintok, or Lord Prudden, or Sir Andrew Duncan. The choice to rest with us--for otherwise Kenya would say that the

Co. had chosen a referee whom they knew to be partial to their view. The point of reference would be the point stated in the letter of the 21st July to Sir J. Byrne.

If the Co. agree, we could then go ahead, if they do not agree (and I admit they could make out a good case for refusing) then I think the only course is to issue a despatch, on such authority as we have been able to obtain, putting such view as the S/S may finally decide. Kenya may accept that--and we have got our solution. They may refuse to accept the S/S's view--because local feeling is so strong, and because of the legal objection already explained--and in that event I should think that we'd simply have to let events run their course, however undesirable that would be. The constitutional question which would then arise is not for me--fortunately.

The 10th September, 1936.

Sir C. Bottomley

Keep this till you return. I do not like the idea of suggesting that the Co should be asked to pay a fee for an independent expert to advise him. They might not mind paying us to get an expert to back their own view, but that would not do in Kenya. Also though we all think an expert would advise for the Co's convenience, it would be awkward if he did not and we expected the Co to pay for him.

So I hardly know what to say. First of all we ought to find out what a fee would be. I thought of 100 guineas & the C.A. agreed, it might do but for big men like these mentioned 500 would be not unusual. But no one would be likely to name a fee, that's all right, knowing what he was advising on

26B
get we must get good advice with which we can meet the opposition. Not even Mr. Bryan could set up against Lord Plender or Sir W. O'Connell, but any smaller firm would hardly do.

All I can suggest is to tell Sir W. Guinness that Kenya won't pay, and suggest the Co. paying but that before we try to do so Sir J. Campbell suggests we ought to have some close idea of the job which would be required. And send his views.

So proceed. Before we write to the Company I should like to hear the other side of the story.

W.S. 6.10.36

Res 31 32 To James - 28 ansd - 8 OCT 1936

33. Crown Agents.----- 20.10.36.
25 ansd; return documents enclosed therein, and letter from Sir H. McGowan stating his opinion on the matter; in these circumstances, do not intend to take any action on No. 32.

Sir Harry McGowan's opinion is given gratis, for publication in Kenya if desired. It is unequivocal in terms and would no doubt be accepted by most people. But I am not sure that Sir Harry's letter contains the full and detailed reasons which the Governor asked for in paragraph 12 of his despatch of the 14th of May.

It is for decision whether or not the Governor should now be asked to reconsider, in the light of the authoritative opinion which has now been obtained, the question of the renewal of the licences

(No. 15)

licences of the E.A.P. & L. Company for the period desired by the Company, and also the question of amending the Electricity Ordinance to afford the Company the security which it desires in respect of its existing licences.

C. J. Paskin

21.10.1936

? a resp. on the lines of the last page of Mr. Hood's minute of 11/6 - also the points at X & Y in Sir J. Campbell's minute of 12/6; & encl. copies of 25 + 33 in consultation with S. J. P.'s view.

J. J. Paskin
23/x

Sir J. Campbell

Sir H. Mc Gowan's opinion is as blunt and plain as could be desired. But it gives no reasons and therefore may not satisfy the Kenya people who ^{may} ~~would~~ say "he doesn't know Kenya" and ~~simply~~ ignore him. On the other hand they may show ~~some~~ ^{an} ~~interest~~ ^{interest} since Mr. Holden may not like Mr. Fitzgerald's line.

If we could get this out to Kenya, and if the Company could at the same time make it clear that ~~if they get a long licence they will reduce rates~~ ^{if they get a long licence they will reduce rates} the unofficial might agree. It is very necessary to consider unofficial opinion because they are the people who pay. Govt does not ^{use} ~~pay~~ very much for electricity.

So, if you agree, I think we had better

Send this out to Kenya in a despatch explaining how it came to be obtained ^{and} ~~advising~~ ^{advising} generally that the Company's case be accepted.

And tell Mr. Shearer that we are again taking up the

question and say that if the Co. was in a position to ^{agree} ~~agree~~ in Kenya that, on the grant of an extension which was acceptable to them they would be prepared to review their charges it might help in the discussions which will inevitably begin again (we can't tell them what the opinion given was or who gave it; they will learn when they hear from Kenya)

If you agree to this I will hotel drafts for consideration

S. J. P.
23/10

(The author's view is that Govt is really dealing with the Co for the unofficial community but interest is only
a) to see that proper development is not cramped
b) to see that it is a source of trouble for the community - does not allow the community to be pleased)

We should acknowledge, handsomely, the assistance Sir Harry Mc Gowan has been so good as to give.

2. I'd be inclined to take action as Mr. Paskin suggests. I do not think Kenya can ^{seriously} question Sir H Mc G's standing or competence in a matter of this kind. If he is good enough for H M G, he ought--one would think--to be good enough for Kenya. But I am quite sure Mr. Fitzgerald will think him a fool. And "Kenya" will probably think he has been "got at", though it seems to me they will be obliged to accept his opinion.

3. I'd write also, as you suggest, to Mr. Shearer. I'd give him such information as is permissible; would say that local opposition would still undoubtedly be strong; that the issue was still in doubt; and that we here felt that it would help materially if, on the assumption that the extended period for which the Co. had asked were granted, they would ^{publicly} ~~publicly~~

summary

in such manner as deemed to them most appropriate, let it be known in Kenya that they were ready to review, as soon as the extended term was in fact agreed to, their scales of charges. That seems to me quite reasonable: with security of tenure arranged, it may well be that their scales can be revised in a downwards direction. I am afraid, however, that the local people ^{would like} will try to couple their assent to a longer period with either some pre-determined reductions, or alternatively with the establishment of some form of machinery which ^{would} give them a strangle-hold in the matter over the Co. They evidently feel that the provisions of the Ordinance, designed to secure control, are not enough for their purposes. I think we must leave this point to the Co. If they feel that any indication such as is suggested above would probably provoke a move in the direction I fear, I'd accept that view--and would not urge that any promise should be made by them. The extension would then have to stand on its undoubted merits; the public interest would have to be secured by the application of the provisions of the Ordinance; but the Co. could still come in, voluntarily and quickly, once the extension had been fixed up. It might, in this way, "acquire merit".

The 24th: October, 1936.

Mr. Howe
Pl. app. for extension. I will
add a minute when the 24th
com. app.
Word 28.10.36

I have prepared drafts for consideration, one of which (the despatch) will need some alteration and amplification. ^{Mr. Fitzgerald} Mr. Fitzgerald who told me that he had been in touch with Mr. Shearer on the subject and that he had high hopes that a settlement could be reached which would be acceptable to the Company and also to Government and the Unofficials in Kenya. He said that if he could get the settlement he had ^{in view} recommended he was quite sure that the Unofficials would not oppose too much. I told him Sir Harry McGowan's opinion and showed him the letter and, to my surprise, he said he thought it was generally sound, which means that he has altered his views very considerably. What he is aiming at, he says, is to get the Company to agree to an extension of their licence to 1962 in the first instance (this would give them 25 years to run) and that the Company, on their part, would be prepared to agree to further ~~the~~ powers of supervision and control in regard to their charges. He is going off to put these things into correspondence and has promised to let me have a copy in due course.

In the circumstances, I think there is no good in our sending off a despatch yet or saying anything to Mr. Shearer, and we should await the result of Mr. Fitzgerald's overtures. But the letter herewith to the Crown Agents, thanking Sir Harry McGowan, should go off forthwith.

34
30.10.36
33and
4-11-36
30.10.
30.10.
30.10.

*Sam found that we may get
under some disadvantage if we
do not send out Sir H. McGowan
advise soon - Sir Fitzgerald will
be sent to Kenya. Sir H. McGowan
we can give him till Monday -
bring up then.*

35. F. FITZGERALD (S/O TO MRELFLOOD).....6.11.36.
Attaches copy of his letter to Shearer and states
that the C.O. should get a copy of the McGowan Report
on Electricity Distribution published in May.
Will send another note to C.O. when he has heard
from Shearer.

Mr. Fitzgerald has submitted to Mr. Shearer his ideas on a compromise which would possibly be acceptable to the E.A.P. & L. Company and the Nairobi Municipality (i.e. the consumers). He claims that the consumers' case is supported by the recommendations in the Report of the recent Committee on Electricity Distribution of which Sir H. McGowan was Chairman. The most relevant paragraph in the Report is, I think, paragraph 171. But in point of fact the consumers' main argument (see page flagged A) is refuted by the authoritative opinion which we have obtained from Sir H. McGowan.

A detailed examination of the Electricity Distribution Report and its bearing on the case for the consumers will take some time, and it is for consideration whether or not we should let the Governor have Sir H. McGowan's opinion now or wait until we hear further from Mr. Fitzgerald.

It would perhaps suffice if a paragraph

paragraph was added to the draft despatch already prepared to show that Mr. Fitzgerald is in private communication with the E.A.P. & L. Company and that it is possible that as a result the Company may be prepared to consider favourably certain of the representations made by the Nairobi District Council.

Chrysmith

11.11.36.

Before I could deal with Mr. Crossmith's minute, Mr. Brooke, Mr. Shearer's secretary, rang up to ask if he could come and see me. He did so, and referring to Mr. Fitzgerald's letter said that Mr. Fitzgerald had been having a good deal of conversation with Mr. Shearer and had suggested that he (Mr. Fitzgerald) should go out to Kenya to settle matters on behalf of the Company. Mr. Brooke asked me what I thought of this proposal, to which I said that, while I had no doubt about Mr. Fitzgerald's absolute honesty and believed that since he had come back to this country, whether as a result of arguing with Sir J. Campbell and myself or not, he had seen some of the error of his ways, yet I could not think that he would do at all since the Kenya Unofficials, who are by nature suspicious, would be very suspicious indeed and would leap to the conclusion that Mr. Fitzgerald had been bought by the Company. This would be inevitable and the result of it would be that not only would negotiations fall so far as the Unofficials were concerned, but any possibility of a friendly arrangement would be seriously jeopardised.

Mr. Brooke

Mr. Brooke said that was his own view and therefore he thought they would have to decline Mr. Fitzgerald's offer as politely as possible.

He told me, however, that the situation was not so pressing or so difficult as it had been. The Company thinks it can get on for some time without any serious injury to itself without taking up the Maragua scheme. I said that would be probably all to the good if they could do something or other to make it clear that they were not unreasonable. Mr. Brooke said that the various things proposed for the consumers by Mr. Fitzgerald were mostly common form and such as no reasonable electric undertaking could object to. It will be noted that Mr. Fitzgerald, on the other hand, has now swung round to giving the Company a long lease and amending the mistaken phrase in the Ordinance.

To my own mind it is rather desirable, if we can do it, (which I doubt), to get the questions of the length of lease and the terms governing the Company's relations with its consumers entirely separate. They have really nothing in common. If certain conditions as regards the lease of the power station and the length of the distributing licence are considered reasonable, in order that the Company may be able to raise its necessary capital on the most advantageous terms, then those conditions are reasonable whatever the rates charged by the Company. The question of those rates is a matter for negotiation and, in the case of a monopoly company, for regulation by Government

Government, and the acceptance of such regulation and control is a very proper consideration for granting a licence but such conditions ought not to be allowed to affect the length of the licence and the security of tenure of the Company, which are the points here at issue.

I think then that we can now let the despatch to Kenya go, adding a couple of paragraphs to it as per draft herewith and sending out a copy of the report of the Committee on Electricity Distribution. If they want more copies, they can buy them. The letter to Mr. Shearer might also go and we can wait and see what the result is.

16.11.1936

I agree with Mr. Flood. I do not regard Mr. Fitzgerald as a suitable negotiator. He is extremely obstinate; not at all tactful; very borne indeed; and (I think) vain and anxious to demonstrate his power and his influence. Apart therefore from the point taken in Mr. Flood's minute, I should say he was a most unsuitable negotiator in himself. I should like to have him out out of the business entirely, if that is possible.

2. I agree that the question of the extension of the licence should, if at all possible, be kept apart from the "consumer concessions". But it is clear now that the Co. is quite willing to go a long way in the direction of concessions:--they are common form stuff, mostly, and should as Mr. Brook says present no difficulties. My preferred solution would

be to suggest to Mr. Shearer to go out to Kenya and settle the thing there himself. But he would probably like to know Kenya's "reaction" to the Mc. Gowan letter and our despatch before going so. Then--if that is broadly favourable--he could go out, with the suggested concessions in his pocket, and settle the whole thing direct with Kenya, probably in a very short time.

The 17th November, 1936.

Wade
17/11/36

Sent off to Mr. Shearer

Wade 17.11.36

① Librarian
② By air mail 19/11/36
③ To Kenya, Conf (w/c and to 33)
④ To Wade (w/c and to 33)
⑤ To Kenya (page in report on Electricity 1936) had 13/12 - 23/11/36
⑥ W. Flood

It will be seen from file 42171/36 Tanganyika below that it is shortly proposed, at the request of the Tanganyika Government, to ask Power Securities Corporation Limited to agree to a modification of Clause 3(e) of the Agreement of April, 1931 between the Corporation and the Tanganyika Government for the development of electricity at the Pangani Falls.

I understand that Sir William Gowers has suggested on the telephone that it might be possible to use as a bargaining factor with the Corporation over this particular question the request

for extended facilities

facilities which its subsidiary, the East African Power and Lighting Company, ^{has been} ~~desires~~ in Kenya. Sir William Gowers has suggested that, in order to conserve this bargaining factor, we should arrange with the Government of Kenya that publication of Sir H. McGowan's opinion (enclosure to 33 on this file) should not be effected for the present - i.e. until it has been possible to have a discussion with the Company about the possible modification of the Pangani Agreement.

I understand that Mr. Flood is willing that a telegram should be sent to Kenya asking them to defer publication of the McGowan opinion, and I submit a draft telegram accordingly. I assume that it will be desired (i) to follow this by a brief explanation in an air mail letter to Mr. Wade; (ii) to tell Sir W. Gowers of the action taken. The file should retire, urgently for these further letters.

I am not quite clear whether, in view of this latest development, it will be desired to send the letter to Mr. Shearer of which an approved draft is with the papers. Mr. Flood will, no doubt, decide on this point.

COPY RECD ON
42171/36 TT

[A copy of this letter should be sent to 42171/36]

Three

W. H. Alder
3.12.36

39 To Mr. Shearer

40 To Kenya

TEL. 290 Conf

4.12.36

H. Fitzgerald (5/6 to Mr. Flood) — 8.12.36
Describes talk he had with Shearer on 3.12.36.

I submit herewith drafts to Mr. Wade and Sir W. Gowers as indicated in my minute of the 3rd December. The file should then re-circulate urgently to Mr. Flood for consideration of 41.

Wade

8.12.36.

A.19 ref. 41 to Wade.

43 to Sir W. Gowers (ref. 42)

10 DEC 1936

44 Shearer (5/6 to Mr. Flood) — 8.12.36
(39/42) Comes on position and states that he will show at an early date and suggest a mutually convenient time for discussion.

45 Shearer (5/6 to Mr. Flood) — 8.12.36
Would like to discuss Mr. Fitzgerald's position in the matter when he calls at the Colonial Office (Sec. 44).

Sir J. Campbell.

I have acknowledged Mr. Shearer's two letters and told him to come along. Please see also Mr. Fitzgerald's letter in No. 41. I can quite understand that a conversation between Mr. Shearer and Mr. Fitzgerald might wind up with each gentleman charging the other with being a piteous fool. Mr. Shearer

never

never struck me in my conversations with him as being at all unreasonable and you know what you and I think of Mr. Fitzgerald's attitude towards the Company. Of course, Mr. Shearer knows perfectly well that Mr. Fitzgerald is mainly responsible for the Government's attitude towards him and that knowledge would not make a conversation more amicable. I think myself that if the Company get what they want in the way of a long term distributing licence they will be found to be quite ready to accept reasonable stipulations as regards control. After all, they are not without experience. Balfour Beatty and Company is a very big concern and they have many electricity undertakings.

It is a pity that it is considered advisable not to disclose Sir Harry McGowan's opinion to the public in Kenya and for my own part I think it is rather sharp practice not to. But that is not my affair though it will have to come out pretty soon if we are to get the Kenya situation at all straight. Because that opinion is the only stick we can use to beat the Government and the consumers.

11.12.36

11.12.36

DESTROYED UNDER STATUTE
4/2 to Fitzgerald
to Shearer
10 DEC 36
10 DEC 36

48. Shearer (9/0 to Mr Flood) ————— 30.12.36

Final copy of letter which he has addressed to Fitzgerald and apologises for not having taken advantage of suggestion for a further discussion. Does not think any real progress could be made until Kenyon's reply to last official letter are received.

Wait for Mr Shearer to write again

A. P. Rossmore
4/1/37.

Yes: a very cautious letter.

S.S. 209
1.1.37

See J. Campbell to see

is - the attitude we thought was likely.

campbell
2/1/37

49. Fitzgerald (9/0) ————— 4.1.37

The copy of letter which he has had from Shearer

Copy already reqd. at (45)

? Pully

D. 2.297

5.1.37

at once 4/1/37.

COPY.

PRIVATE & CONFIDENTIAL.

28

30th December, 1936.

RECEIVED
- 6 JAN 1937
C. O. BEG

Dear Mr. Fitzgerald,

Since our recent conversation on the subject of your letter to me dated the 6th November, I have given careful consideration to the opinions expressed by you and your suggested proposal for remedying the present situation. While I fully appreciate from your point of view your opinions and the reasons which prompted them, I am somewhat hesitant at this stage about discussing your proposals in detail for reasons which I am sure you will equally appreciate.

If it had rested with me alone the position would have been less difficult, but as you know the matter has recently been the subject of discussions between members of the Board in Nairobi and the authorities there apart from my own conversations with the Colonial Office.

You will, therefore, no doubt realize that in a matter which so vitally affects the policy and future of the Company I must refrain from taking any independent action which might adversely affect the present relations without first having ascertained how far it is desirable to press the matter forward at this particular moment having in mind the sympathetic guidance which has been extended to us by the Colonial Office.

For this reason I am afraid, however willing, it is impossible for me at the moment to give a definite reply to your proposals and consideration of them would have to be delayed until I can more clearly judge as to the whole position. I think you will understand that in a matter vitally affecting so many interests it is essential to act with the greatest discretion.

However, as soon as the opportunity arises I will communicate with you again when I hope I may still rely upon your continued goodwill in our efforts to promote an understanding and arrive at a mutually satisfactory basis for the future operation of the Company in East Africa in the best interests of the Colony, the consumer and the Company. Meantime, you may rest assured that any policy we adopt will be a progressive one, as my sole desire ever since I became connected with Electricity Supply in Kenya has been as you well know, to proceed with active development in the interests of all consumers.

Sincerely yours,

T. Fitzgerald, Esq.,
Grove Hall,
Twynford, Berks.

(Sgd) W. Searles

48

BALFOUR, BEATTY & CO., LIMITED.

66, QUEEN STREET,
LONDON, E.C.4.

30th December, 1936.

Edinburgh Office:
47, MELVILLE STREET

Codes Used:
SENTLETS,
LEISERS,
WESTERN UNION,
A.B.C. (5th EDITION)

TELEPHONE NOS.
CITY 2046 (10 LINES)
EDINBURGH 2043 (3 LINES)

TELEGRAPHIC ADDRESS:
"RUOPLAS, LONDON"
"RUOPLAS, EDINBURGH"
CABLE ADDRESS:
"RUOPLAS, LONDON"

PRIVATE & CONFIDENTIAL:

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

Dear Mr. Flood,

35

I enclose copy letter which I have addressed to Mr. Fitzgerald, for your private and confidential information. I send you this as he sent you copy of his letter to me of November 6th and I naturally want you to be kept informed of all that is passing.

I must apologise for not yet having taken advantage of your kind suggestion for a further discussion and as I am leaving for the Continent to-day for a few days I am afraid I will not be able to suggest a meeting for a week or two. However, I do not think that any real progress could be made until you get Kenya's reaction to your last official letters on the subject.

With regards and all good wishes for the New Year,

I am, Yours sincerely,

WS/GS.
ENCLS:

PRIVATE & CONFIDENTIAL

30th December, 1936.

Dear Mr. Fitzgerald,

Since our recent conversation on the subject of your letter to me dated the 6th November, I have given careful consideration to the opinions expressed by you and your suggested proposal for remedying the present situation. While I fully appreciate from your point of view your opinions and the reasons which prompted them, I am somewhat hesitant at this stage about discussing your proposals in detail for reasons which I am sure you will equally appreciate.

If it had rested with me alone the position would have been less difficult, but as you know the matter has recently been the subject of discussions between members of the Board in Nairobi and the authorities there apart from my own conversations with the Colonial Office.

You will, therefore, no doubt realise that in a matter which so vitally affects the policy and future of the Company I must refrain from taking any independent action which might adversely affect the present relations without first having ascertained how far it is desirable to press the matter forward at this particular moment having in mind the sympathetic guidance which has been extended to us by the Colonial Office.

For this reason I am afraid, however willing, it is impossible for me at the moment to give a definite reply to your proposals and consideration of them would have to be delayed until I can more clearly judge as to the whole position. I think you will understand that in a matter vitally affecting so many interests it is essential to act with the greatest discretion.

However, as soon as the opportunity arises I will communicate with you again when I hope I may still rely upon your continued goodwill in our efforts to promote an understanding and arrive at a mutually satisfactory basis for the future operation of the Company in East Africa in the best interests of the Colony, the consumer and the Company. Meantime, you may rest assured that any policy we adopt will be a progressive one, and my sole desire

ever since I became connected with Electricity Supply in Kenya has been as you well know, to proceed with active development in the interests of all consumers.

Sincerely yours.

J. Fitzgerald, Esq.,
Grove Hall,
Twyford,
Barks.

39
45

BALFOUR, BEATTY & CO., LIMITED

60, QUEEN STREET
LONDON, E.C. 4.

8th December, 1936.

EDINBURGH OFFICE:
10, WILKIE STREET
CHICKS USED:
BENTLEY'S
LISBENS.
WESTERN UNION,
R.F.C. (25 LINES)

TELEPHONE NOS.
NO. 17, 2046 (10 LINES)
EDINBURGH 2043 (3 LINES)
TELEGRAMS ADDRESS:
"AUDFAS, CANNON, LONDON"
"RUDFAS, EDINBURGH"
CABLE ADDRESS:
"RUDFAS, LONDON"

EXPLICITLY PRIVATE & CONFIDENTIAL:

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

17 DEC 1936
C. O. REU!

Dear Mr. Flood,

I had another call from Mr. Fitzgerald the other day when he told me that he had forwarded to you a copy of his private and confidential letter to me of November 6th. I told him that certain of his suggestions would be unacceptable to the Company, although I examined his various unofficial proposals with an open mind. He seems very anxious for a considered reply in writing and before sending anything of this kind to him I would like to talk the matter over with you as I am a little uncertain as to what his position in the matter is or may be.

He makes it clear in his letter to me that he is only presenting his personal views and that they carry no authority from the Kenya Government or the Colonial Office. On the other hand, he indicated that he may be going out there and intended to take a personal interest in matters of this kind.

I am not certain as to what advantage might be gained from pursuing the matter further with Mr. Fitzgerald. Indeed, unless his position in any negotiations is clearly defined further discussions with him might be prejudicial. I would like to discuss this matter with you when I see you, as I hope to do as suggested in my official reply to your letter of the 4th inst. which goes by same post.

Yours very truly,

William Beatty

WS/GS.

Encl. (35)

Amo 47

(444)

C. O.

Mr. Lee. 8 12.36.

Mr. Calder 8.12

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

38082/1/36. Kenya.

Semi-official for Mr. Calder's signature.

Downing Street.

10 December, 1936.

Dear Gowers,

You suggested on the telephone that the publication of the McGowan opinion on the application of the East African Power and Lighting Company for a renewal of its licences in Kenya should be deferred until it has been possible to begin discussions with Power Securities Corporation about the proposed modification of Clause 3(e) of their Agreement with the Tanganyika Government for the development of electricity at the Pangani Falls.

DRAFT.

SIR WILLIAM GOWERS, K.C.M.G.

Tel to Gov. 4th Dec.
(40)

To Wade 12.36
(dft. Bennett)

2 drafts.

FURTHER ACTION.

Copied in 42/7/36

42

I enclose a copy of a telegram which, in accordance with this suggestion, was sent to the Governor of Kenya a few days ago. We have not heard whether, in point of fact, the opinion had already been published, but the presumption is, in the absence of a reply, that it had not.

is a confirming letter from Flood

Yours sincerely,

(Signed) J. CALDER

C. O.

- Mr. Lee. B 12.36.
- Mr. *Lee* 8/12
- Mr. *Flood* 8/12
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Ballouley.
- Sir J. Stauchburgh.
- Perm. U.S. of S.
- Partly U.S. of S.
- Secretary of State.

38082/1/36. Kenya.

Semi-official for Mr. Flood's signature.

Air Mail.

Downing Street.

10 December, 1936.

C.D
9-DEC
D

CONFIDENTIAL.

DRAFT.

Dear Madam.

A. de V. WADE, ESQ., C.M.G.,
O.B.E.

In the Secretary of State's confidential telegram No. 290 of the 4th December the request was made that the opinion of Sir Harry McGowan concerning the proposed renewal of the licences of the East African Power and Lighting Company Limited should be withheld from publication for the present unless it had already been issued.

2 drafts.

FURTHER ACTION.

Copied on 4/17/36.

I write to explain that this request was made at the suggestion of Sir William Cowers. It so happens that the Crown Agents will shortly

shortly begin discussions with Power

Securities Corporation Limited with

a view to obtaining their concurrence,

of the Corporation

in the modification of a particular

clause of an Agreement between the

Corporation and the Tanganyika

Government for the development of

enterprises in Kenya,

electricity at the Pangani Falls.

Gowers has suggested that it might be

possible to have as an additional

factor with the Corporation over this

particular Tanganyika question the its

request for extended facilities for

East African Power and Lighting Company

has made in Kenya, and that, in order

to conserve this bargaining factor

as much as possible, publication of

the McGowan opinion should be deferred

for the present and it would be

undoubtedly possible to have a

discussion with the Company about the

unstable.

regarding the Pangani Falls

(the Pangani Falls) in the other the Corporation

wish to obtain permission from the T.T. Govt.

to use power from the Tangani Falls for

enterprises in Kenya.

have as an additional

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson

Sir G. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

possible modification of the Pangani Agreement.

It is perhaps doubtful

whether it will be possible to make

much use of this so-called bargaining

factor, but it seemed desirable, in the

circumstances, to ask you to defer

publishing McGowan's opinion for the

present. I trust that this course

will not inconvenience you in any way;

we will, of course, let you know as

soon as the way is clear for its

publication.

Yours sincerely,

Sp. J. C. W. Lloyd

FURTHER ACTION.

Personal on file

37

41

Grove Hall,
Twyford Berks

4 Dec 1938

A.A. TWYFORD 108. R.A.C.
CLUBS 122.

Dear Flood,

17 DEC 1938
H. O. HEGY

As I had decided

from Shearer & As I had decided

to go up to town yesterday for the

S.A. lunch to the S. D.S. & Booth

perhaps I arranged with him

to drop in during the forenoon &

have a talk.

I thought him a bit

stuffy & inclined, very foolishly, to

Grove Hall.
Twyford Berks.
A.A. TWYFORD JOB. R.A.C.
GUESTS " 122

discrepancy the Melbourne report. He particularly did not like the suggested restriction on the issue of capital & complained that they were not subject to such conditions in connection with their Colonial enterprises of theirs. I suggested to him that authoritative opinion was definitely hardening in favour of close control over utility services

& that I was also unable to see that there was anything in my suggestions to which the Coy. need take exception.

However they are going to send me a reply which I am afraid will not at the moment help things along very much. I told them (Brooke was also present) that I had

sent a copy of my letter to you^o
personally + would like to have a
written reply which I might also
send you. I think Secares has
in mind having another talk with
you. He asked me if I had
sent a copy of my letter to Nambrin +
I told him I had not + that I
answered the question through I did

Grove Hall.
Twyford Berks.
AA TWYFORD 106 RAC
GUESTS .. 122

not consider it a proper one. They
are gentry who need careful
handling:

I think you should know
what happened in case they
come to see you.

I will let you have a
copy of their reply when I get
it. I feel they are still

trying to bluff it out with big
talk about the city & finance &
will ultimately come to see
reason. Brooke was ^{welcomed} ~~welcomed~~
to be reasonable.

The S. of S. makes some important
statements at the luncheon.

Yours faithfully

T. Felman

C. O.

Mr. Lee. 3/12

Mr. Clegg 3/12

Mr. Flood 4. 12

Sir C. Parkinson

Sir G. Tomlinson

Sir C. Bathmley

Sir J. Shackburgh

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State

Code sent 3/12

O.D.
R 4-DEC
D K-

4/12/36

No. 290 Confidential.

My despatch of 19th November

(36)

Confidential paragraph 3. Should be

obliged if for the present McGowan,

opinion could be withheld from

publication. Explanatory letter

follows by air mail.

DRAFT. TELEGRAM CODE.

GOVERNOR,
NAIROBI.

if not already
issued

SECR.

FURTHER ACTION.

Recirc. quickly for further action indicated in minutes.

4

C.D.
7 DEC
0 4
34

38028/1/36.

C. O.

Mr. Flood. 1/12

X Mr. J. Campbell

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir C. Bottomley. 2/12/36

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET

4 December, 1936

In my opinion
Amund (1/12)

Dear Mr. Shearer,

DRAFT.

W. SHEARER, ESQ.

Concerning the matter of the Kenya electric licences, about which we had correspondence in July, I am now able to tell you that the Secretary of State has received an expert opinion from a very responsible quarter indeed, which he has communicated to the Government of Kenya. I understand, also, that you are in touch with Mr. Fitzgerald and that he is of opinion that the Kenya Government would now be prepared to consider more favourably the grant of a much longer extension of your distributing licences than had been originally proposed.

We do not yet know what the Kenya Government's reactions will be to the suggestions and considerations which

FURTHER ACTION.

which have been placed before them, but it is possible that a fresh approach to the Kenya Government ^{in the near future} might produce a more favourable response than previously.

On the other hand, you may prefer to wait until there is something more definite from Kenya in reply to the Secretary of State's despatch, which only went off on the 19th of November. The Kenya Government is very busy with its Estimates and Income Tax and other matters, and may take some time to consider it.

We are not at all sure here that the best thing would not be for you, if you could manage it, to go out to Kenya yourself in order to settle ~~the~~ matters, but you will probably wish to wait to hear further before considering such a step.

As you know, there has been a good deal of local opposition to the Company (as there is to most electricity undertakings) on the ground that its rates are alleged to be too high and

on

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

on other matters which affect the individual consumer. It has occurred to us here that it might help if the Company could let it be known in Kenya that, in the event of the licences being extended for a reasonable period, and of their carrying through the Maregua-Tana undertaking, it is their intention to examine rates and other charges with a view to such reductions as are justified in the light of the increased security and longer tenure which would then be available. On the other hand, it might possibly be that, if the Company did make any such announcement, in however guarded terms, an attempt would then be made to make such revision a condition of the issue of an extended licence, which we think, would be a mistake, as the two questions ought to be kept separate and each considered on its merits.

C. O.

Mr. Flood.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley. 17:11 f

Sir J. Shuckburgh.

Permt. U.S. of S.

Partly. U.S. of S. *Stout*

Secretary of State.

DOWNING STREET.

19 November, 1936.

Dear Wade,

In connexion with the Secretary of State's despatch about the electricity concession, I enclose a copy of Fitzgerald's letter to the Company which he sent to me. I do not think it advisable to put it in the despatch but you will see that on the main point he has come round to the view that the Company needs a longer period for its licence to run. He had not seen and did not know of Sir H. McGowan's opinion when he wrote his letter. I think myself that there is the basis of a settlement on Fitzgerald's lines, though even so, he is rather niggardly in regard to the length

DRAFT. AIR MAIL

A. de V. WADE, ESQ., C.M.G., O.B.E.

6 Nov

sent in 35.

FURTHER ACTION.

AIR MAIL

C. D.

Mr. Flood 1/10/36

Mr.

Sir J. Campbell *has seen*

Sir C. Parkinson.

Sir G. Tomkinson.

Sir C. Bottomley 17-11-36 *fs*

Sir J. Shuckburgh.

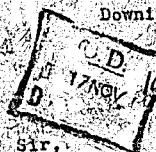
Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,

October, 1936.



Sir,

I have etc. to refer to my telegram No. 147 of the 9th of June and to your Confidential despatch No. 51 of the 14th of May on the subject of the East African Power and Lighting Company and its operations in Kenya.

2. In my telegram I informed you that I hoped to be able to reply to your despatch at an early date and I accordingly caused the Crown Agents for the Colonies to be approached with a view to obtaining an authoritative opinion on the questions at issue and more particularly whether under the arrangements as proposed by the Govt. of Kenya the Company would have a reasonable prospect of going into the market and raising the additional

capital

of the period. One thing we do feel hard is that it is a great pity that questions of the rates charged are allowed to interfere with the important question of the length of the licence.

As I see the situation now, I think the Company will proceed to approach you again and if they can come to a satisfactory arrangement, will proceed to take up the question of the Maragua lease.

Yours sincerely,

Arthur E. W. Flood

DRAFT.KENYA.CONFIDENTIAL.

GOVERNOR.

FURTHER ACTION.

capital which would be required by them in order to develop the large hydro-electric scheme which they have in contemplation.

The Crown Agents consulted their brokers and Messrs. Scrimgeour's expressed the opinion that while they were reluctant to make any definite pronouncement in the absence of detailed information with regard to Kenya and the project in question, they felt that the absolute minimum period for an extended licence to enable the Company to have a new issue of capital underwritten was 25 years, and they more definitely expressed the view that the Company's application for extension up to 1972 was reasonable. The brokers, however, expressed the view that their opinion might not be regarded as authoritative and suggested that other views might be obtained. It was accordingly proposed to consult some person of great eminence in the accounting and commercial world, such as Lord Plender or Sir William McIntock but a large fee would probably have been required for advice from anyone of this calibre and it was ascertained semi-officially

from

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION

45
from you that the Govt. of Kenya would be unwilling to pay any fee, being perfectly satisfied with the conclusions already reached.

3. The matter thus seemed at a deadlock but an opportunity occurred for Sir William Gowers to mention the matter to Sir Harry McGowan, K.B.E., the Chairman of Imperial Chemical Industries, who recently acted as Chairman of the Committee on Electricity Distribution which presented a report to the Minister of Transport in May of this year. Sir Harry very kindly undertook to advise upon the matter free of any charge and he has embodied his opinion in the letter to the Crown Agents of which I enclose a copy. This opinion has been prepared for publication in Kenya if desired. It can be regarded as authoritative and its impartiality cannot be called in question

question

question.

4. My own view, and that taken by my predecessors is entirely in accord with that expressed by Sir Harry McGowan. It is, I think, unwise to contend, as has been done, and as has been represented here very forcibly by Mr. Fitzgerald,

that if the Company could raise sufficient capital to develop their Pangoni undertaking at a time when their Nairobi Licence had only 35 years to run, they should have equally good prospects of raising capital to develop the Maragua-Tana project, if the Licence is extended so as to give them 16 years. Such an argument overlooks the plain fact that the Tanganyika undertaking is completely separate from that in Nairobi and even if subscribers' capital locked ^{into} the Nairobi undertaking as an indication of the prospects of the Company, that security is not of unlimited value, and cannot be used as the basis of further capital issues.

Also it is generally acknowledged that an undertaking of this nature requires a long period

(1/2 note)
d

formed a course of bulk supply independent of the Nairobi distribution network

reference to supply lines

of assured demand

C. O.

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

DRAFT.

unreasonable or undesirable

security of demand over a period sufficiently long to enable a financially soundly financed, without market commercial cost,

FURTHER ACTION.

in order to enable it to carry out satisfactory developmental work and to supply its services to the community at a reasonable price. In my opinion, the Company, in asking for an extension of the Distributing Licences until 1972, has been reasonable, ^{and} ~~and~~ an extension for a still longer period would not have been at all out of the way. It must be borne in mind that if a large capital is to be sunk in electrical installation, the Company which finds the capital must have a reasonable period in which to recover its outlay, especially if it is desired to provide electricity at a low cost.

5. In regard to the existing Ordinance with its mistaken provision as to the date on which an undertaking can be purchased by a local authority, it appears to me that the correct course would be to acknowledge the mistake and to correct it. This has been done for the future but the

existing

existing provisions are expressly retained in regard to the licences now held by the Company, and it is, I think, expedient that ^{the most desirable} the anomaly should ^{now} be removed.

6. The effect of this opinion of Sir Harry McCowan, with which I am in ^{full} ~~entire~~ ^{will} agreement, would be to revive the question once more, and the Company ^{will} would probably proceed to make a new application, in accordance with the appropriate provisions of the Ordinance. If so, I would urge that that application be considered afresh, on its merits, in the light of the opinion expressed above. I do not consider that questions of the rates at present charged by the Company for electric light and power should come into the consideration, ~~and~~. Such questions may properly be considered, and taken up with the Company as provided in the Ordinance; but ^{do not appear to me to be} they are not relevant to the question here at issue:—

which is what is an appropriate length ^{in the} of period for ^{of the} distributing licences, if the Company is to undertake a scheme involving the raising and expenditure of capital to the amount of between £200,000 and

C. O.

- Mr.
- Mr.
- Mr.
- Sir G. Parkinson
- Sir G. Tomlinson
- Sir C. Ballantyne
- Sir J. Stuckburgh
- Permt. U.S. of S.
- Partly. U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

£300,000. It ^{is possible} may be that the rates now charged by the Company are unduly high. I express no opinion on that, though I notice from the Report of the Committee of Enquiry that the representative of the ^(at any rate) sisal industry was not of opinion that the rates were excessive, ^{which} though ~~he~~ did ^{my} hope for further reduction if the scheme were carried through. It is in that direction, namely of expansion and provision of more power, that the chance of reduction ^{is free & short} in cost must lie.

7. In the concluding paragraph of your despatch of the 14th of May you stated that if it were necessary for me to direct you to re-consider the decision in the light of further technical advice, you would wish to have full and detailed reasons. I have no desire to issue any definite instruction as I should prefer to secure the "reasoned"

reasoned assent of Government and of the
unofficials alike to the proposal, and I
accordingly suggest that if the Company, who
are being informed that I have received expert
opinion in the light of which I think their
application might well be renewed, do renew
their application you will be able to approach it
with a fresh mind.

L. Hays, etc.

To be added to Draft
himself as para. 8

C. O.

- Mr. ~~Head~~ 16 Nov 1951
- Mr.
- Mr.
- Sir G. Parkinson
- Sir G. Tomlinson
- Sir C. Bottomley *Williamson*
- Sir J. Shuckburgh
- Permi. U.S. of S.
- Partly U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

At the moment when this
despatch was originally prepared I was
given to understand that
Mr. Fitzgerald, the late Postmaster
General, had been in communication
with the Company and I now learn that
he has, in fact, approached them with
suggestions which he trusts may be
acceptable to the Company and to the
Kenya Government. I understand,
however, that the Company does not
regard the question as of the same
degree of urgency as previously, and
some time may elapse before any further
overtures are made. I enclose, for
your information, a copy of the report
on Electricity Distribution by the
Committee over which Sir Harry McGowan
presided, since it discusses numerous
points which are of interest to the
Government of Kenya.

(Signed) W. ORMSBY GORE

Grove Hall.
Twyford Berks.

AA TWYFORD 100 R.A.C.
GUESTS " 122

35
6 Nov 1936

9 NOV 1936

G. O. REGY

Dear Flood

I attach copy of my letter to

Shearer

I do not know if you have
in the office a copy of the Kelowna
Report on Electricity Distribution
published in May and if not you
should I suggest get a copy & arrange
for Sir John Campbell to see it. It
has a very definite bearing on the
question at issue with the Company

1011
W. H. Wood

(37)

Grove Hall.

Twyford Barks.

A.A. TWYFORD 108, R.A.C.

GUESTS 122

& very strongly emphasizes the need for
effective safeguards for consumers. The
safeguards are in general in harmony
with the recommendations contained
in the Notes to the Nairobi Committee's
Report - pages 26 et seq. The Nairobi
Committee were therefore not entirely
in the air!

The paras. in the McIlwain
Report of main interest are:

Grave Hall
Twyford Books

A.A. TWYFORD 106. R.A.C.
GUESTS 128

158-186 relating to Power Companies

194

287

282 & seq relating to Holding Companies

The Kenya Coy is really in the
position of a subsidiary to
Balfour Beatty & Co.

I will send you another note
when I hear from Quarer.

Yours sincerely

T. Fitzgerald

GROVE HALL (Twyford) LTD.

A.A.

R.A.C.

TELEPHONE:
TWYFORD 106.

Grove Hall,
Twyford.

DIRECTORS
J. D. TIDGALL
D. M. TIDGALL

Berks.

Private & Confidential.

November 6

1938

W. Shearer Esq.

66, Queen Street,

E.C.4

Dear Mr Shearer,

Since our informal talk of a few days ago, I have been turning over in my mind the terms on which, in my view, the Kenya Government and your people might come together in the matter of development in the Nairobi area in the best interests of all concerned.

2. From the general tenor of our talk and your request that I should put my ideas in writing, I conclude that you personally feel that the question is one for give and take on both sides in a reasonable spirit. That is a definite advance on the uncompromising attitude adopted by the Company at the enquiry at Nairobi in March last.

3. I still feel that a private undertaking with a due sense of its obligations, can best cater for the Nairobi area for a substantial time to come. But safeguards on both sides are obviously necessary and the following are what I have in a general way in mind.

For the Company.

(1) An extension of the period of Franchise to 1962 which is a date mentioned by

GROVE HALL (Twyford) LTD.

A.A.

R.A.C.

Grove Hall,

Twyford,

Berks.

195

TELEPHONE
TWYFORD 106

DIRECTORS
J. G. TISDALL
D. M. TISDALL

you at an earlier discussion. The date might be made 1964 which would give a total period of the usual 42 years from 1922, the date of the licence. Extension to 1964 would give a run of 28 years from now.

(2) Amendment of Section 19 (a) of the Kenya Ordinance so as to give the Company an interrupted run to 1964, subject to the consent of the Nairobi Municipality such consent not to be unreasonably withheld.

For Consumers

(1) Period during which fixed or maximum charges may be revised to be reduced from 5 to 3 years.

(2) Approval by Government of the terms of issue of new capital.

(3) Company to furnish Government with such returns, statistics, accounts and generally such information as it may require.

(4) Amend Section 45 (6) of the Kenya Ordinance so as to (1) remove its cumulative effect regarding dividends; (2) provide the maximum net earnings available for dividends in connection with any undertaking shall apply to the ordinary shares.

(5) Measures to ensure that

GROVE HALL (Twyford) LTD.

A.A.

R.A.C.

TELEPHONE : TWYFORD 108

DIRECTOR : J. H. TISSALL
DR. M. TISSALL

Grove Hall,

Twyford,

Berks

193

the sliding scale relating to prices shall be really effective. This would imply depreciation provision on a more defined basis than at present and the placing of a limit on the amounts which could be credited to Reserve Funds.

4. As you are aware all the safeguards for consumers outlined above find, in general way, a place in existing legislation in England. Moreover the need for them as protection against possible abuse on the part of undertakers is strongly emphasized in the McGowan Report of May last. Also they were, I may say, present to the minds of the Hairobi Committee as directions in which the Carya Ordinance needed strengthening should a substantial extension of the Company's franchise ever be contemplated.

5. I feel sure you will agree that a Utility Company whose policy is to accept and carry out its obligations in the proper spirit has nothing to fear from the suggested safeguards at the hands of a Colonial Government. On the other hand willing agreement to them by the Company would go a tremendous way towards satisfying the public that they would get a fair deal, and towards allaying that suspicion of the Company which was at the bottom of the strong opposition on the part of the Local Authorities to the proposed amendment of Section 19 (a) in 1934. They felt the right to take over a licence at any time was a real protection, as things then stood, against the Company should the latter abuse its powers.

6. If the safeguards are accepted and

GROVE HALL (Twyford) LTD.

A.A.

R.A.C.

TELEPHONE
TWYFORD 106

Grove Hall,
Twyford.

DIRECTORS
J. D. TISDALL
G. M. TISDALL

Berks

explained locally under ~~the~~ circumstances which gave the public confidence, I feel certain that local opposition to such extension of the franchise as I have mentioned would be withdrawn or would, at least, die down to such an extent that Government would be justified in ~~fasting~~ through the necessary legislation.

7. You will remember that the relations between the Company and Messrs Balfour, Beatty & Company and other London interests were referred to at the Nairobi enquiry. In this connection the observations at pages 50/55 of the McGowan Report are not without interest.

8. In the course of our last talk you referred to the desirability from the Company's point of view of a blanket arrangement which would cover the whole of the Company's operations in Kenya. I fear I can see no possibility of this at the moment. The Company's various undertakings are not anything like equally prosperous and inter-district interests would stand in the way.

9. I wish to make it perfectly clear that this letter represents only my personal views. It carries no authority from the Kenya Government or the Colonial Office.

Yours faithfully,

(Sgd) T. Fitzgerald

C.O.

Mr. Flood 30/10/36

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley. 30. f

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,

October, 1936.

La. hon.

Gentlemen,

I am etc. to acknowledge the receipt of your letter No. O. Kenya/79 on the subject of the East African Light and Power Company's application for an extension of their Generating and Distributing Licences in Kenya, and to request that you will express to Sir Harry McGowan his most grateful thanks for his kindness for examining and advising upon the questions at issue. Sir Harry's generous action is deeply appreciated and a copy of his letter is being sent to the Governor of Kenya for his information. Mr. Ormsby Gore trusts that, with Sir Harry McGowan's assistance this vexed question may soon be settled.

DRAFT.

THE CROWN AGENTS

FOR THE COLONIES.

FURTHER ACTION.

*Review from
Sect.*

certain aspects of the evidence. We have not retained copies of these documents, which will no doubt be sent to us again, if necessary, in the event of further action on our part being required.

I have the honour to be
Sir,

Your obedient servant,

J. C. Lamont

FOR CROWN AGENTS.

1. head

IMPERIAL CHEMICAL INDUSTRIES LIMITED.

FROM: THE CHAIRMAN.
(SIR HARRY MCGOWAN, K.B.E.)

TELEGRAMS:
IMPKEM TELEX. LONDON
TELEPHONE:
VICTORIA 4444.

MILLBANK,

LONDON, S.W.1.

15th October, 1956.

Gentlemen,

Sir William Gowers has asked me to give an opinion for the assistance of the Colonial Office in the matter of the dispute between the East African Power and Lighting Co. Ltd. and the Government of Kenya, arising out of the Company's application for a renewal of their electrical generating and distributing licences until 1972. Sir William explained to me the position regarding the right of the local authority to apply for revocation of the licences, and informed me that the Government had declined to agree to the renewal of the licences beyond 1952 or to a modification of the present right of the local authority to apply for revocation.

The point as I understand it is whether with no greater security of tenure than at present exists, and no longer licence period than until the end of 1952, the Company could expect to be able to raise the capital necessary for the development of the Maragua-Tana Hydro-Electric Scheme. As Chairman of the Committee on Electricity Distribution, which published its

To

Report in May 1936, I had many opportunities of considering the financial and economic problems of electric supply companies, and I have no hesitation in giving my opinion that the East African Lighting and Power Company could not expect to be able to raise the large capital which they have in view unless their tenure is made more secure and extended for at least the period for which they ask.

Yours faithfully,

J. D. G. G. G.

Crown Agents for the Colonies,
4, Millbank,
London, S.W.1.

60
320

38082/1/36

C. O.

Mr. Grossmith.

Mr. Flood

Mr.

Sir C. Parkinson.

Sir G. Tomkinson.

Sir C. Bellamy.

Sir J. Shackleton.

Perm. U.S. of S.

Partly U.S. of S.

Secretary of State.

6/10
6/15

DOWNING STREET.

8 October, 1936.

S.O. for Mr. Flood's signature.

SECRET

Dear Sir,

This is a somewhat

related reply to your letter of the 15th of July regarding the trouble-

some question of the extension of the licences granted by the Kenya Government to the East African Power and Lighting Company.

We thought that it would be a very good move to take the advice of Sir William McIntlock or Lord Plender, as you suggested, but the question of the fee and

difficultly. We haven't heard from Sir Joseph Byrne but Kenya won't say. He suggests that in outside

opinion is considered absolutely necessary, the fee should be paid

by

DRAFT.

28

SIR WILLIAM F. GOWERS, K.C.M.G.

(Gow Gow)

and we felt bound to consult the Governor of Kenya

FURTHER ACTION.

by the Company. We are considering
putting the suggestion to the Company,
but before writing, we ^{feel we} ought to have
some close idea of the fee which would
be required by Sir William McIntock or
Lord Plender, or by Sir Andrew Duncan,
who was suggested by Scrimgeours.

Any information which you can
give us on this point ^{will} would be much
appreciated. ^{We had} had vague ideas
about a hundred guineas. It ^{is} and
experts come expensive. It might
easily be more.

Yours sincerely,
(Sgd) J. E. W. Flood.

BY AIR MAIL:

REC'D
11 OCT 1936
O. O. REGY

GOVERNMENT HOUSE,
KENYA,
EAST AFRICA.

2nd September, 1936.

My dear Bottomley,

(29)

Your letter of the 21st July, dealing with that troublesome question of the extension of the licence granted to the East African Power and Lighting Company, has been carefully considered by myself and my advisors.

There is, as you are aware, considerable feeling among consumers in the Colony about this matter, and I do not think that the decision arrived at by me on the advice of Executive Council should be lightly set aside. However, we gave you an opening in paragraph 12 of my

(15)

despatch No. 51 of the 14th May, to over-rule this decision should the technical advice available to you in the United Kingdom warrant such a course. Undoubtedly an extension up to 1972 would make it easier to finance the scheme but according to the advice tendered to me by the Committee the funds can be raised on the shorter extension.

You now.....

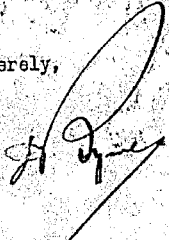
SIR W. C. BOTTOMLEY, K.C.M.G., C.B., O.B.E.,
COLONIAL OFFICE,
DOWNING STREET,
LONDON. S. W. 1.

You now ask us to agree to a fee not exceeding £100 being paid by the Government for expert advice. We are all opposed to any such payment being made. If an outside opinion is considered absolutely necessary, we think that the fee should be paid by the Company.

Will not the withdrawal of the application ease the situation for the present? I find that delay often solves the most difficult problems. In this connection we are awaiting the despatch promised in your telegram of the 9th June.

(18)

Yours sincerely,



G. O.

38082/1/36. Kenya.

Mr. Flood: 18 7.36.

Mr. *W.S. Campbell*

Sir C. Parkinson

Sir G. Tomlinson

Sir G. Bottomley *W.S.*

Sir J. Sainsbury

Permt. U.S. of S.

Party U.S. of S.

Secretary of State

For Sir C. Bottomley's signature.

Downing Street.

C.D.
R 20JUL
D 21

Am... July, 1936

W.S. Bottomley

DRAFT.

SIR JOSEPH BYRNE, G.C.M.G., K.B.E., G.B.

The correspondence about the East African Power and Lighting Company, ending with your confidential despatch No. 51 of the 14th of May, has been giving us a good deal of trouble. We have referred it to the Crown Agents for advice on various technical questions concerned, and especially on the point whether the Company's contention that they must have a reasonably long period of security if they are to engage in the big hydro-electric power scheme which they contemplate is sound. The Crown Agents have consulted

FURTHER ACTION.

their

their brokers on the finance aspect of it and Springsours, while thinking themselves that the Company's application for an extension to 1972 is a sound one and reasonable from the point of view of raising fresh capital, do not feel particularly able to give an authoritative opinion. The Urban Agents have accordingly suggested taking the advice of Sir William McIntock or Lord Plender, either of whom could be trusted to give an authoritative opinion which would be accepted as really authoritative.

Unfortunately, either gentleman would probably expect a fee for examining and advising on the questions at issue and I wish to ask whether you would have any objection to the payment of a fee from Kanya's funds, up to some reasonable limit.

Our own opinion here is that the Company is in the right of it and that

(In the consulting directors, the Roy name was not given in the meeting in which I participated)

and an 100,000 pounds or more I could not like to agree to more than that without further reference to you

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parbanson
- Sir G. Tomlinson
- Sir C. Bottomley
- Sir J. Shackburgh
- Parly. U.S. of S.
- Parly. U.S. of S.
- Secretary of State. *W.*

DRAFT

FURTHER ACTION.

(to consult the Fed. Institute)

the Ordinance should be amended and the Company given an extended licence for a reasonable period. Not necessarily till 1972 but at any rate till somewhere about 1965, but we note that this did not commend itself to your advisers.

It is suggested that an alternative suggestion made by Springsours - that Sir William McIntock, as one of the members of the Council, should be asked to advise. I think you will be glad enough to act in favour of your own view in the matter. It is up to you whether to give a letter of this kind to the Board, or to drop it. If you wish you may give me your own view of the matter, or any other suggestion.

Yours sincerely,
(Signed) W. G. BOTTOMLEY.

64
28

RECEIVED
17 JUL 1936
C. O. REGY

4, MILLBANK,
WESTMINSTER,
LONDON, S.W. 1.
(VICTORIA 7730)

15th July, 1936

Dear Flood,

(24)

Fleming has passed to me your letter No. 38082/1/36 of the 25th June about the East African Power & Lighting Company, as I have been dealing with this matter. After discussing with me, Fleming wrote to Scrimgeour and I attach a copy of his letter, together with a copy of Scrimgeour's reply.

Personally I do not think that the opinion of any firm of brokers or issuing house, or of any solicitors (whether those suggested by Scrimgeour or others), would be sufficient for the purpose for which you require it. I would suggest that it would be better to ask either Sir William McIntock or Lord Plender. Both must have had vast experience of the kind of point now at issue, and there could be no doubt about the authoritativeness of the opinion of either of them.

/Perhaps

J. E. W. Flood Esq., C.M.G.

CA

Perhaps you will let me know whether you agree to our approaching one of them. I take it that the Kenya Government will pay any fee incurred.

Yours sincerely

L. J. Gowers

COPI

STRICTLY CONFIDENTIAL

10th July, 1956

Dear Mr. Springeour,

I should be glad if you would let us have your help in the following matter.

A certain limited liability Company, incorporated in one of the Colonies, are licensees under a number of electrical generating and distributing licences issued by the Government of the Colony. The licences confer on the Company, under certain conditions, a monopoly of the generation and supply for the purposes of sale of electrical energy in the capital of the Colony and surrounding area.

The licences are due to expire variously in 1947 and 1951 (the important ones in 1947) and the Company recently applied to the Government for extension of the licences until 1972. In accordance with existing law in the Colony notice of the intended application was given by public advertisement. A considerable degree of public and private opposition to the application was thereupon manifested and eventually a Committee was appointed by the Government to consider the objections to the Company's application.

H. Carron Springeour, Esq.

r

In order to meet increasing demand the Company wish to develop in the Colony a hydro-electric scheme of some magnitude, involving a capital expenditure estimated at between £200,000 and £300,000. They contend that if their application for extension until 1972 is not granted their chances of raising the capital required for this development on favourable terms will be gravely prejudiced. The need for developing the scheme in question is not in dispute; nevertheless, the Committee recommend that the Licences shall be extended until 1952 only, and this recommendation has been accepted by the Government. On being advised of the Government's decision, the Company indicated to the Government that they had been advised by cable by their brokers that the latter would not underwrite issue on presently proposed extension and that they would advise other underwriters similarly. Therefore no hope of raising money unless reasonable tenure assured. It is understood that the Company have since withdrawn their application.

The question is one of very great importance to the Colony, and the Secretary of State is inclined to take the view that in the matter of finance there is much force in the Company's contention. He is therefore anxious to obtain an authoritative opinion - so that he can tell the Colony that he has consulted the best available authorities on this subject and that no better opinion can be obtained. He wishes to be able to inform the

Government

Government and the local population of the Colony to this effect.

You will see that there are two questions before

us:-

(a) what is the shortest licence renewal period on which it would be reasonable to expect the Company to be able to underwrite a new issue

and

(b) from whom we can get an opinion on the point which can be published in the Colony (with the adviser's name) as the opinion of an independent authority which cannot very well be challenged.

I expect that you can advise on (a) and we should be very glad to have your opinion. But as to (b) you will no doubt feel, as our advisers on loan matters, that it would be better not to have your name published in a Colony as an independent authority. Can you suggest somebody else who might be suitable? We have already consulted Procter, Gardew. What we require now is rather an authority on the raising of capital for electrical undertakings.

(Sgd.) J. G. Fleming.

3, Lothbury,

London, E.C. 2.

13th July, 1936

PRIVATE AND CONFIDENTIAL

Dear Col. Fleming,

I am in receipt of your letter of the 10th July, with regard to the question of the extension of certain licences to an Electrical Company in one of the Colonies.

We have considered the points raised in your letter very carefully and are definitely of opinion that the Company's application for the extension of their licences until 1972 is a reasonable one from the point of view of raising fresh capital.

The actual questions you ask:-

(a) As to what is the shortest licence renewal period on which it would be reasonable to expect the Company to be able to underwrite a new issue, is a difficult one to answer without knowing more details, but we should feel that it should be for at least 25 years.

With regard to question:-

(b) We would suggest your consulting Messrs. Linklaters & Paines of 2, Bond Court, E.C. 4. This firm of Solicitors has had great experience in advising on all Public Company matters including Electricity Companies and I think might be considered an independent authority. I might mention that one of the partners is Solicitor to the Stock Exchange.

Col. J. G. Fleming, C.B.E., D.S.O.

Another suggestion which might be considered would be to consult Sir Andrew Duncan or one of the Directors of the Central Electricity Board.

Yours sincerely,
(Sgd.) H. Carron Scrimgeour.

C.O.

For Mr. Flood's signature.

Mr. Flood 13.7

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley 14.7

Sir J. Shuckburgh

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET.

16 July, 1936.

Dear Mr. Shearer,

Thank you for your letter of the 6th of July, enclosing the local Kenya correspondence on the subject of the withdrawal of your application for extension of licences. The situation at the present moment is that the Secretary of State has asked for and is now awaiting authoritative advice on the subject of your application and on the whole question of the Kenya situation. When he has received and considered that advice it will be possible to take up the matter again, but until then I do not think that anything useful can be done. Lord Francis Scott did mention the matter to

DRAFT

W. SHEARER, ESQ.,

BALFOUR BEATTY & CO. LTD.,

FURTHER ACTION

Sir John Maffey

Sir John Maffey, so he is not
unfamiliar with it.

Yours sincerely,

(Signed) J. E. W. FLOOD

66, QUEEN STREET,
LONDON, E.C.4.

6th July, 1936.

REC
to entering
7-AUG 1936
REGY

Dear Mr. Flood,

I enclose herewith copy of further correspondence between His Excellency the Governor of Kenya, and our Solicitors, regarding the final withdrawal of the application for extension of licences, which consists of two letters dated 22nd and 26th June last.

This completes your record and I shall be pleased to come along when you are ready for a further discussion.

Yours sincerely,

[Handwritten signature]

Case 27

*of the Dictating above, I have had
sent to a note from Mrs. [unclear]
for which I gather that he has already
to Sir John Raftery a book of some
quite likely that he will be able to
me to see him*

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

ENC.

The General Manager,
The East African Power & Lightings Co. Ltd.,
Nairobi.

Dear Sir,

re APPLICATION FOR EXTENSION OF LICENCES.

We enclose copy of letter dated 22nd instant received by us yesterday afternoon from the Colonial Secretary that the decision of His Excellency the Governor, in Council to extend the licences so as to expire on 23rd March 1952 has been rescinded.

Yours faithfully,
For HAMILTON HARRISON & MATHEWS.

(Signed) R.H. Mathews.

No. s/E/EL.6/1/1/7.11/36.

The Secretariat,
Nairobi.

22nd June, 1936.

Gentlemen,

I have the honour to refer to your letter No. 1192/114 of the 10th June and to a letter No. E.P.6/78 of the 9th April addressed to the General Manager of the East African Power and Lighting Co., Ltd., by the Acting Postmaster General, and to state that the withdrawal of the Company's application contained in your letter under reference was considered by His Excellency the Governor in Council on the 12th June. I am accordingly directed to inform you that in view of the withdrawal of the application, His Excellency the Governor in Council has decided to rescind the decision, conveyed to you in the Acting Postmaster General's letter referred to above, that the licences which were the subject of the application should be extended so as to expire on the 23rd March, 1952.

2. A copy of this letter will be furnished to the Postmaster General and his request to the Company to submit the licences for endorsement may now be regarded as cancelled.

I have the honour to be, Gentlemen,

Your obedient servant,

M.J. Sabine,

for Colonial Secretary.

Messrs. Hamilton Harrison & Mathews,
NAIROBI.

C. O.

DOWNING STREET.

Mr. Flood. 22-6

Mr.

Mr. J. Campbell

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir C. Buttouley. 23-6

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

CD
23 JUN

25 June, 1936.

Gentlemen,

With further reference to

your letter No. O/Kenya 79. of the

6th of May 1936, I am etc. to

transmit to you the enclosed copy of

a further despatch from the Governor

of Kenya, on the subject of the East

African Power and Lighting Company's

application for an extension of the

period of their distributing licences.

A copy of the report of the Committee

to which reference is made is enclosed

together with copies of shorthand

notes of the Enquiry and comments

made by the Company upon certain

aspects of their facts. I am to

request that all these documents,

which are sent in original, may be

returned with your reply. Since then,

it

DRAFT

CROWN AGENTS
FOR THE COLONIES

FURTHER ACTION

184 copies

to be sent

(13)

it is understood that the Company has withdrawn its application for an extension of its licences.

2. It will be seen that the Governor was prepared to grant to the Company an extension of their licences, both power and distributing, for a ~~general~~ period of ^{about} five years, so as to expire ^{at the end of} the year 1952. The Company contend that this period is not sufficient to enable them to embark upon a comprehensive scheme involving the development of the hydro-electric project on the Maragua-Tana rivers, but the view taken by the Committee and endorsed by the Governor of Kenya is that if the five year extension were granted the Company should have no difficulty in raising the necessary capital on security of their undertaking as a whole, more particularly in view of the fact that they were able to raise the necessary capital for the development of the Pangani estate on the same security.

Attention

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Huttonley.
- Sir J. Shuckburgh.
- Perml. U.S. of S.
- Party U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

Attention is invited in this connection to the eighth paragraph of the Governor's despatch. Mr. Ormsby-Gore is at present inclined to the view that there is much force in the Company's contention and that, in order to develop a hydro-electric power scheme involving, ^{as this one will,} the expenditure of anything from £150,000 to £300,000 on capital works, it is only reasonable to ^{grant} expect a long period of ^{certain} undisturbed tenure. Support for this view will be found in paragraph 11 of the letter addressed to ^{you} him by Messrs. Preece, Cardew and Rider on the 6th of May, in which they expressed the opinion that if the licence granted were limited to the period specified, then the period specified was too short for purposes of finance. It is noted that the Consulting Engineers ^{will} are also of opinion that if the ambiguities were

201

removed from the terms of purchase then
 the extension applied for might be too
 long. Having regard, however, to the
 modern practice in regard to hydro-electric
 schemes, the Secretary of State is inclined
 to take the view that adequate security and
 adequate prospect of development can only
 be provided under a long lease of anything
 from fifty years upwards.

*to all the points
 of the lease
 of terms
 to all the points
 for which
 the lease
 is intended
 to cover a lease
 of 50 years
 of the Co.*

It is on this point that
 Mr. Ormsby-Gore desires advice and, in particular,
 as to the prospects of the Company being able
 to raise the large capital which it has in
 view, in addition to the capital already raised
 for the Pangani undertaking, if it is to be
 given no greater security of tenure than at
 present exists, and no longer period than till the end of 1962.

In view of the fact that the Company
 has now withdrawn its application, the matter
 is no longer urgent, but it is desired to
 secure a settlement of the points at issue
 within a reasonable period.

I am, etc.,
 (Signed) J. E. W. FLOOD

C. O.

S.O. for Mr. Flood's signature.

Mr. Flood, 22.6.

Mr.

Mr. J. Campbell 22/6

Sir C. Parkinson

Sir G. Tomlinson

* Sir C. Blandley

Sir J. Spuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET.

25 June, 1936.

Ann 28

Dear Colonel,

We are sending you an
 official letter, with enormous
 enclosures, about the East African
 Power and Lighting Company. The
 question has already, in some of its
 aspects, been put before Preece,
 Cardew and Rider (see your letter to
 us of the 8th of May, No. O/Kenya 79).
 What we should really like is to get
 the opinion of some unquestioned,
 independent authority which would go
 down with the Government of Kenya and
 still more, would carry weight with
 the local population of that Colony.

You have already given us the views of
 the Consulting Engineers and of course
 Preece, Cardew and Rider are as good a
 firm as there is on electric points of
 view. In a matter of this kind,
 however,

DRAFT

COLONEL J. G. FLEMING, C.B.E., D.S.O.
 CROWN AGENTS

FURTHER ACTION:

however, financial considerations come into it just as much, and the opinion of an issuing house might be of even greater value than that of the electrical consulting engineers. What we are wondering, then, is whether you could suggest anybody who might be regarded as definitely authoritative, so that the Secretary of State could tell Kenya that no better opinion can be got.

Our view here is that Kenya are being particularly shortsighted: that if they want to develop a big hydro-electric scheme then it is only reasonable that the company taking it on should have a reasonably long tenure (~~fifty years or over~~) so as to enable it to plan ahead and make a good thing out of it. In Kenya, not only are they not prepared to do this, but they have tied round the Company a mistake which crept into the original Power Ordinance.

To put it briefly, what was intended in the Ordinance was to provide that Municipal Authorities could take over the undertakings

E 2378

Mr. Brooks, the Secretary of the Company, called and raised some more points. Section 19 of the Electric Power Ordinance as it now stands lays down that

"At least six months preceding the expiration of a period of forty-two years:.... or such shorter period as is specified in that behalf in the distributing licence, or at least six months preceding the expiration of every subsequent period of seven years, the local authority shall make application to the Governor in Council for the revocation of the existing distributing licence, and for the issue to them of a distributing licence,

If that application from the ^{local} municipal authority relates to an area which is wholly within its jurisdiction the application shall be granted. This is laid down in Section 19(b).

Now the date on which the application for revocation shall be granted is not stated and Mr. Brooke thinks that it is at any rate possible that the application would have no effect until the period of the licence was up. Otherwise the local authority would have power to take up ~~the~~ the undertaking at any time. This interpretation, however, is not that which was held in Kenya because when they were introducing the amending Ordinance in 1934 they said that the purpose of the amendment was to do away with this anomaly. Further, if there is not power to take over the licence before its period is up, what is the need for prescribing any formalities at all since all that would be necessary would be for the local authority to oppose the grant of a new licence.

I am afraid, then, that this idea will not work in that the law as it stands allows a local authority to take over the undertaking - on payment of compensation, of course - at any time during

during the currency of the licence. This was
not intended but appears to be the law as it
stands.

J. S. Flaw

16.6.36.

NOTE.

The East African Power and Lighting Company, in its present form, has the important backing of Power Securities Limited in this country. It took over the Nairobi undertaking from a previous Company and its supply is obtained partly from water power and partly from engines (steam or oil). It has long wanted to put this supply on a proper basis by means of a large hydro-electric station on the Tank River, which would involve taking over 1,500 acres of native land as a reservoir. The arrangements were practically concluded in 1929, when in the middle of the general election the Company proposed a maximum for the amount of the compensation they should pay to natives. The general election led to a change of Secretary of State and to a thorough examination of the native interests concerned. It is now, after seven years, possible to give the Company what they want, but they feel unable to raise the capital for the work unless their licences are substantially extended.

The best that the Local Government are prepared to do is to extend the licences from 1947 to 1952, and there remains the fact that these licences are in any case insecure. The Ordinance under which they are held provides that a local authority can apply to take over the undertaking "at least six months preceeding the expiration" of the distributing licence - i.e. at any time after the licence is granted. This blunder has been corrected, but the municipal interests concerned have successfully resisted

resisted any attempt to make the correction retrospective.

The local critics of the Company also maintain that the remaining period of the licences is enough security on which to raise £300,000; ^{plus} security enough to enable the Company to raise £190,000 for their enterprise in Tanganyika, and therefore presumably is sufficient security on which to raise any amount of money at any time.

was 16.5

*Mr Flood has seen (10/11)
wait 1/2*

66, QUEEN STREET,
LONDON, E.C.4.

12th June, 1936.

RECEIVED
13 JUN 1936
C.O.F.
21

Dear Mr. Flood,

Further to the cable which I sent off to Nairobi on Tuesday last, I have now received a reply from Captain Ward and enclose a copy herewith for your information. So far as I can see, this is satisfactory and will enable us now to explore the situation quietly and expeditiously on this side.

After our meeting with you on Tuesday, I had a look through the papers again to refresh my memory generally on the matter. I find, however, there are one or two points which are not quite clear to us here and in order that we may be on common ground when next I see you, I should like you, if you can spare the time, to give Mr. Brook a few minutes one day early next week in order to clear up the points on which we are in doubt.

I have, therefore, told Mr. Brook to place himself in touch with you at the beginning of the week in order to find out whether you would be able to see him.

Yours sincerely,

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

Enc.

32
COPY OF CABLE RECEIVED FROM CAPT. WARD, NAIROBI, 10.6.36.

submitted letter withdrawing application this morning
Attorney-General present says he will move Executive
Council Friday that previous minutes of Council be
rescinded and letter accepted.

/ABG

66, QUEEN STREET.
LONDON, E.C.4.

19 83

9th June, 1936.

RECEIVED
10 JUL 1936
C.O. REGY

Dear Mr. Flood,

With reference to our interview this afternoon, I have pleasure in enclosing, in accordance with your request, copies of the correspondence to which reference was made by us which is mainly between our solicitors in Nairobi and Government and with the Company in Nairobi.

I also enclose copy of the cable which was sent to the Board in Nairobi this afternoon advising them to withdraw our application for an extension of the licences.

Yours sincerely,

Julia Flood

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

COPY.

GH/DCB/GS. 9.6.36. 5.0 P.M.

WARD
ELECTRIC
NAIROBI

YICKI	WITHDRAW
AOPEH	APPLICATION
OVDIV	WITHOUT PREJUDICE
RYTIE	RENEWAL
AOPEH	APPLICATION
ASYTO	AS SOON AS
GROLZ	EXPEDIENT
SHRAGER	

COPY

HS/RT.

1192/114

17th April, 1936.

The General Manager,
The East African Power & Lighting Co., Ltd.,
NAIROBI.

Dear Sir,

Extension of Licences.

You have asked our opinion as to the exact effect of section 18 of the Electric Power Ordinance, with regard to the granting and refusal of applications for extensions, and the power of the Governor-in-Council to entertain subsequent applications in the event of a first application being withdrawn or refused.

The writer discussed the question with Dr. Mathews and we are both of the opinion that the Attorney General is right in a ruling that, by the terms of sub-section (6) of the section, the refusal of an application precludes the Licensee from making any further application for extension at a later date.

Under the terms of sub-section (5) the Governor-in-Council is empowered to grant an application "on such terms and conditions and for such period as he may deem fit"; which means that the application need not necessarily be either granted according to its exact terms or refused. We think it beyond doubt, however, that the Licensee cannot be compelled to accept any modified grant of the application, but could deal upon the Governor-in-Council either to grant the application in its original terms or to refuse the same.

We are further of the opinion, though the Ordinance is silent on the point, that, pending the final granting or refusal of the application, the same could be withdrawn; and that in those circumstances the Licensee would not be debarred from making an application de novo at a later date.

The position with regard to the Company's present application is that the same has not yet been definitely refused, nor, in view of the fact that the Governor-in-Council is offering a modified grant which has not yet been accepted by the Company, can the application be regarded as granted at this stage. We think, therefore, that there is still nothing to prevent the Company withdrawing its application altogether and making a new application later on if it thinks fit.

It seems to us that there are three alternative courses open to the Company either :

- (a) To accept the proposed extension of five years making it clear that, with such a small extension, the Company cannot be expected to commence with the Maragua-Rana Scheme; or
- (b) To withdraw the application on the grounds that the Company is not receiving the encouragement for which it had hoped; or
- (c) To reply to the Governor-in-Council's offer by pointing out that the same is not in accordance with the terms of the application and that the Governor-in-Council is required either to grant the application in its original terms or else definitely to refuse the same.

Both Dr. Mathews and the writer are of the opinion that, if either the second or third course is to be adopted, the Company should first be satisfied as a matter of policy that it has very good grounds for adopting such a course, and should also be prepared to give sound reasons to the Governor-in-Council for doing so.

Yours faithfully,
for HAMILTON HARRISON & MATHEWS.

(Signed) HULPHREY BLADE.

COPY

HFV/EM

5th May,

6.

The Honourable
The Colonial Secretary,
The Secretariat,
N.A.I.R.O.B.I.

Sir,

As requested by His Excellency the Governor at the interview which he very kindly granted to Mr. Odum, Dr. Mathews and myself today, I have the honour to submit herewith Notes of the representations made to His Excellency at the meeting referred to.

2. His Excellency instructed us to treat the whole subject as being in abeyance until he receives the final decision of the Secretary of State on the subject and His Excellency stated that he was referring the matter to him together with the representations that I made this morning on behalf of this Company.

I have the honour to state that my Company will consider the matter as in abeyance until a further communication is received from Government.

3. I confirm that at the end of the interview I refrained from tendering formal withdrawal of the Company's application for extension of licence on being assured by His Excellency (after he had heard the views of the Attorney General on the legal position) that nothing would be done by Government which would in any way prejudice the Company's right of withdrawal or which could be construed as a refusal of the application.

I have the honour to be, Sir,
Your obedient servant,

for THE EAST AFRICAN POWER & LIGHTING COMPANY LTD.

Chairman

Encls.
/APG

COPY

5th May, 1936.

Your Excellency,

My Company on the 22nd October, 1935, submitted an application to Your Excellency in Council, a part of which application was for leave to make early application to Your Excellency in Council under Section 18(4) of the Electric Power Ordinance, for a renewal of the distributing licences in the Nairobi area. Your Excellency was pleased to grant liberty to make such early application; and formal application for these renewals was submitted by our lawyers, Messrs. Hamilton, Harrison & Mathews on 14th December, 1935.

On the 9th April, 1936, we received from the Acting Postmaster General Your Excellency's decision to offer an extension of a period of approximately five years. This offer has been very carefully considered in Nairobi by my Board after having the benefit of the advice of our technical and financial advisers in London.

It is with the deepest possible regret that I have to inform Your Excellency that the considered view of my Board is that such an offer of extension does not meet the difficulties which have been fully dealt with both in the application of 22nd October, 1935, and before the Committee appointed by Your Excellency to consider the matter and because instead of placing my Company in a better position to raise capital it will definitely hinder the raising of such capital.

I have, therefore, with the deepest possible regret to inform Your Excellency that my Company desires to withdraw its application for an extension of licences in this area dated the 14th December, 1935.

Your Excellency, with great respect I would suggest that the consequences of the decision in offering only a further five years extension is that in the face of the Highfield report, which must admittedly be taken as an independent one, we cannot proceed with this scheme. Until yesterday my Board's views were based to a certain extent on hypothetical grounds although we had at our disposal the best possible financial advice and we further had the benefit of this report. However, my Company's correct function is to act as agents in this matter and to endeavour to carry out the wishes of Government and of the consumers in this area. With that object the view of the market was obtained on the offer to extend the licences by a further five years and I received yesterday the following cable:-

*Informed today by brokers they would not underwrite

issue on present proposed extension and that they would advise other underwriters similarly stop therefore no hope of raising money unless reasonable tenure assured.

I think possibly that in view of all the arguments advanced both in the application dated 22nd October, 1935, and before the Committee of Enquiry appointed by Your Excellency it is unnecessary for me to say anything more than that as my Company has not been given the facilities which in our opinion are essential wherewith to proceed with the further development scheme for Nairobi it means, and must mean, a grave setback to the provision of supplies of electric light and energy in this area on the same efficient, economical and cheap basis as is at present ruling.

Much as we regret that this should be so yet I do wish to assure Your Excellency that the decision outlined to you has only been reached after grave consideration and with an extreme measure of reluctance.

RHM/ST.

1192/114

NAIROBI.

20th May, 1936.

The Hon. The Colonial Secretary,
The Secretariat,
NAIROBI.

Sir,

Application for Extension of Licences by
The East African Power & Lighting Co., Ltd.

With reference to the letter No. 25921 of 5th instant addressed to you by the Chairman of the Company recorded what had taken place on that date at the interview at Government House granted by His Excellency, we desire to draw the attention of Government to the urgency of this matter having regard to the provisions of sub-section 5 of section 18 of the Electric Power Ordinance which provides that the Application has to be dealt with within six months after the date on which it was received by the Governor in Council.

As the application was lodged on 14th December last the six months will expire on 14th prox. that is to say, in little more than three weeks time.

We have the honour to be, Sir,

Your obedient servants,

For HAMILTON HARRISON & MATHEWS.

(Sgd.) R.H. MATHEWS.

COPY

THE SECRETARIAT
NAIROBI. KENYA.

No. a/B/EL.6/1/1/7.11/20

23rd May 1936.

Gentlemen,

With reference to your letter No. 1192/114 of the 20th May, on the subject of the application made by you on the 14th December, 1935, for the extension of certain Licences granted to the East African Power and Lighting Company Limited, I have the honour to observe that His Excellency the Governor in Council, on the 3rd April, 1936, granted an extension of the licences in question to the 23rd March, 1952, as notified to the Company by the Acting Postmaster General in his letter No. E.P. 6/78 of the 9th April. In the circumstances the provisions of sub-section 5 of section 18 of the Electric Power Ordinance would appear to have been complied with in all respects.

2. I am to add that the decision made in this matter was reported to the Secretary of State for the Colonies by His Excellency in an air mail despatch on the 14th May, as arranged by His Excellency during the course of the interview referred to in letter No. 25921 of the 5th May addressed to me by the Chairman of the Company.

I have the honour to be, Gentlemen,

Your obedient servant,

(Sgd.) N.J. SABINE.

for Colonial Secretary.

Messrs. Hamilton Harrison & Mathews
Nairobi House,
NAIROBI.

/APG

COPY

Nairobi. 92

RHM/ST.

1192/114.

26th May, 1936.

The General Manager,
Messrs. R.A. Power & Lighting Co. Ltd.,
NAIROBI.

Dear Sir,

APPLICATION FOR EXTENSION OF LICENCES BY
YOUR COMPANY.

We sent you a copy of our letter of the 20th instant addressed to The Hon. The Colonial Secretary referring to the interview which took place at Government House on the 5th instant and emphasising the urgency of this matter seeing that the six months referred to in sub-section 5 of Section 18 of the Ordinance will expire on the 14th prox.

We have now received a reply from the Colonial Secretary dated the 23rd instant, copy of which we herewith enclose, from which it would appear that notwithstanding the opinion given by the Attorney General at Government House on the 5th instant Government now take the attitude that the Governor in Council has already granted an extension of the Licences to 23rd March 1952.

We are not replying to the Colonial Secretary's letter until we hear further from you.

Yours faithfully,

for HAMILTON HARRISON & MATHEWS

(Sgd.) R. H. MATHEWS.

ENCLS.

/APG.

COPY.

NAIROBI.

93

RHM/ST.

1192/114

28th May, 1936.

The Hon. The Colonial Secretary,
The Secretariat,
NAIROBI.

Sir,

With reference to your letter of the 23rd instant, in which you state that His Excellency the Governor in Council on 3rd ult. granted an extension of the licences to 23rd March 1952 as notified by the Acting Postmaster General on 9th ult., we have the honour to reply that if that is the view of the position now adopted by Government it would seem to indicate a change of opinion on the part of The Hon. The Attorney General since the 5th instant, as on that date at the interview at Government House he expressed the opinion that the legal position was that Government had neither granted nor refused the application but had made a counter offer which could only be considered a grant in terms of sub-section 5 of Section 18 of the Ordinance if and when such counter offer was accepted by the Company.

It may be that your letter under reply is to be construed as meaning that His Excellency the Governor in Council having decided to offer the Company an extension until 23rd March 1952 nothing further can be done under existing circumstances until the Air Mail Despatch of the 14th instant has been dealt with by the Secretary of State for the Colonies.

A reply in due course will be appreciated.

We have the honour to be, Sir,

Your obedient servants,

for HAMILTON HARRISON & MATHEWS.

(Sgd.) R.H. MATHEWS.

ZAG

COPY

Copy to :
The General Manager,
E.A. Power & Lighting Co., Ltd.,
NAIROBI,
for his information.

RRH/ST

1192/114

29th May, 1936.

The Hon. The Colonial Secretary,
The Secretariat,
NAIROBI.

Sir,

With reference to your letter No. S/B/EL.6/1/1/7
11/20 of the 23rd instant, and further to our letter of
yesterday's date, we have the honour to request that you will
advise us on what date the application dated 14th December
1935 which was lodged by us for extension of the Licences
held by the East African Power & Lighting Company Limited
was actually received by His Excellency the Governor in
Council, as this date is the important one for the purposes
of sub-section 5 of section 18 of the Electric Power Ordinance.

We have the honour to be, Sir,

Your obedient Servants,

(For HAMILTON HARRISON & MATHEWS.)

(Sgd). R.H. MATHEWS.

38082 / 36

G. O.

7/2 9/6

coded & sent
9.30 pm.
9.6.36.

18
D 75

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

16c

7/0 147

Your deep 51 Coy. Electric

Power Company : understood to be
 intending to withdraw application
 for extension if this can be done
 without prejudice to renewal of
 application as soon as may be
 expedient. Presume no
 objection on your part or hope
 to reply by despatch at early date.

DRAFT.

copy
at

Governor
Nairobi

E

17

Desiderata of the East African Power and
Lighting Company Limited.

The Company asked the Kenya Government that the period of their various generating and distributing licences held in the Nairobi area should be extended in order that they should expire in 1972. The existing licences expire in 1947, and, due to an admitted fault in the Electricity Ordinance, 1932, are subject to the disadvantage that a Local Authority (i.e. Municipality) can at any time, except within the last six months of the period of a licence, apply to the Governor to revoke the licence, and to have a licence issued to itself.

Legislation has been passed to remove the disadvantage in so far as ^{future} new licences are concerned, but in view of representations made by Local Authorities, the amending legislation was purposely not made retrospective. However, what the Company is most concerned with is the fact that their licences have only eleven years to run.

The Company requires an additional £300,000 capital immediately for the further development of its undertakings in Kenya, including the completion of the Maragua-Tana power scheme. They argue that it is impossible to secure the additional finance because of the short life of the licences in the area in which the new operations are to be undertaken.

A Committee of Enquiry was appointed to consider the Company's application. The Committee recommended that the Company's licences should be extended for a period of five years only, to expire in 1952, instead of twenty-five years, to expire in 1972 as desired by the Company. This recommendation has been accepted by the Governor in Executive Council and the Company so informed. X

The Company has informed the Governor that the extension of five years would not serve their purpose. At the same time the Company made further representations which the Governor now forwards, and the matter is left for the Secretary of State's decision. These representations include the additional information that the Company has been informed by its brokers that they would not undertake an issue on the present proposed extension, and that they would advise other underwriters similarly.

Colonial Office.

June, 1936.

There is a rider to the recommendation that, if the Governor-in-Council should contemplate the granting of a period of more than five years, there should be certain conditions precedent to the granting of any such extension. The conditions relate to

maximum

maximum prices, maximum dividends, depreciation,
general reserve account, etc., and are set out on
pages 26 - 29 of the report.

99

Points from the Company's Case.

That long period licences have been granted in similar undertakings, e.g.

Palestine Electric Corporation Ltd.
71 years with option to Government to purchase at expiry of 41 years.

Jerusalem Electric & Public Service Corporation Ltd., 45 years with an option to extend for a further period of 16 years.

Burma Electric Supply Co. Ltd.,
50 years from 1928.

Parak River Hydro-Electric Power Co. Ltd., and Dar-es-Salaam & District Electric Supply Co. Ltd., both 80 years with option to Government to purchase at the expiry of 50 years.

Pangani Concession.
60 years with the option to the Company to extend for a further 15 and the right to Government to purchase the undertaking at the expiry of 50 years.

That it is agreed that the best scheme to provide for the future electricity supply of Nairobi and district is the Maragua Tana scheme. Mr. Highfield's advice, see page 13 of the shorthand notes.

The Company's reply to the Councils' objections to the application on the score of maximum prices, provision for depreciation, maximum dividends, overhead lines and meter rents, is that provision exists under the Electricity Ordinance for their control and that the matters are not strictly relevant to the issue.

Points from the Municipalities' Case.

That the application is premature, as none of the licences will expire until 1947.

That additional capital is immediately required is not disputed. Indeed it is obvious in order to provide additional generating plant, but that additional capital will only be available if the period of the existing licences is extended, is emphatically denied.

On first class securities money is available for investment at 4 1/2 per cent. Councils have received offers of loans up to £250,000 at 4 1/2 per cent.

If the Company's Application were granted, the result would be to increase the market value of the present shares. That, it is suggested, is the principal reason for making the application for the renewal of the Company's existing licences eleven years before the date of expiry of such licences.

That the Councils have had under consideration a proposal to apply for a Distributing Licence, and they object to any of their rights and privileges under the Ordinance being abrogated.

That the price charged by the Company for electric power is too high.

That provision for depreciation is not being made by the Company in accordance with Section 45 of the Electricity Ordinance.

That the maximum dividends payable by the Company should be limited to 10 per cent. per annum.

That



That the estimate of overhead lines in built up areas is unsatisfactory, unsightly and dangerous, and should be replaced by underground cables.

costing?
J.

That the charges for meter rents is excessive.



Note on the Governor's Confidential Despatch

No. 51 of the 14th of May.

Para. 2.

The Governor assumes (a) that the Company has accepted as final the terms of our letter of the 4th of March, and (b) that it is not necessary for him to comment further on the question of an amendment to the Ordinance of 1934.

Flag A.

As regards (a) the Company's letter of the 13th of March (flag B) cannot be regarded as accepting the terms of our letter of the 4th of March, neither can the statements made by the Company's representatives at the conversations at the Colonial Office on the 12th and 27th of March (flags C and D).

The Governor deals with the remaining points in the Company's letter of the 13th of March (Flag B) as follows:-

The Company.

The Governor.

That the circular issued by the Town Clerk, Nairobi, (Flag B) regarding the Company's application was libellous. They propose to take no action however.

NO observations on this point.

That the members of the Committee of Enquiry were interested parties and could not be regarded as impartial.

The Governor has dealt fully with this in paragraphs 4-7 of the despatch. He says, "I am, in short, at a loss to understand the reasons underlying these representations in so far as they concern the personnel of the Committee. I can hardly believe, however, that the implication of the Company's protest is

(that)



that the Committee, individually or collectively, were for some unworthy reason, or through some ulterior motive, so biased against the Company that they deliberately took a decision which would seriously prejudice the future of the only Company or organization in the Colony which is at present capable of carrying on this important undertaking. On the contrary, the Committee consisted of persons whose sole object, and in some cases interest, lay in affording to the public increased facilities to be supplied with electricity at a reasonable unit rate. It was in this light that they considered the Company's case as it was presented to them;

.....

That it would be difficult to raise the capital necessary for the development of the Maragua-Tana scheme without the renewal of the various licences for a minimum term of twenty-five years.

While agreeing as to the desirability of the Maragua-Tana scheme, the Committee wished to be further assured that the extension required was essential to the scheme. It will be observed from pages 14 and 15 of the report that the Company's replies to this question or the statement of its future intentions were not so conclusive or so definite as the Committee had hoped. Incidentally, the Company were advised in November 1934 by Mr. Highfield, past President of the Institute of Electrical Engineers, that, failing the grant of the extension of twenty-five years, the Company would not be justified in proceeding with expenditure on the Maragua-Tana scheme.

The Committee's decision was largely due to the fact that the Company had had no difficulty in raising £250,000 in 1934 in connection with the Pangani concession in Tanganyika. On the Company's own admission the money had been raised on the general financial standing of the Company, to which the success of the Nairobi undertaking had substantially contributed.

BALFOUR, BEATTY & CO., LIMITED.
66, QUEEN STREET,
LONDON, E.C. 4.

EDINBURGH OFFICE
10, MELVILLE STREET.

COPIES USED
BENTLEY'S
RELIEVERS.
WESTERN UNION
A.S.C. (EX. EDINBURGH).

104
TELEPHONE NOS.
CITY 2040 (10 LINES)
EDINBURGH 20143 (3 LINES).

TELEGRAPHIC ADDRESS,
"RUOPLAB, CANNON, LONDON"
"RUOPLAB, EDINBURGH"
CABLE ADDRESS,
"RUOPLAB, LONDON"

29th May, 1936.

RECEIVED
1 JUL 1936
C. O. REGY

J. E. W. Flood Esq.,
Colonial Office,
8, W. 1.

Dear Mr. Flood,

East African Power & Lighting Co. Ltd.

Referring to conversation on the telephone to-day, I have pleasure in sending you herewith copy of the shorthand notes of the inquiry held in Nairobi in March last. It may be interesting to you to have the opportunity of looking over these pending our meeting with you, which I hope to arrange as you kindly suggest some day towards the end of next week.

Yours very truly,

J. E. W. Flood

Send in copy - to Dept (337) (for file)

WB/GS
ENCL.

IN THE MATTER OF AN APPLICATION BY
THE EAST AFRICAN POWER AND LIGHTING COMPANY LIMITED
FOR AN EXTENSION OF THEIR LICENCES

SHORTHAND NOTES OF THE ENQUIRY MADE BY A COMMITTEE
APPOINTED BY THE GOVERNMENT: SITTINGS HELD IN THE
HONOURABLE THE ATTORNEY GENERAL'S OFFICE ON MONDAY,
TUESDAY and WEDNESDAY, the 2nd, 3rd and 4th MARCH,
1936.

COPY

ELECTRIC POWER ORDINANCE

MINUTES of a Meeting of a Committee of Inquiry set up to investigate an application by the East African Power and Lighting Company Limited for a renewal of their existing licences, held in the Offices of The Honourable The Attorney General on THURSDAY, the 13th FEBRUARY, 1936, commencing at 10 o'clock in the forenoon.

MEMBERS OF COMMITTEE OF INQUIRY present:-

The Honourable The Attorney General, in the chair;
 T. Fitzgerald Esq., C.M.G., O.B.E., (Postmaster General);
 George Blowers Esq.
 Mr. Cocker;
 Mr. Ferguson;
 Mr. Strahan;
 Mr. Evans;
 Mr. N.J.B. Sabine, (Secretary).

At this stage of the meeting representatives of the Company and its directors were called in. The foregoing report is that of strictly private proceedings.

THE HONOURABLE THE ATTORNEY GENERAL: (to Mr. Humphrey Slade, solicitor, for the Company); I understand you wish to make an application in this matter?

MR. SLADE: Yes, sir. The application is grounded purely on Mr. Odam's (General Manager of the Company) health for which purpose I have called Dr. Gregory as a witness. Perhaps we might take his evidence first so as to release him as quickly as possible.

THE HONOURABLE THE ATTORNEY GENERAL: I have no objection.
 DR. GREGORY: In 1934, in January and February and again in 1935 Odam was very ill and I advised him to go to England or South Africa.

THE HONOURABLE THE ATTORNEY GENERAL: When?

DR. GREGORY: The beginning of January. He has not been very well for three or four months.

THE HONOURABLE THE ATTORNEY GENERAL: When did he go actually?

DR. GREGORY: The 22nd January. I told him to stay away for three or four months.

THE POSTMASTER GENERAL: Would it have made any serious difference if Mr. Odam had waited until this application had been disposed of?

DR. GREGORY: One must only be guided by previous experience and each January he has been laid up by chest trouble. In 1934 he contracted pneumonia and in 1935 bronchitis. I advised him to leave in the last week of January. He seemed definitely to go down. I wanted him to go away before then.

MR. SLADE: It is perhaps unnecessary for me to enlarge on the importance of the deliberations of this Committee and on the necessity for a full and careful hearing. The Committee will presumably decide on the evidence given before it whether or not the extension should be recommended and the question of extension with reference to an undertaking of this size assumes even greater importance. I say that in view of what Mr. Highfield has said in his report already put in. The Maragua-Tana Scheme not only involves the interests of the applicant but also of the consumer for the future and for the Colony in general in the matter of acquiring an asset and having a considerable amount of money spent in the country. The Company is not ready to give evidence today for two reasons. The first is that we submit the Company has not had sufficient opportunity to prepare its case and meet the objection of the Municipality. It is true enough we have had ample time to consider what the Company's case is and the arguments in the memorandum shows that still we have got to deal with the pleadings that are put against us and the formal pleading of the Municipal Council only came in on the 5th of this month leaving us seven days. Even in a small case the defendant has thirty days before his case is set down for hearing. In a case of this magnitude seven days is just hardly enough. The two witnesses for the Company are

the Chairman and the General Manager, and Major Ward is now here but Mr.Odam, the General Manager, is away in South Africa. I understand Mr.Odam's understanding of the position regarding the date of the meeting of this Committee was a wrong understanding and we must of course accept that but I can satisfy you, Mr.Chairman and gentlemen, that it is quite bona fide that Mr.Odam and the Company believed that this Committee was not to be appointed until after and that the date of inquiry was not until some time after that. The Chairman went away on urgent business to Uganda. We have just managed to get him back yesterday afternoon and it means if the case is to go on he must carry the whole weight of it instead of just his share. He has not had time to put his case into proper form. Actually we had only one week's notice. Then we heard that the General Manager contemplated going away for his health about this time and then Dr.Gregory further recommended it, and in view of Mr.Odam's misunderstanding of the date and the necessity of his looking after his health, I do submit he was quite justified in going when he did. The absence of the General Manager even more serious than the short notice which we have had so far as the Chairman's evidence is concerned. The General Manager is the technical expert of the Company and the Chief Engineer as well, and it is certain that technical details will arise during the inquiry. Without him it simply means that the Company is not in a position to deal with this question and it is an unsatisfactory position not only for ourselves but also for you. Without him, in regard to date there is no possibility of a full weight of evidence as we could present being presented as carefully as we would wish. We would like the thing to be settled as soon as we can but we cannot sacrifice a proper hearing to speed and the Company cannot be taken to have asked that the case be rushed. They are saying that through

109

inevitable circumstances they cannot go on with their case just now.

THE HONOURABLE THE ATTORNEY GENERAL: What is your earliest date?

MR. SLADE: The 2nd March.

THE HONOURABLE THE ATTORNEY GENERAL: Would you be prepared to carry straight on on that date? My idea is to get the thing over.

MR. ECKERSLEY: It is more than three months since they gave notice in the Press of their intention to make their application and one would have thought they would have been ready for the hearing. If it is a case of technical evidence I suggest that the Company have sufficient technical officers to give full and ample evidence. I sent in a copy of the objections to the Company five or six days before I was actually obliged to to give them some opportunity to answer. I do suggest that the Company have had ample time in which to prepare their case and I see no reason why it should be adjourned. I would ask the Committee to consider going on with it.

THE HONOURABLE THE ATTORNEY GENERAL: Mr. Slade, do you wish to answer Mr. Eckersley?

MR. SLADE: There is not much to answer there.

THE HONOURABLE THE ATTORNEY GENERAL (to Mr. Slade): If you have any particular point you want to bring up we have no objection.

MR. SLADE: I would like you to hear Major Ward.

MAJOR WARD: I wish to make the fullest possible apology to the Committee that it should be necessary to ask for any delay in these proceedings. Mr. Odam came to me about the middle of January and said that in view of the service he had put in he was running the risk of a breakdown. The details of his service are:- He has done eight years and eleven months of which nine months have been leave. Last time he was on three months' leave and during that time he had to spend a

great deal of time with our London Managers. We did not think his absence would inconvenience this Committee or put us in the position of asking for a delay. The Postmaster General said that this Committee would not be appointed until after sixty days during which time objections must be lodged. The Postmaster General was quite adamant and would not advise Government to appoint a Committee of Inquiry.

THE POSTMASTER GENERAL: That statement is absolutely incorrect. By no word or by any suggestion did I convey that this Committee would not be appointed until after the 13th of February. If Mr. Odam wanted to use that minute he should have had the courtesy to send me a copy of it. It issues an entirely false impression of what took place. I told Mr. Odam I would have no objection on the part of this Committee. My opinion was that this Committee was sitting at the earliest possible moment. I am very sorry to have to say it but I will not have things like that said and put forward in support of an adjournment without any check.

MR. SLADE: We have no other technical man here to give evidence.

MR. JORWARD: There is nobody.

MR. BLOWERS: Is not Mr. Haines the Chief Engineer?

MR. SLADE: Chief Engineer for the Nairobi District.

THE HONOURABLE THE ATTORNEY GENERAL: Would it be possible assuming you got this adjournment, for you to answer these questions?

MR. SLADE: We are prepared to answer all questions put to us.

THE HONOURABLE THE ATTORNEY GENERAL: We can't make you answer any questions if you don't want to, but you want some ground on which to base your application and this Committee has been appointed to investigate and recommend whether it should be granted or not.

MR. SLADE: In saying that we will give you the answers to the questionnaire, we might add that there is one stipulation.

lot of the questions involve matters of domestic arrangements of the Company which in the ordinary way the Company in the interests of shareholders would not be justified in disclosing. We do propose to stipulate that this be kept strictly private and confidential.

THE HONOURABLE THE ATTORNEY GENERAL: This is an ad hoc Committee appointed by the Government and I am quite certain each member would agree to that.

MR. SLADE: I shall probably raise that question when the discussion takes place. I should like to point out to the Committee that this Maragua-Tana Scheme has been under consideration by Government and worked for continually by the applicant for a matter of eight or nine years and it is only now it shows some hopes of fruition. If all that work and preparation which involves enormous expense falls to the ground because of the case not being adequately presented it would be a very heavy injustice to the Company. The Ordinance does recognise the importance of long notice on questions of this kind because that section under which we are making application we are required to give two months' notice in which objections should be filed.

THE HONOURABLE THE ATTORNEY GENERAL: You have had two months in which to prepare your case.

MR. SLADE: But not two months in which to deal with objections.

THE POSTMASTER GENERAL: I take it that there is a clear-cut division between the evidence of Mr. Odum and Major Ward?

MR. SLADE: They will both give evidence on the same points in some cases.

THE POSTMASTER GENERAL: Who will give evidence as to the first question in my letter of 5th January?

MR. SLADE: Major Ward would be competent to give evidence on the questionnaire. We only knew we had to answer it to this Committee after Major Ward had gone away.

THE POSTMASTER GENERAL: In regard to the questionnaire, it was sent out on the 5th January. On what date did Major Ward go to Uganda?

MAJOR WARD: The 3rd February.

THE POSTMASTER GENERAL: What objection had the Company to answering this questionnaire?

MR. SLADE: According to the Ordinance and owing to the fact that this Committee was only contemplated we would submit that a number of the questions you ask there you are not given power to ask and we have not the power to answer under the Ordinance.

THE POSTMASTER GENERAL: Is the attitude of the Company in the spirit of helpfulness or is to stand fast for their rights and privileges?

MR. SLADE: Certainly not. We want to help.

THE POSTMASTER GENERAL: Then what is the real purpose of objecting to answer these questions before Mr. Odum left?

MR. SLADE: However much we want to help we must watch our case. On the question of the Company's domestic arrangements we are now assured about that.

THE POSTMASTER GENERAL: You have nothing more to say why the Company did not answer the questionnaire?

MR. SLADE: No.

WITNESSES LEAVE THE CHAMBER AND COMMITTEE PROCEEDS.

Mr. Slade and others were recalled and informed of the Committee's decision.

THE HONOURABLE THE ATTORNEY GENERAL: The Committee have decided to grant the application for an adjournment on condition that you will go straight on on 2nd March.

MR. SLADE: Thank you very much, sir.

CLOSURE OF MEETING.

COPY.

HS/ST

NAIROBI.

No. 1192/114

21st February, 1936

The Secretary,
E.A. Power & Lighting Co. Ltd.,
NAIROBI.

Dear Sir,

EXTENSION OF LICENCES COMMITTEE OF ENQUIRY

We have now obtained and send you herewith a copy of the shorthand notes taken at the commencement of this enquiry on 13th instant.

The notes appear to us to be both inaccurate and incomplete; and we propose to ask the Attorney General privately whether some arrangement cannot be made for a more accurate record to be kept.

Will you kindly return the enclosed to us so soon as you have perused it and made such copies as you want.

Yours faithfully,

for HAMILTON HARRISON & MATHEWS

(Sgd) Humphrey Slade

COPY

HS/RT.
1192/114

NAIROBI.

24th February 1935.

The Secretary,
Committee of Enquiry on Extension of Licences,
Secretariat,
NAIROBI.

Sir,

THE EAST AFRICAN POWER AND LIGHTING CO. LTD.
Application for Extension of Licences.
Your Reference B/EL6/1/1/7.

We thank you for your letter of the 20th inst. enclosing a copy of the shorthand notes of the proceedings of the Committee on the 13th inst. for which we are much obliged.

To avoid any mistaken report of what was said on behalf of the Company and of the Company's attitude towards the Committee, we should like to take this opportunity of referring to two points upon which the shorthand notes do not appear quite clear or complete:

1. On page 10, Major Ward is shown as having said:

"The Postmaster General said that this Committee would not be appointed until after 60 days during which some objections must be lodged. The Postmaster General was quite adamant and would not advise Government to appoint a Committee of Enquiry."

Actually Major Ward did not purport to give any direct evidence as to what the Hon. The Postmaster General had said, but was merely quoting from a Minute made by Mr. Odam on the 12th December last, of which he promised to furnish the Committee with a copy; and we now enclose the copy herewith, together with a statutory declaration as to the date on which it was made.

We should also like to record that, upon the Hon. The Postmaster General's denial of any such statement, we immediately apologised for any misunderstanding that might have occurred; and we explained that the object of producing the minute was not to dispute what he had said, but merely to prove the bonafides of what Mr. Odam had believed.

2. Page 11 of the notes do not refer quite correctly to the explanation which the writer gave for the Questionnaire not having been answered previously. That explanation was as follows :-

The Questionnaire came from The Hon. The Postmaster General in his separate official capacity, and neither by the direction of nor with any reference to the Committee of Enquiry; and the Company took the view that the questions asked were not such as it was legally bound to answer in the interests of its shareholders, entitled to answer to the Officer appointed to represent the Governor under the Electric Power Ordinance. Subsequently, (on or about the 5th inst.) the Company

was instructed by the Secretary to the Committee that they would like these questions to be answered for the purpose of the enquiry; and the Company has expressed its readiness (subject only to the matter being treated as confidential) to give the Committee all the information they may require. We drew a careful distinction between questions put by The Hon. The Postmaster General in his official capacity, and questions put by the Committee; and we pointed out that the Committee's request for a reply to the Questionnaire was only received after Major Ward had left for Uganda which he did on the 3rd inst.

We should like to confirm that, while disputing the relevancy of many of the questions that are being raised, the Company is ready to give the Committee the fullest information that it can on all points.

We have the honour to be,

Sir,

Your obedient servants,

for HAMILTON HARRISON & MATHEWS,

(Sgd) Humphrey Slade.

COPY

IN THE MATTER OF AN APPLICATION by the EAST AFRICAN POWER AND LIGHTING COMPANY FOR AN EXTENSION OF THEIR LICENCES. SHORTHAND NOTES OF THE INQUIRY MADE BY A COMMITTEE APPOINTED BY THE GOVERNMENT, SITTINGS HELD IN THE HONOURABLE THE ATTORNEY GENERAL'S OFFICES ON MONDAY, TUESDAY AND WEDNESDAY, THE 2ND, 3RD AND 4TH OF MARCH, 1936.

F I R S T D A Y.

Meeting commenced 10 o'clock in the forenoon.

Present:-

The Honourable The Attorney General (in the Chair);

The Honourable The Postmaster General;

George Blowers, Esq.;

Mr. Cochrane;

Mr. Robinson;

Mr. Evans;

Mr. Strahan.

The Honourable The Attorney General: You had the minutes circulated and may I sign them as correct?

Agreed.

The Honourable The Attorney General: The Company asked for a copy of the shorthand notes of the last meeting held in February and I sent them what you might call the public part of the proceedings. They sent a letter in which they referred to two points in the shorthand notes (letter read)

Mr. Eckersley, Town Clerk, Nairobi: At the outset, sir, I should like to say that I wonder whether it will be possible to obtain a more commodious room in which this application could be heard. My friends and I have quite a lot of books and papers and it does appear that it will be very inconvenient for us if the application is heard in this room.

The Honourable The Attorney General: We might consider what we could do from this afternoon onwards. Have you any suggestions to make, Mr. Eckersley?

Mr. Eckersley: Yes, the board room of the Shell Company would be convenient. Mr. Reed has ascertained that they are ready and willing to give it to us.

The Honourable The Attorney General: For this afternoon?

Mr. Eckersley: Any time.

The Honourable The Attorney General: I suggest that we go on with the business now. I suggest, Mr. Slade, (for the Company) that the easiest and surer way of making this inquiry would be to treat it as though you are ordinary applicants and that all the various papers are pleadings.

Mr. Slade: I should say to start with that the Memorandum that the Company has prepared represents the whole of the Company's arguments and the whole of its evidence, as well as the Company's witnesses are here to support everything that is said in the Memorandum but unless they are called upon to repeat what is in the Memorandum they don't want to give verbal evidence and I propose to go over the Memorandum and emphasise the points we wish to emphasise and then answer any questions on the Memorandum afterwards. This is an application by the Company for an extension of its distributing licences in respect of Nairobi and district, under Section 18, Sub-Section 4 of the Electric Power Ordinance as recently amended, and the necessary consent has been obtained for such application more than five years before the dates before the licence would ordinarily expire. Under that Section in the ordinary way this application could only be made in the last five years but with the consent of the Governor in Council it could be made earlier. As would appear from the Company's application and exhibits thereto, all the statutory requirements in regard to advertising and notice have been complied with.

The Committee before which we now appear has been appointed to consider the merits of the application and to advise the Governor in Council thereon. We are not unaware of the fact that out of the seven persons appointed to this Committee no less than three are actually representatives of parties objecting to the Company's application but we are perfectly ready to assume that these three members on the Committee will judge the merits of the application no less impartially than the others and it is on that assumption and on that understanding that we appear before this Committee without protest. If it were otherwise we would, of course, have to protest.

The Honourable The Attorney General: This is only an advisory Committee for the Governor in Council. We can make no final decision here.

Mr. Slade: I understand that but we would naturally not like to present our case even with a view to advising the Governor in face of the three objectors.

Mr. Eckersley: So far as the Municipal Council is concerned, no pledge has been asked for or given. They have a perfectly free hand.

Mr. Slade: There is a preliminary point I should make clear. Under Section 19(a) of the Ordinance as it originally stood the Local Authority has in effect the right to acquire the Company's distributing licences at any time during the period of the licence. In 1934 that section was amended to provide that it was only at the end of the period of 49 years and thereafter within six months of the end of each period of seven years that that power could be exercised. A provision was made in the amendment that that amendment should not apply to existing licences so that our licence is subject to the section as it originally stood. Under Section 25(6) dealing with extension of licences, it is

stood shall be deemed to continue to apply to any renewed licences unless the Governor in Council shall otherwise instruct so that it rests with the Governor in Council, if this extension is granted, to say whether or not Section 19 as it originally stood will apply to the extended period. The Company is asking you to recommend not only the extension of licence but also an extension with the amendment particularly applying to the extension. The Company's Memorandum has already been presented to you and circulated to all the members. The Chairman of the Company, the General Manager, Col. Maxwell and Mr. Reid, the Secretary, are all here to confirm the evidence as given here (indicating the Memorandum). If you will refer to the Memorandum you will see from the first paragraph that the Company's reasons for making the present application at this stage appear in a letter which the General Manager wrote to the Colonial Secretary on the 22nd October, 1935. It is the first appendix to the Memorandum. From that letter the following points emerged (See Memorandum). It sets out that in conversations which have already taken place with you, this point has been made clear that the generating capacity of this Company's installations is such that an extension of the capacity has become urgent. The Company has now applied for a grant of 1400 acres in the Kikuyu Native Reserve for the purpose of proceeding with the Maragua-Tana Scheme the first section of which was completed in 1933. The next point appearing from that letter to which I have drawn attention is under paragraph 8

"I am also instructed to bring to the notice of Government that, according to the estimate made by the consulting engineers, recently sent out by the Colonial Office to report on the scheme, it will eventually involve the Company in a total capital expenditure of approximately £300,000."

Thus three points arise - the expenditure involved in this development which is contemplated is, according to the consulting engineers appointed by the Colonial Office, estimated at £300,000. Immediately following on that paragraph there is in the letter -

"During the last few years we have been repeatedly warned by our London financial advisers that due to the rapidly dwindling period of the Nairobi licences, it will become increasingly difficult to secure on favourable terms the additional capital for this and other necessary developments of the undertaking which may arise from time to time. If permission were given immediately for the Company to proceed with the next stage of the development of the Maragua-Tana Scheme this would take approximately 2 1/2 years to complete. Thus as the principal licence under which this Company operates expires in 1947 only 9 1/2 years would be left in which to secure some benefit from the increased capital expenditure involved. This capital expenditure is unduly high for the additional output required during the unexpired period of this licence because of the necessity of constructing at this stage civil engineering works to permit of the ultimate development of the full capacity of the Tana River. It will be quite obvious that any reasonable provision for the amortisation of this new capital involved would be absolutely impossible in view of the short unexpired period of the existing licences in the Nairobi area and this is particularly the case when it is remembered that substantial sums of this new capital have to be expended in 1938 and again as late as 1946, the present licences, as explained, expiring in 1947.

That is of course the main point of the present application. It shows how the question of hydro-electric development is linked up with the question of extension of licences and it shows that the Company has been advised that there is too short a period left in the present licence to embark on a scheme of this size which involves such a heavy expenditure at the start without applying for an extension of licences.

Paragraph 9 of the same letter -

"I have, therefore, the honour to request that your passu with this application for the land you will grant an extension of the various generating and distributing licences in the Nairobi area without which it would not be commercially possible to proceed with the development,

and paragraph 11 of that letter -

"If this application is approved by Government it will mean that the period of the principal licences

Thus three points arise - the expenditure involved in this development which is contemplated is, according to the consulting engineers appointed by the Colonial Office, estimated at £300,000. Immediately following on that paragraph there is in the letter -

"During the last few years we have been repeatedly warned by our London financial advisers that due to the rapidly dwindling period of the Nairobi licences, it will become increasingly difficult to secure on favourable terms the additional capital for this and other necessary developments of the undertaking which may arise from time to time. If permission were given immediately for the Company to proceed with the next stage of the development of the Maragua-Tana Scheme this would take approximately 2 1/2 years to complete. Thus as the principal licence under which this Company operates expires in 1947 only 9 1/2 years would be left in which to secure some benefit from the increased capital expenditure involved. This capital expenditure is unduly high for the additional output required during the unexpired period of this licence because of the necessity of constructing at this stage civil engineering works to permit of the ultimate development of the full capacity of the Tana River.

"It will be quite obvious that any reasonable provision for the amortisation of the new capital involved would be absolutely impossible in view of the short unexpired period of the existing licences in the Nairobi area and this is particularly the case when it is remembered that substantial sums of this new capital have to be expended in 1938 and again as late as 1945, the present licence, as explained, expiring in 1947.

That is of course the main point of the present application. It shows how the question of hydro-electric development is linked up with the question of extension of licences and it shows that the Company has been advised that there is too short a period left in the present licence to embark on a scheme of this size which involves such a heavy expenditure at the start without applying for an extension of licences.

Paragraph 9 of the same letter -

"I have, therefore, the honour to request that pari passu with this application for the land you will grant an extension of the various generating and distributing licences in the Nairobi area without which it would not be commercially possible to proceed with the development.

and paragraph 11 of that letter -

"If this application is approved by Government it will mean that the period of the principal licence -

"Distributing Licences No.2 dated 24th March 1922" -
"will then total in all fifty years."

And then passing on to paragraph 13 -

"In support of this contention I have the honour to draw your attention to the fact that the Electric Lighting Act 1882, section 27, conferred upon the local authority within whose jurisdiction the area of supply was situated the right to compel the undertakers to sell their undertaking, or so much thereof as was within such jurisdiction, at the expiration of twenty-one years, from the passing of the Act confirming the undertakers' Provisional Order, or at the expiration of every subsequent period of seven years. This period, having regard to the terms of purchase, was found to be too short to offer an inducement to the investment of capital in electric supply undertakings, and accordingly by Section 2 of the Electric Lighting Act 1888 the periods were altered, forty-two years being substituted for twenty-one years, and ten years for seven years, though shorter periods may be specified in any provisional or special order. I also enclose copies of two paragraphs taken from the Report of the Committee appointed for 'Review of the National Problem of the Supply of Electrical Energy' presented over by the Rt. Hon. Lord Weir of Eastwood in 1921 and commonly known as the Weir Report.

and then two paragraphs in the Weir Report are enclosed in that letter and I particularly want to draw your attention to one point - they suggest that one alteration should be made to the existing law

"DISTRIBUTION COMPANIES" turning to Distribution Companies, we find only one point in which we suggest that an alteration should be made. This relates to the purchase of undertakings by Local Authorities. Under the existing law any Local Authority may at the end of 42 years purchase the undertaking in its absence, on 6 months' notice, and this right recurs at the expiration of every subsequent period of 40 years. It appears to us that the possibility of purchase at such short notice has the effect of sterilizing the activities of the undertaker during the latter years of his franchise owing to his reluctance to sink capital in an undertaking which may be compulsorily purchased. We recommend that in the interests of electrical development this statutory right of purchase should be modified in the following manner:-

- "(a) The undertaker should have the right at any time within seven years of the end of his franchise to require the Local Authority to declare their intentions;
- "(b) If the Local Authority fail to notify their intention within six months, or require unreasonable terms and conditions for the non-exercise of their powers, the Commissioners may by order suspend the right of purchase for such period as they think fit;
- "(c) If the Local Authority declare their intention to purchase, they shall advance by way of loan such moneys as the undertakers may reasonably require for expenditure on capital account during the remaining

" seven years, and so assure the continued develop-
ment of the undertaking. "

The suggested modification gives the electric undertaker very much greater security - certainty of tenure. The Company's second object in the Appendix is that it is recommended that it should be subject to a purchase clause which could be exercised after fifty years with right of notice seven years before the expiry of the franchise. The point that the Company would make is two-fold - the first point is that it is essential that the Company, before embarking on large capital undertakings should have security of tenure whether it is security from purchase or security from the even greater danger of expiration. The other point is that the tendency of modern practice is to give this security of tenure in the period of licence and I would refer to paragraph 12. you will see that even in this colony and in the adjacent territories of Uganda and Tanganyika it is fifty years and upwards. We are only asking now for an appropriate period of fifty years. There is one further point arising from that letter of 22nd October to which I would like to refer - at the bottom of page 5 of paragraph 13

"I have also to remind Government that owing to the delay experienced in obtaining permission to exchange fair lands for the 1400 acres of Native Reserve (herein referred to) this Company was forced in 1928 to spend about £26,000 upon an oil engine station in Nairobi a capital expenditure uneconomic and unjustified in itself which was necessarily forced upon this Company to ensure continuity of supply in any emergency and to a drought.

and also paragraph 15

"I have the honour to suggest, therefore, that the matter of obtaining permission to develop the Maragua-Tana Scheme is one of extreme urgency both to the consumers in this area and to this Company, negotiations in this respect having been commenced with Government as far back as 1927.

We simply wish to emphasise that this is not a sudden stampede by the Company now that matters have got to such a pitch as to force them to do something that should have been done long. This hydro-electric scheme has been under

consideration and application for the last eight years at least and the position has become increasingly serious as these eight years went by and the Company's prospects of raising capital for the Scheme on favourable terms have been diminishing proportionately. The Memorandum is in fact by way of elaboration of that letter. It falls under five separate headings with which we would like to deal very briefly in turn. I am not asking the Committee to dispense with reading this Memorandum in full and if you think it might help I propose going through it very quickly and emphasising the particular points we wish to emphasise. The first heading is "Sundry Criticisms". This amounts to unconfirmed, spiteful criticism which has received a fair amount of publicity. I think that this Committee will appreciate that such criticisms as have been published would appear to be expressed by entirely unqualified opinion. We are confident that this Committee will not be influenced to any material extent by this unsubstantiated opinion and if any member wants answers to any of the questions raised in public he will find these answers in this Memorandum. I don't propose to waste time over this now. The Company's case, of course, is independent of these criticisms and it is only if this Committee calls upon us to answer independent objections that we propose to do so. The only point under that heading is with regard to modern practice in respect of the period of licence to which I have already referred. Turning to paragraph 20 page 5,

"The final report of the Water Power Resources Committee, 1921, presided over by Sir John Snell, Chairman of the Electricity Commissioners of Great Britain, contained the following recommendation :-

- "We recommend that licences to develop water powers should normally be granted for a period of 100 years.
- "The State should, however, retain the right to terminate a licence at any time after the expiry of sixty years from the commencement of the licence period, provided that adequate notice be given. If the licence retains possession for the full period of 100 years,"

"We consider that the permanent or comparatively
"imperishable parts of the undertaking, such for
"example, as the dam, flumes, tail-race, power house
"structure, and other civil engineering works, should
"revert free to the State at the end of that period. "

As an instance of the terms of modern concessions the follow-
ing are quoted :-

Palestine Electric Corporation Ltd.

71 years with option to Government to purchase
at expiry of 41 years.

Jerusalem Electric & Public Service Corporation Ltd.

45 years with an option to extend for a further period
of 16 years.

Burma Electric Supply Co. Ltd.

50 years from 1928

Parak River Hydro-Electric Power Co. Ltd. and

Dar-es-salaam & District Electric Supply Co. Ltd.

Both 80 years with option to Government to purchase
at the expiry of 50 years.

Pangani Concession

50 years with the option to the Company to expand
for a further 15 and the right to Government to
purchase the undertaking at the expiry of 50 years.

The next question that the Memorandum deals with by way of
elaboration is the question of urgency. I think the urgency
of increasing the Company's generating capacity is generally
admitted and I see that the objection lodged by the Municipal
Council particularly admits it. Paragraph 1 of that objec-
tion reads :-

"That additional capital is immediately required is not
"disputed - indeed it is obvious in order to provide
"additional generating plant

and again in paragraph 10 of the objection -

"The Company have known for the last two and a half
"years that the generating plant is insufficient to
"meet the demand during periods of drought and that
"the primary load has been perilously near the total
"generating plant capacity in drought conditions, for
"some time past."

It may not be necessary to elaborate that very much. I would
also refer you to the sixth line on page 6 of paragraph 21
of the Memorandum -

"In October last, just prior to the commencement of the
"short rains, it became necessary to curtail supply to
"sisal estates during the day with consequent inconven-
"ience and expense to the growers. This is a condition
"of affairs which must not only persist but become

"We consider that the permanent or comparatively imperishable parts of the undertaking, such for example, as the dam, flumes, tail-race, power house structure, and other civil engineering works, should revert free to the State at the end of that period."

As an instance of the terms of modern concessions the following are quoted :-

Palestine Electric Corporation Ltd.
71 years with option to Government to purchase at expiry of 41 years.

Jerusalem Electric & Public Service Corporation Ltd.
45 years with an option to extend for a further period of 16 years.

Burma Electric Supply Co. Ltd.
50 years from 1928

Porak River Hydro-Electric Power Co. Ltd. and
Day-es-salaam & District Electric Supply Co. Ltd.
Both 80 years with option to Government to purchase at the expiry of 50 years.

Pantani Concession
50 years with the option to the Company to extend for a further 15 and the right to Government to purchase the undertaking at the expiry of 50 years.

The next question that the Memorandum deals with by way of elaboration is the question of urgency. I think the urgency of increasing the Company's generating capacity is generally admitted. And I see that the objection lodged by the Municipal Council particularly admits it. Paragraph 1 of that objection reads :

"That additional capital is immediately required is not disputed - indeed it is obvious in order to provide additional generating plant

and again in paragraph 10 of the objection -

"The Company have known for the last two and a half years that the generating plant is insufficient to meet the demand during periods of drought and that the primary load has been perilously near the total generating plant capacity in drought conditions, for some time past."

It may not be necessary to elaborate that very much. I would also refer you to the sixth line on page 6 of paragraph 21 of the Memorandum -

"In October last, just prior to the commencement of the short rains, it became necessary to curtail supply to sisal estates during the day with consequent inconvenience and expense to the growers. This is a condition of affairs which must not only persist but become

"aggravated until such time as additional generating plant is in commercial service. The proposed development will take three years to complete so that even if the Company's application is granted immediately the increased generating capacity cannot be available until the latter part of the year 1938."

If the Committee requires figures they are respectfully referred to Appendix 2 of the letter of 22nd October last to which I have already referred and they will see quite clearly that in times of drought the Company has at present little or no reserve. The 2nd Appendix to the letter of 22nd October which is the first appendix to the Memorandum. As has been pointed out in the objection of the Municipal Council it is the Company's business to deal with its obligations under the Ordinance and it is a question how it is to be dealt with and as the Committee will see the Company's proposal to deal with it is by this hydro-electric development. And that brings us to the next heading in the Memorandum "The Most Economic Scheme". Paragraph 22 of the Memorandum says -

"As far back as 1927 the London Managers of this Company investigated and reported on the best scheme to provide for the future electricity supply of Nairobi and district. They came to the conclusion that the only possible development, if economy and future requirements were taken into consideration, was that known as the Maragua-Tana Scheme or the one now under consideration."

Early last year - 1935 - the Colonial Office employed consulting engineers in consultation with Messrs. Goode, Wilson, Mitchell and Vaughan Lee to advise Government as to the merits or demerits of the scheme and the report of these consulting engineers is set out in Appendix VI of the Memorandum. That report is of course of tremendous importance for the Company's case because it is completely impartial evidence. Anything that is said in this report can be taken as unbiassed and therefore the most valuable evidence the Committee could have. A part that falls under that report I would like to refer you to particularly. It is in paragraph 6 -

"The merits of any alternative hydro-electric schemes

"must depend upon their suitability for meeting the present and the probable future demands for power and upon the capital cost.

and also in paragraph 7 -

"With regard to the development of electricity supply in Nairobi and district, Mr. Hughes made a general survey of the present and the probable future demands. The normal industrial load is required mainly from 8 a.m. to 4 p.m. and the lighting load comes on about 6 p.m. There is also an industrial load from certain factories, owing to special cheap rates, during the night after the lighting demand has ceased. The present maximum demand in the whole area, of supply is about 2,500 kilowatts of which the sisal plantations take about 800 kilowatts.

The report deals at great length with engineering details with which I won't trouble but there are some passages as to the merits of the scheme as a whole which are rather important. On page 6 there is a particular passage at the start of the second paragraph -

"The adoption of a scheme at Maragua-Tana would enable the licencees to get the full benefit throughout the year from the expenditure already incurred at Maragua.

and paragraph 17 -

"Mr. Hughes and Mr. Nairn came to the conclusion that the licencees' proposed dam on the Tana, designed to take advantage of the daily storage, is the only rational one from a commercial point of view. The cost of the civil engineering works in connection with Maragua-Tana scheme is estimated as being about £179,000, excluding contingencies. The licencees themselves had mentioned that the cost might be in the neighbourhood of £100,000 so that in this respect the Company appear to have underestimated the cost of the civil engineering work.

and the summary under paragraph 20 on page 7 -

"It is evident that the construction of the hydro-electric scheme at Maragua-Tana instead of in the Seven Forks area will be of considerable advantage to the licencees, not only in the capital expenditure, but also with respect to the staffs required and to a reduction in transmission line losses over some 50 miles in place of nearly 90 miles. It is therefore not unreasonable to expect that, if the licencees are permitted to make use of the Tana River above the confluence of the Maragua River, it should result in appreciably less prices for electricity than would be the case if developments had to take place in the Seven Forks area. Briefly put we are of the opinion the scheme proposed on the Tana River by the licencees, so designed as to take advantage of the daily storage, is without doubt the proper and most economical method of meeting the growing demands for electricity in Nairobi and surrounding districts.

And then the question which the Memorandum follows is the question of finance. Page 7 of the Memorandum paragraph 25 says -

"It must be obvious that it would be most difficult to raise capital even at a discount under such circumstances, as to develop the proposed scheme the Company must expend a sum estimated by the Consulting Engineers to the Crown Agents to amount to £300,000. Of this amount £182,000, practically the whole of which would be spent locally, must be provided immediately and the balance before 1947 when the Company's existing licences expire. In the case of a hydro-electric scheme such as that contemplated, it is necessary to spend at the start the larger proportion of the total amount required for the ultimate development. This expenditure includes the cost of the dam, headworks, and canal which would have a life of over 100 years and these works would not be employed to their full capacity for at least another 25 years.

Paragraph 25 on the same page says -

"The development under consideration would thus deal with the requirements of the area for a considerable period after the end of 1947 but unfortunately the Company cannot foresee that the growth of electricity sales up to the end of that year will be sufficient to meet interest and amortisation charges on the new capital required and a considerable shortfall must be anticipated. In the normal course of business this shortfall during the early years will be met by the additional increment in business in subsequent years but it is suggested that the Directors of the Company or any other Company would be desirous of saving expense if they endeavoured to raise additional capital for the purpose of this part without regard to making good these interest and amortisation charges."

Various statements have been made in public and it is said that the Company could raise this capital "in the wink of an eye", but I suggest they are the expressions of an entirely uninformed opinion. The Company sees no reason in view of those statements to move from the opinion which it has adopted and which is fortified in fact by the advice given by Mr. Highfield. I would refer you to Appendix VII of the Memorandum from which you will see that Mr. Highfield is a man with very high qualifications. He is past President of the Institution of Electrical Engineers, a Member of the Institution of Civil Engineers, a Member of the Royal Institution of Great Britain and an honorary Member of the Incorporated Association of Electric Power Companies, and if you are

mind to make further enquiries about his qualifications you will be satisfied that he is one of the best authorities I think we could have possibly got. What he says on this question of finance is so important that I am asking you to exercise your patience while I read his whole letter through.

With reference to our conversation regarding the proposed extension of your Company's Hydro-Electric Station in Kenya Colony to deal with the growing load, I have as requested, carefully studied the position in relation to the short unexpired term of your licence which I understand expires in 1947.

I understand that the proposed extension referred to involves the construction of works consisting principally of a new hydro-electric plant having a capacity of some 8,000 kilowatts the cost of which has been estimated at £300,000.

Our experience is that capital spent for electric supply under similar conditions will not reach its full interest earning capacity in less than five years after the plant has been put to work. Taking into account a construction period of say two years, the unexpired term of your licence is then somewhat less than ten years. In my opinion, therefore, your Company is not justified in undertaking this extension of your system unless your period of tenure is considerably increased. I observe although normally you cannot apply for a renewal of your licence until 1942, that under Section 2, Sub-section 4 of the Electricity Ordinance, 1934, the Governor in Council has discretionary power to extend or renew a licence before the appointed date on which such application is normally made.

The position in which your Company finds itself therefore makes it, in my opinion, imperative for you to apply immediately for the exercise of the powers granted to the Governor in Council of the powers granted to him by the section quoted above with the view of obtaining an extension of your licence. I understand that an application is about to be made for the term of your licence to be extended for a period of twenty-five years that is to the 23rd March, 1970.

Having regard to the large amount of capital expenditure involved, I consider that even this period is inadequate. In support of this opinion, I would refer to the precedent of the Electric Lighting legislation in the United Kingdom. The first Electric Lighting Act was passed in 1882 and granted a right of supply for a period of not more than twenty-one years. Certain progress had been made in the public supply of electricity before the passing of the 1882 Act, but the effect of the quite inadequate period granted under the Act was practically to put an end to that progress. The result was that an amending Act was passed in 1888 extending the supply period to 42 years and numerous companies were formed to generate and distribute electricity in the principal towns and densely populated areas.

In the year 1900 further legislation resulted under which "Electric Power Companies" were authorised and empowered to supply electricity over much wider areas bounded rather by county boundaries than by city boundaries. It was realised that the developments in these areas would be less rapid than in urban areas, and to enable the companies to be financed, they were given power of supply in perpetuity.

"I should point out that in all this legislation it was contemplated that practically the whole of the generating works would be steam driven, using mainly coal fuel. The capital cost of water power plant is often twice or may be even three times as great as steam plant. It follows that the necessity of a long term concession is more important for a water power plant than for a steam plant. I would also draw your attention to the precedents of concessions granted abroad where the practice has been for periods of forty years up to eighty years. I would refer you to the concessions and licences granted in Palestine, Federated Malay States, Tanganyika, etc. To summarise my views, I am of the definite opinion that the capital expenditure required to meet the growth of load in your area constitutes sufficient grounds for an application to be granted for an extension of your licence and that you should make such application forthwith and for a much longer period than twenty-five years. Failing the granting of your application, in my opinion, your Company is not justified in proceeding with the expenditure now contemplated.

After reading that letter my submission is that the opinion of Mr. Highfield who has these high qualifications must be accepted, unless and until a contrary opinion of equal authority is brought before you.

The only remaining question is the possible alternative of meeting the increased demand and that is dealt with briefly by paragraphs 29-32 of page 8 of the Memorandum.

The Committee will understand that the Company is neither willing nor able to commit itself to any fixed general policy of development for the remaining period of its licence. The Directors of the Company cannot bind the Company to any general policy in the future. They can, of course, commit the Company to any particular undertaking as they have done in the Maragua-Tana Scheme. But notwithstanding that, in view of the evidence of Messrs. Preece, Cardew and Rider, Consulting Engineers, and of the opinion expressed by Mr. Highfield, we do not see how it will be possible for the Company to proceed with the Maragua-Tana Scheme without an extension of licence. It would, at any rate, be a very dangerous thing in view of this advice to risk the interests of the shareholders and the consumers. The only alternative which now appears is the method of what we have referred to as "piecemeal development" and which is referred to under paragraph

30 of the Memorandum. It reads -

"The alternative is the supplementation of the existing generating plant from time to time by means of fuel units and this method of uneconomic and piecemeal development must continue until such time as a sufficiently long extension of licences is granted to permit of the financing of the scheme recommended by our London advisers, Messrs. Balfour, Beatty & Co. Ltd., and endorsed by the Consulting Engineers to the Crown Agents."

And that would appear to be the position at the moment unless someone is able to suggest something more satisfactory as an alternative to the Maragua-Tana Scheme.

I don't think I could improve the conclusion which is written to the Memorandum -

"It is submitted that the foregoing arguments, supported by figures and statements all of which can readily be verified by the Committee, prove conclusively that the way in which the interests of consumers can best be served is the granting of this Company's present application which will enable it to proceed immediately with the construction of the Tana Hydro-Electric Scheme, and that negotiation on the part of Government entailing a piecemeal type of development must inevitably cause hardship to these consumers not only during the unexpired period of the licences but also for many years after the date of expiry irrespective of when the licences expire at that particular time."

Gentlemen, that is the Company's case. The Company's witnesses are here and ready to answer questions relating to the Memorandum. I would say that the answers to the Postmaster General's questionnaire have been circulated. I would suggest that any questions should in the first instance be confined to the Memorandum in order to avoid confusion of issues. For the same reason the Company does not propose at this stage to deal with the objections which have been put in to the written reply to the objection by the Municipal Council. I see from the Secretary's letter to the Company that we have the right to reply to objections. At this point I should like to say that the Company has endeavoured to assist the Committee by answering in detail all the written arguments which have been put up, but there are a good many points arising which cannot possibly be regarded

as relevant to this particular issue.

The Honourable The Attorney General: Such as? I just want to follow your argument.

Mr. Slade: Take paragraph 3 of the Municipal Council's objections. It reads -

"That the maximum prices authorized by the Company's distributing licence No. 2 dated the 24th March, 1922, are too high and should be reduced."

"The maximum prices which may be charged for the supply of electrical energy for the first five years from the date the licence came into force are

" For Power 35 cents per I.P.U.
" For Lighting 100 cents per B.T.U.

"The licence contains a provision to the effect that such maximum prices shall be subject to revision after the first five years, but no revision of such maximum prices has taken place.

"The prices at present charged by the Company for the supply of electric energy are less than the authorized maximum prices.

"Attention is directed to the provisions of Section 69 of the Electric Power Ordinance on the subject of prices. The Section 69 reads as follows -

"69. (1) The prices to be charged by the licensee for electrical energy supplied by him shall not exceed those stated in that behalf in the licence or in the case of a method of charge approved by the Governor in Council, such price as the Governor in Council may determine on approving the method.

"(2) Provided that if, in a case where a public or local authority is not the licensee, either of such authorities, or the licensee, or such authorized distributors (in the case of a bulk supply area) or ordinary consumers (in the case of a distributing area) as the Governor in Council may consider sufficient having regard to the circumstances, at any time after the expiration of five years after the commencement of the licence, make a representation to the Governor in Council that the prices or method of charge stated in the licence or approved by the Governor in Council ought to be altered, the Governor in Council after such inquiry as he may think fit, may make an order varying the prices or methods of charge stated in the licence or so approved as aforesaid, or substituting other prices or methods of charge in lieu thereof, and the prices or methods of charge so varied or substituted shall have effect on and after such day as may be mentioned in the order, as if they had been stated in the licence: Provided also, that the prices and methods of charge for the time being in force may be altered in like manner at any time after the expiration of any or every period of five years after they were last altered."

The Honourable The Attorney General: I would have thought that it was relevant. If we are going to recommend an

extension, the Municipality say that you should not do this thing because already we are being flooded by the Company at present and we intend to exercise our right later.

Mr. Slade: That is what they say, only they have their remedy under the Ordinance. I don't see why the Company should be penalised in regard to the extension because of the concessions that have been made in the licence. At all times during the present licence the Governor has power independent of the licence to put these things right. This is a question simply of whether the extension should be granted or not.

The Honourable The Attorney General: The Governor in Council might want assistance on the point as to whether exorbitant rates are charged.

Mr. Slade: It is not actually a question of the Company charging exorbitant rates but a question of whether they are being given too high a maximum rate. It does seem to me to be an entirely independent matter.

The Honourable The Attorney General: Surely they might take this point that by allowing you to spend extra money which is the net result of your application you are destroying their case for a cheaper unit. You naturally could go to them and say "We have spent all this money and we ought to be able to charge".

Mr. Slade: It is all a matter of security of tenure. I am still submitting that the question of maximum prices is quite independent of the terms of our extension and even independent of the terms of our licence. It is such a large matter that it is going to require the appointment of a separate Committee to deal with it.

The next one of the Municipal Council's objections is No. 4 which reads :-

"That provision for depreciation is not being made by the Company in accordance with the requirements of Section 45 of the Electric Power Ordinance."

The Honourable the Attorney General: You mean "If the Ordinance to the letter has not been carried out it has nothing to do with you". (Meaning the Committee)

Mr. Slade: That is about it.

The Honourable the Attorney General: You are rather adopting the attitude that the Committee must say "yes" or "no" and you are not taking into consideration the possibility of the Committee suggesting conditions to their "yes". It is a matter for you entirely but it seems to me a matter which might be a point for consideration by the Committee.

Mr. Slade: It does seem a question of "yes" or "no" because the things on which it is suggested you should make suggestions can always be dealt with independently. The Honourable the Attorney General: If that is your sense it clears the air very much because it might occur to certain members of the Committee that they would not object if certain provisions were put in.

Mr. Slade: I am prepared to enter that, Sir.

I have the same remarks to make about paragraphs 6, 7 and 8 of the Municipal Council's objections. Paragraph 5 reads -

"That the maximum dividends payable by the Company should be limited to ten per centum per annum."

Mr. Eckersley: Might I call attention to one point. He is I understand going to address the Committee with regard to the criticisms offered to his application. If he is doing it now is he to have the opportunity after we have spoken?

Mr. Slade: I am addressing the Committee purely on the question of relevancy in the hope that the Committee may decide that evidence will not be taken on these points.

The Honourable the Attorney General: We could not decide that without hearing the objections.

Mr. Slade: Objection 5 reads -

"That the maximum dividends payable by the Company should be limited to ten per centum per annum"

and so on. What I have to point out particularly is this that this is a matter of an amendment to the Ordinance. They say if you are not going to amend the Ordinance we object to the extension and then you say what is your reason and they have not got one except that they want the Ordinance amended.

The Honourable The Attorney General: They say the rate is too high. That is their argument for what it is worth.

Mr. Slade: It is irrelevant, sir; it is blackmail.

The Honourable The Attorney General: There is such a thing as legitimate blackmail; (laughter)

Mr. Slade: I would not put this among that, though.

The Honourable The Attorney General: They say that the Law stands they object but if there is any possibility of an amendment to the Ordinance in that respect they would be prepared to withdraw that objection.

Mr. Slade: Whether we get the extension or somebody else gets it that Ordinance is there. Either they put the Ordinance amended or they don't.

The Honourable The Attorney General: They say if you are going to cut out this provision then we object to the extension.

Mr. Slade: Paragraph 6 - if you can see what that has to do with the extension. It reads -

"That the system of overhead lines in built-up areas is unsatisfactory, unsightly and dangerous and should be replaced by underground cables in built-up areas."

I would point out that they have a complete statutory remedy. They have independent means of disposing of this objection and they are not tied up in any way.

The Honourable The Postmaster General: On what authority do you say the Municipal Council can take independent action in regard to paragraph 6? They could compel the Company to put their lines underground?

Mr. Slade: Oh, no. They would have to put the Ordinance

amended.

Then paragraph 7 reads -

"That the practice of the Company in undertaking contract works at a loss is unfair and inequitable both to consumers and electrical contractors and should be prohibited."

The Company denies that it adopts any such practice. This is entirely under the control of the Governor in Council. At any rate our right to undertake contracting work may be revoked at any time under the Ordinance.

And the same with paragraph 8 of the objections -

"That the charges for the meter rents are excessive."

The Government has complete control under the terms of the Ordinance. Although we have answered all the questions in the questionnaire we suggest that some of these questions would not appear to have any direct bearing on the question of extension.

The Honourable The Attorney General: If people have all these grievances and the Chairman picks 95% of them out in the report that you will have to answer them to some other Committee in a few months.

Mr. Slade: Yes. We want these points to be dealt with by separate inquiries.

The Honourable The Attorney General: We will hear the other side on the question of relevancy.

Mr. Slade: The question of depreciation comes up in paragraph 3 of the questionnaire and I have nothing to add to what I have said before. I would like to remind you that the answers are given in confidence.

Mr. Eckersley: I can give the Company the assurance that so far as the Municipal Council is concerned these things will go no further. We shall regard them as strictly confidential.

The Honourable The Attorney General: What I feel about the questionnaire is that the Postmaster General has given the

Company in advance a series of questions which he will ask now as a member of the Committee. The Company has had an advance notice that these questions were going to be asked. The Honourable The Postmaster General. . . definite statement has been made that some of this information I have asked for is of an irrelevant character. I now ask Mr. Slade definitely to point out any question I have asked here which he considers irrelevant. I have here a reply by the Company to a letter which I sent them which is just the same thing; I referred to this very question of depreciation when I asked the Company if they were prepared to put in a Memorandum. The Company's reply was as follows:

No. 24/81/P/K. Nairobi. 16th January 1936.
The Honourable The Postmaster General,
Nairobi.

"Sir,
I have the honour to acknowledge your letter No. E.P. 6/78 of the 5th January with many thanks.
I am directed to state that as Government has agreed to appoint a Committee of Enquiry to examine objections to this Company's application for an extension of its Nairobi licence it is felt that the information called for in your questionnaire would be more appropriately given in evidence to that Committee should the Chairman so desire.
It is the course for the Chairman of that Committee to say which points are or are not relevant to the issue, viz. this Company's application.
In regard to paragraph 3 of your letter should the Chairman of the Committee judge that this subject is relevant to the issue I am to say that this Company is hopeful that in view of the volume of correspondence and the number of interviews with yourself on this subject that you will be in a position to offer a correct reply on behalf of this Company. This will be particularly useful to this Company in view of the fact that we understand the subject is to be raised in other quarters and in almost identically the same terms as you first raised it with this Company.
Again thanking you.

I have the honour to be, etc.

Mr. Slade: I was about to explain what parts of this questionnaire were irrelevant but I think it would be better to deal with the questions on the Memorandum first of all.

The Honourable The Attorney General: After you have finished I take it one of the representatives of the Company will be put in the position of being asked questions.

Mr. Slade: As far as the Company's case goes we don't want to add anything in the way of amplification.

The Honourable The Attorney General: I take it you will be prepared to answer questions on the whole position - not only on the Memorandum?

Mr. Slade: I suggest we should confine it as much as possible to questions on the Company's Memorandum first of all.

The Honourable The Attorney General: Any questions?

The Honourable The Postmaster General: In regard to the first question Mr. Slade is not justified in his suggestion that any of these questions are irrelevant and either it is that or it is proper to say how they are relevant here and now or irrelevant.

Mr. Slade: Question 3 of the questionnaire has to do with the method of depreciation and accounts. I am suggesting now, as I suggested in connection with the Municipal Council's objections, that in view of Section 45 of the Ordinance and the power which is given the Governor in Council under that section if the Company misbehaves itself, it is irrelevant and that no such action was taken and that if the Committee had considered it before action was taken it would be embarrassing in any subsequent Court of law.

The Honourable The Attorney General: You are relying on Section 45(8). Which is the default?

Mr. Slade: I am not quite sure, sir, but there is possibly a suggestion that there is some default.

The Honourable The Attorney General: (quoting sub-section):

"If the licensee makes default in complying with any of the provisions of this section he shall be liable to a penalty not exceeding fifteen pounds for each default, and to a daily penalty not exceeding seven pounds ten shillings for each default, or, having regard to the circumstances, the Governor in Council may deal with the licence as he thinks fit."

Mr. Eckersley: I would also refer you to the last lines of sub-section 3.

The Honourable The Attorney General: (quoting):

45
"(3) When and after the supply of electrical energy from or through any part of a licensee's works or undertaking is begun, there shall appear in the accounts of the undertaking from year to year an allowance for depreciation of such works or such part thereof, which shall be of such amount as is usual for works of the same nature and class, or as may be stated in the licence."

Mr. Slade: I want to satisfy the Postmaster General though

I don't think the question is relevant to this application.

The Honourable The Postmaster General: This is a question affecting the credit of the Company. My view is that one

or other of these figures is a false figure of depreciation.

Mr. Slade: If that is the case I say there are other ways of dealing with it but it does not affect this application.

The Honourable The Postmaster General: I do submit that it is a question of credit.

The Honourable The Attorney General: It is certainly a question of credit.

Mr. Slade: I suggest you should agree with us that there is not very much object in answering it.

The Honourable The Attorney General: If you are of opinion that this question has no bearing on the application you can say "we refuse to answer it" and nothing in the world can make you answer.

Mr. Slade: If these things are raised to attack our credit I may say that the only proper method of attacking is through a Court of law and this Committee is not the place.

The Honourable The Postmaster General: It is not a question of attacking but a question of asking for an opinion. There is no attacking and I would like that to be understood.

Mr. Slade: If it is an opinion then it has nothing very much to do with this Committee.

The Honourable The Attorney General: Only the Committee now know.

Mr. Slade: That is all I will say on that just now. I suggest that questions 4, 5 and 7 are not very relevant.

The Honourable The Postmaster General: I do not agree with that. I am sure the Company will agree that when the Company came before us with this extension it would be reasonable for a Committee of this sort to bring their past management of affairs under review. The Company is not a private company in the ordinary sense of the word. It might well be said that it is interfering with domestic affairs but there is also the point of view that the Company have a monopoly and the public have a right to say "You have this concession and are in a very privileged position and we have a right to know how you are managing what amounts to our affairs as well as your own". It is simply asking the Company in a way to give an account of their stewardship.

Mr. Slade: We don't object to answering this question but we are trying to save the Committee from being befogged.

The Honourable The Attorney General: In the interests of everybody, as these questions are raised, it would be a great mistake if they were not answered if they can be answered.

Mr. Slade: It rests with you, sir.

The Honourable The Attorney General: It doesn't rest with me. If you don't want to answer then you don't need to.

The Honourable The Attorney General: Look at paragraph 10 of the Memorandum. It says -

"The very scattered nature of the demand for electricity in Nairobi and district necessarily results in an abnormally, and unavoidable, high cost per unit in respect of maintenance and similar charges. The demand per square mile in Great Britain, including the comparatively sparsely inhabited areas of the Highlands of Scotland, according to the latest figures available, is 57 k.W., which compares with a figure of 2 k.W., in the case of the Nairobi area of supply."

You say in paragraph 13 -

".....Further, bad debts written off amount to a much higher percentage in the case of small consumers as compared with the larger consumers."

Mr. Cocker: It appears to me that you attach very much importance to a letter addressed to you by Mr. Highfield on the

question of finance. When it is understood that the local authority can take over from you at any time under the Ordinance, how and why should it affect your raising capital on this Maragua-Tana Scheme and spending it when the Company need it ?

Mr. Slade: We are in the risk of being taken over by the local authority at any time up to the end of our present licence. On the expiration of the licence, if no public authority has taken over, various people have the right to compel us to sell our undertaking. It may be that when our licence expires we have to take up our works and get out.

Mr. Cooker: Have you ever investigated the local market to see whether or not there is a possibility of raising capital at a cheaper rate than in London? A great deal of criticism has been levelled in regard to this point and I should like to satisfy myself.

Major Ward (Chairman of Directors of the Company): No, we have never done that. The Company's methods of dealing with this sort of thing has the advantages of the highly organized markets of the City.

Mr. Cooker: I am told there is money available in Nairobi and that people would not be so shy even if your licence were not extended.

Mr. Ekersley: Can Mr. Slade point out a single instance where a licence has been allowed to run out and the owners of the licence told to get out without some provision being made for somebody else to take it over? This Colony would never leave consumers of electricity in such a position. The thing is absurd.

The Honourable The Postmaster General: Has the Company any serious fears of arbitration proceedings if they are maintaining their undertaking in a proper state of efficiency and making proper provision for depreciation ?

Mr. Slade: Certainly. If the Company were forced to sell at

a price that could only be agreed upon in arbitration under the Ordinance it is quite clear that there is no certainty at all that the Company would get back its full capital. It appears quite clear that what the purchaser has to pay is the value of the works to him for his purpose and not in compensation to the licensee.

The Honourable The Attorney General: It would be better for each member to ask their questions.

The Honourable The Postmaster General: In regard to paragraph 8 of the Memorandum is it reasonable to draw a comparison between power generated by means of fuel and power generated by means of water?

Mr. Odam (General Manager of the Company): Very definitely, sir.

The Honourable The Postmaster General: Will you agree that your transmitting mains are part and parcel of the hydro-electric arrangement? That is to say, you generate your power a certain distance away and have to bring in transmission mains.

Mr. Odam. I don't understand you, sir.

The Honourable The Postmaster General: Reason out that question: Your consumption in the Nairobi area is only 30 units per head of population. Is that right?

Mr. Odam. Yes, sir.

The Honourable The Postmaster General: Now look at Appendix 5 (b) of the Memorandum.

The Honourable The Attorney General: (reading):

"In the case of the more remote and more sparsely populated rural areas of supply where a degree of development beyond a consumption of the order of 30 units per head of population could not be reasonably expected, the alternative rates of charge should not exceed -

- "(i) from 9d. to 10d. per unit for lighting.
- "(ii) from 3d. to 4d. for other purposes.

"It is pointed out that the last-mentioned prices for other purposes will not be conducive to development, and that the prospect of securing any general use of electricity in such areas will be dependent on the offer of a suitable two-part tariff.

Mr. Odam: That is the expression of opinion of a gentleman we cannot name.

AT THIS STAGE IT WAS STATED THAT THE ORIGINAL DOCUMENT WAS AVAILABLE FOR THE CONFIDENTIAL INFORMATION OF THE COMMITTEE.

Major Ward: He has quoted from a report.

The Honourable The Postmaster General: But what is the point of this 30 units per head of population? It is suggested that that is about the ratio in the Nairobi district.

Mr. Odam: The report was based on the figures given at that time. We went to the trouble of getting an expression of opinion as to whether our rates were right or wrong. We wanted to be assured that our charges were reasonable.

The Honourable The Postmaster General: Regarding paragraphs 17 and 19 of the Memorandum, it goes back to the point in connection with my questionnaire. That is to say it is the duty of the Government to protect the interests of the public and the licensee and that all questions which relate to the good management of the Company are relevant questions. I take it that is agreed?

Mr. Slade: 'Good management' is a wide phrase.

The Honourable The Postmaster General: As regard to paragraph 20 of the Memorandum - the Parak River Hydro-Electric Scheme - is it not one in which the Government has a financial interest?

Mr. Slade: I don't think so.

The Honourable The Postmaster General: The Dar-es-salaam Government has a right there, at the end of eighty years.

The Honourable The Postmaster General: In 1929 it was stated that the first stage of the Maragua-Tana work would take three and a half years and the second stage would be completed in six months. I quite agree that if you continued on with the work you could possibly do it in less time but there is a substantial difference between three years and six months.

Mr. Odam: Nothing has been done in the way of designing the dam that is to be used.

The Honourable The Postmaster General: The Company gave evidence before a Government Committee as to what the development of the Maragua-Tana Scheme would cost and that evidence was based on some inquiry or investigation. Now I am told that nothing has been done in regard to an investigation in regard to the Maragua-Tana Scheme. The figures placed before the Government Committee were in point of view of the cost of the Maragua-Tana Scheme, worthless figures?

Mr. Slade: The Government has before them two sets of figures but we assumed that the Government would work on their own consulting engineers' figures. They said in their letter that the Company would appear to have under-estimated the cost. Do you want us to go into the Company's figures as well, in view of the consulting engineers'?

The Honourable The Postmaster General: They came before the Government Committee in 1929 with figures which I believed, the Company were prepared to discredit.

Mr. Slade: This Committee will work on these figures.

The Honourable The Postmaster General: Because they are more favourable to the Company.

Mr. Odam: We don't disagree with those figures at all.

The Honourable The Postmaster General: You don't refuse that the experts' figures were taken from the Company's estimate?

Major Ward: I cannot possibly tell you because I don't know.

1 p.m. Inquiry Adjourned.

2.15 p.m. Inquiry Resumed.

The Honourable The Postmaster General: How long does the Company estimate it will take to get the detailed estimates out?

Mr. Odam: It is difficult to say. I should say it would not be fair to allow less than six months.

The Honourable The Postmaster General: What is the point of

the concluding part of paragraph 16 of the letter of 22nd October ?

The Honourable The Attorney General (reading): the concluding paragraph reads -

"I am directed again to emphasise the urgency of the position and to point out that if this Company cannot commence construction work on the proposed dam during the 3 months of January, February and March, 1936, construction must necessarily be postponed until the river falls sufficiently low to permit of work of this nature being carried out which would not be before the following September."

The Honourable The Postmaster General: So the Company knew full well that it would take two months to deal with the application and six months to get out your specifications, etc. I want to know what was the purpose of that statement in regard to the possible reconstruction in January, February and March when three months had to elapse before dealing with the application and six months to prepare your specifications and estimates.

Major Wargo: Our answer is that in writing the letter of 22nd October last year, this Company had no idea there would be the volume of objection that has been raised. Otherwise a certain amount of this preliminary work would have been done during the dry weather this year. I think we now thought we would be a good way ahead with this preliminary work by the end of March.

Mr. Odam: The moment we get permission to go ahead with the scheme I shall be sent home for an expert and we will go on with it.

The Honourable The Postmaster General: Are you so far advanced as to form an estimate of the cost ?

Mr. Odam: The original estimate of cost is sufficient for us to go on with the scheme.

The Honourable The Postmaster General: Has the Company thought of handing over the contract for this work without any proper details - quantities, specifications or designs or anything of that sort.

Mr. Odam: No.

The Honourable The Postmaster General: In regard to commission paid to the Beaver Trust, what proportion of the 2% is in respect of guaranteeing the subscription?

Secretary of the Company: I have no knowledge that there was any allocation of that amount.

The Honourable The Postmaster General: Can the Chairman give me any information of how the figure of Shs. 6/50 per share premium is arrived at?

Major Ward: All these things are a matter of catering the market at the right time and our advisers arrived at 26/6 as being a fair figure. No one can tell with any degree of accuracy what the market is going to do six months after your allotment is made.

The Honourable The Postmaster General: Does the Board of the Company arrange these matters or do you simply transfer the responsibilities on somebody in London?

Major Ward: This Company does not transfer responsibilities to anybody in London.

The Honourable The Postmaster General: You don't give up to the matter of the Board? This Company is not in a position to decide matters and cannot act independently of London?

Major Ward: Oh, yes. The majority of shareholders live overseas and naturally it is only courtesy on important subjects to consult with them. Matters are more easily changed and ascertainable in London.

The Honourable The Postmaster General: The Company say in their application that their position regarding the raising of the money is going to be prejudiced if the application is refused. What is that statement based on?

Major Ward: You have to take into consideration the fact that you cannot hope to get money at reasonable terms with only eleven years left and no responsible man would face that capital development with only eleven years left.

The Honourable The Postmaster General: That is all very general.

Major Ward: You have Mr. Highfield's opinion in support.

The Honourable The Postmaster General: The Company never undertakes to do any major works itself?

Major Ward: That is clearly outlined in the answer. (Indicating the questionnaire).

The Honourable The Postmaster General: No tenders are called for. Everything that has to be done is sent over to Balfour, Beatty & Co.?

Major Ward: It is not a new idea. It is an idea that is usually carried out with Balfour, Beatty & Co. They have done this sort of work on behalf of the Imperial Government.

The Honourable The Postmaster General: That means to say that they are entrusted with the work and they can charge what they like. What is the fee paid?

Major Ward: For Contract No. 818 which was the Maraga-Sera Scheme the total cost was £81,242 and the fee £10,000.

The Honourable The Postmaster General: It was given to me as £71,000. The Company state that its position in regard to raising capital would be affected if the application is refused. The Company must base that statement on some assumption. Take paragraphs 29 - 32, a very definite statement is made in paragraph 29.

Major Ward: Are you examining me on paragraph 29?

The Honourable The Postmaster General: The two have nothing to do with each other.

Major Ward: Might I say that this Company is trying to give you our case in this Memorandum. We are trying to make it as clear as possible and trying to give you every possible support. This case is full of contentions of which No. 29 is one. We are reasonable people and if this Committee or the Government can show us that our contentions are wrong in any respect we are perfectly willing to consider it.

The Honourable The Postmaster General: Am I to understand

that the Company do not mean that they will not proceed were the application refused ?

Major Ward. Yes, that is the position.

The Honourable The Attorney General: The point is we are asked to recommend "yes" or "no" to a certain scheme and I take it when I read this that if we said "no" it would mean that this scheme would not be gone on with. They say "if you say 'not we as a Company say we can't go on with the scheme."

Mr. Slade: We are trying to be honest. The position is that we can't now make a declaration of policy in the future because we may turn back on it. All we can say is that all the evidence has been put before you.

The Honourable The Attorney General: If the answer is "no"

from all the information we have, this scheme can't go on.

Major Ward: That is exactly our case. We want to know if we are wrong in any case although we don't believe we are.

The Honourable The Postmaster General: That was the crux of my question.

The Honourable The Attorney General: I understand that that is the position that we say "no" the Company say "no" to the other thing.

The Honourable The Postmaster General: Would the Company be prepared to agree that the peculiar phrasing of No. 29 would be caused by the Company's fear that it would not be possible to carry on if the application were refused ?

Mr. Slade: I don't see any reason to amend the reading of that paragraph. That is what appears to us at the moment on the evidence before us. It looks to us that it would not be possible to go on.

The Honourable The Postmaster General: These are the very words I want you to use "that it looks to you that it will not be possible".

Mr. Slade: I don't think the actual wording matters so very

much.

The Honourable The Attorney General: I don't think that from what you have told him you should alter it.

Mr. Blade: No. It looks as if we will have to abandon the scheme.

The Honourable The Postmaster General: What is the position in regard to the general financial position of the Nairobi undertaking?

Major Ward: I gave the Committee our position.

The Honourable The Postmaster General: I want more information than that because certain reserves have been put against on the Nairobi undertaking when that undertaking was standing on its own legs.

Major Ward: In 1929 the Postmaster General drew the attention of the Company to the fact that the returns were not very satisfactory. Various meetings took place between the Postmaster General and representatives of this Company and the Auditors to see how far these returns could be improved upon. In these schedule forms there is no provision for Head Office account and it was agreed that this account should be spread out between the different branches. After that the forms in draft were sent out to the Postmaster's office to make sure we were going to do what he wanted. It therefore follows when you look at the Government returns that it looks as if Nairobi had a substantial balance in hand. The actual cash position as at 31st December was £118,133 less balance required for the Pangani Scheme £89,674 leaving a working capital of £28,459.

The Honourable The Postmaster General: It is suggested that the accounts submitted are not true accounts.

Major Ward: They are submitted as the Postmaster General wanted them.

The Honourable The Postmaster General: No Postmaster General

has ever agreed that untrue figures should be submitted in these accounts.

Major Ward: They mean exactly what the Postmaster General wanted them to mean. If the correspondence is required, could put it before the Committee.

The Honourable The Postmaster General: These undertakings are supposed to stand on their own feet.

Major Ward: We can't help it. The Ordinance wants looking into. There is no provision in the Ordinance for a Head Office account else this trouble would not arise.

The Honourable The Postmaster General: But there is no earthly reason that the accounts should not show the true state of affairs in regard to each undertaking.

Major Ward: It is done exactly as directed by the Postmaster General.

The Honourable The Postmaster General: I challenge that statement. The accounts are submitted on the form which I agreed to but I have no responsibility in regard to figures.

Major Ward: We explained the whole of the figures and we sent you down the draft for your approval.

The Honourable The Postmaster General: In 1929 I told them that if they could not submit accounts to comply with the Ordinance, they were to come to me and suggest any amendment. From that day to this I have not had a single suggestion from them.

SECOND DAY - COMMITTEE AS BEFORE.

The Honourable The Attorney General: The first witness this morning is Mr. Gill. We thought he might clear up this question in regard to the Head Office accounts.

Mr. Gill: The money invested in the Pangani Scheme takes its place along with other investments of the Company.

The Honourable The Attorney General: Each undertaking starts

on its own feet so that when the ordinary man in the street looks at the Balance Sheet of the Nairobi undertaking he expects to see reflected there the position of the Nairobi undertaking at the moment. Then I heard for the first time yesterday that so much could be taken from that at any moment; that is an investment of £100,000 could be used elsewhere so that it doesn't really reflect the true position of the Nairobi undertaking at all.

Mr. Gill: The accounts themselves give a very full picture of the whole position. These are the true figures of this undertaking. We have done our very best to comply with the form.

The Honourable the Attorney General: By looking at that Balance Sheet of the Nairobi undertaking, the Nairobi man in the street would not know in the least what it was all about. That is our point.

Mr. Gill: I think he would. Tanganyika is not an undertaking of this Company at all. It is an investment and we are not interested in the profits of their licence.

The Honourable the Attorney General: But the money is devoted there. It could not be released for Nairobi. I have no grouse against investing your money. But you invest £70,000 in this show at Tanganyika and the investment is shown as an asset in the Nairobi account. Next year when Nairobi wants some money I would say if the Balance Sheet is true the obvious thing to do would be to take so much of this investment. I am wondering if we have got the position correctly as explained yesterday.

Mr. Slade: Mr. Gill was not present at the discussion yesterday and therefore does not understand perfectly the point you want to get at. It is suggested that the Nairobi undertaking must be kept distinct in all respects from the other undertakings. That is the point. In the first place it must be understood that these are a part of an undertaking which

-35-

on its own feet so that when the ordinary man in the street looks at the Balance Sheet of the Nairobi undertaking he expects to see reflected there the position of the Nairobi undertaking at the moment. Then I heard for the first time yesterday that so much could be taken from that at any moment; that is an investment of £100,000 could be used elsewhere so that it doesn't really reflect the true position of the Nairobi undertaking at all.

Mr. Gill: The accounts themselves give a very full picture of the whole position. These are the true figures of this undertaking. We have done our very best to comply with the form.

The Honourable the Attorney General: By looking at that Balance Sheet of the Nairobi undertaking, the Nairobi man in the street would not know in the least what it was all about. That is our point.

Mr. Gill: I think he would. Tanganyika is not an undertaking of this Company at all. It is an investment and we are not interested in the balance of their licence.

The Honourable the Attorney General: But the money is devoted there. It could not be released for Nairobi. I have no grouse against investing your money. But you invest £70,000 in this show at Tanganyika and the investment is shown as an asset in the Nairobi account. Next year when Nairobi wants some money I would say if the Balance Sheet is true the obvious thing to do would be to take so much of this investment. I am wondering if we have got the position correctly as explained yesterday.

Mr. Slade: Mr. Gill was not present at the discussion yesterday and therefore does not understand perfectly the point you want to get at. It is suggested that the Nairobi undertaking must be kept distinct in all respects from the other undertakings. That is the point. In the first place it must be understood that these are a part of an undertaking which

is under the control and ownership of a single company. The shareholders are simply shareholders of the company; they are not separate shareholders in a separate undertaking. If the Company had its way it would show assets and liabilities under separate Head Office account. The Postmaster General has placed great emphasis on the importance of Government accounts presenting true statements. We say that the Government accounts taken as a whole present as true a statement of the Company's position as it is possible to present in view of the form of accounts and the interpretations placed upon them. So far as the consumers and the public are concerned the question is what information do they need? They are interested to see that the licensees are not making a too big profit. I don't think anyone will suggest that the Company is presenting accounts which do not show truly and correctly the profit that the Company is making in respect of any particular undertaking. What I want to point out is that the question of the profit of a particular undertaking is quite independent of the Company's investments or reserves so that neither consumers nor public care what investments or reserves are appropriated to any particular undertaking. They want to see what assets are there from time to time if the Municipality were to take it over. That only concerns fixed assets, machinery, plant, etc., and has nothing to do with the company's investments, reserves or cash. That remains with the Company. The Nairobi undertaking is simply one arm of the Company.

The Honourable The Attorney General: But if it happens to be a paying arm it is surely a matter of carrying the baby

Mr. Slade: Neither the consumers nor the public are carrying the baby. There has been some confusion in imagining that reserves are represented by cash. That is quite definitely not the case. Where you see an investment or reserve appropriated to a particular undertaking it does not represent

cash belonging to that undertaking,
The Honourable The Attorney General: But it might represent cash ?

Mr. Slade: Not specifically. It is represented by general assets. Doesn't that explain the position ?

The Honourable The Attorney General: It explains your position clearly.

Mr. Slade: To sum up, these allocations are purely nominal allocations for the purpose of these particular accounts and there is no reason why they should be anything else.

The Honourable The Attorney General: That is where we join issue entirely, when you use the words "purely nominal allocations". That means these figures mean nothing whereas the public in the past thought they meant something. The whole purpose of the Ordinance is to separate them out so that each undertaking stands on its own feet.

Mr. Slade: That is the trouble. It is something I must make you understand, sir; the Company has a lot of assets which cannot be related to any particular undertaking like the money invested in the Pangani Scheme. May I call some evidence on this point ?

The Honourable The Attorney General: Certainly.

LAST SECRETARY OF COMPANY CALLED (Mr. Vernon)

Mr. Slade: Is this a copy of a letter you wrote on 1st September, 1931 ?

Witness: It is. (Letter read)

"3264/RGV/B

1st September, 1931

"The Honourable Postmaster General,
"Nairobi.

"Sir,

ELECTRIC POWER ORDINANCE 1919

" We have the honour to enclose herewith our Accounts for the year ended 31st December, 1930, in accordance with Section 42 of the above Ordinance.

" In submitting these Returns, we wish to state that they have been prepared in accordance with the draft Schedules attaching to the Ordinance and that, in consequence, certain of the Schedules appear in a different form from that in

"which they were submitted in previous years.
 "Having in mind your observations upon the form in
 "which the Accounts for 1929 were submitted, and your
 "requirements in regard to future Returns as expressed
 "to our Auditors, in these Returns we have allocated
 "the main Balance Sheet items such as Share Capital,
 "Reserve Fund, Depreciation Fund, Investments, Cash,
 "etc., on a percentage basis between the Nairobi and
 "Mombasa Undertakings. In arriving at the percentages
 "allocated to the two Undertakings, Capital Expenditure,
 "Revenue and Working Costs were taken into consideration,
 "but we wish to state that such Allocations are made
 "solely for the purpose of meeting your requirements
 "under the Ordinance."

Mr. Slade: Mr. Gill will confirm that the accounts have been prepared in that form ever since. Perhaps the Secretary will tell us how the accounts are prepared each year.

SECRETARY OF COMPANY CALLED (Mr. Reed)
 Witness: After our Accounts are prepared we first of all submit them to Gill & Johnson for audit. As soon as their enquiries are answered they are put in official form and submitted to the Postmaster General. In every year that I have been at the office, Mr. Congrove from the Postmaster General's office has called with a large number of notes and has asked me for further information. In order to satisfy him I have given him access to the Company's own detailed Balance Sheet and what has been referred to as the Head Office account. The manner of preparing the accounts comply with the requirements of the Ordinance and also with the interpretation placed by the Postmaster General.

The Honourable the Postmaster General: (To Mr. Gill) - What was the object in changing the form of account after 1929 accounts were prepared?

Mr. Gill: In your letter of the 28th October you said the form of account must be changed.

The Honourable The Postmaster General: What was the purpose of changing the form?

Mr. Gill: To comply more closely with the Ordinance.

The Honourable The Postmaster General: You as the Company's auditor and the Government auditor, in this matter, should have considered it your duty to furnish your accounts

strictly in accordance with the Ordinance.

Mr. Gill: We will have to go back to correspondence in the year 1923.

The Honourable the Postmaster General: There was a change decided upon in 1929. The object of that change was to ensure a true picture of each undertaking. In my letter to you on the subject I suggested that if you had any difficulty in complying with the Ordinance and the spirit of the Ordinance, which of course would be to show a true state of affairs, you should make suggestions to me. Have you suggested to me to this day in regard to any difficulty which you found in complying with the Ordinance or have you made any suggestions in regard to amending the Ordinance?

Mr. Gill: I have not. I refer you to a letter I sent you on 27th February, 1936. The idea was to get out a new form of account for submission to you and the Governor in Council.

The Honourable the Postmaster General: At any rate you were asked to put up new suggestions and you didn't.

Mr. Gill: I had never had a report.

The Honourable the Postmaster General: What we have a quarrel about is that these accounts are made out not in strict compliance with the Ordinance.

Mr. Gill: Who said that?

The Honourable the Postmaster General: In so far as they do not give a true picture.

Mr. Gill: I am not going to allow you to put words into my mouth.

The Honourable the Postmaster General: The whole purpose and spirit of the Ordinance is that these undertakings must be kept strictly separate. From the 1934 Balance Sheet there is a reserve of £120,000 in the Nairobi account.

Mr. Gill: I agree.

The Honourable the Postmaster General: That is money which is properly considered at the disposal of the Nairobi undertaking?

-40-

Mr. Gill: I can't agree. If the Directors had to find £100,000 they would have taken it from that money and they had every right to.

The Honourable The Postmaster General: Then the accounts are not real accounts from that point of view. There is a balance of £120,000. You say it could be taken and disbursed elsewhere. What right in view of the fact that you have to keep this undertaking separate, have they in disposing of these liquid assets in another direction? Is the Company really justified in doing so in view of the contemplated capital expenditure? This money is disposed of elsewhere and the Company has got to raise money in London to do capital works and because you have to go to London we are placed in a prejudiced position.

Mr. Gill: One of the reasons put forward by the Company was the difficulty of raising money.

The Honourable The Postmaster General: If money can be taken from the Nairobi undertaking at the discretion of the Directors, it is only reasonable to assume that if Nairobi needed money they could get it from any of the other undertakings. My point is that the whole thing is entirely contrary to the spirit of the Ordinance.

Mr. Gill: It is still in the Company's funds.

The Honourable The Postmaster General: My position is that you have a duty and so have I to see that these accounts are separately kept.

Mr. Gill: I have done my duty.

The Honourable The Postmaster General: Do these accounts represent a true picture?

Mr. Gill: The allocations have to be made because of the ruling of the Postmaster General. There is no other way out of it.

The Honourable The Attorney General: Why not say "Because of the Ordinance"?

Mr. Gill: We thought they were fair allocations to make.
The Honourable The Postmaster General: Then it should be properly brought to notice. You raised £195,000 the other day for the purposes of Pangani. You should have put Pangani at the top.

Mr. Gill: The Company doesn't own Pangani.

The Honourable The Postmaster General: You go to London and for the purposes of the Tanganyika undertaking on the strength of Kenya undertakings, particularly Nairobi, you are able to raise money at a premium. You ask your consumers to provide you with 7 per cent preference shares and then 7 per cent of your ordinary shares and you allocate the whole of that premium which was partially raised in Nairobi to a Tanganyika proposition.

Mr. Gill: I don't think you know how these things are worked out. £195,000 shares were subscribed at Shs.6.50. The money is in the Bank ready to be spent.

The Honourable The Postmaster General: It was appropriated to Tanganyika, but the Nairobi undertaking is to carry its share of the burden. To find this 7 per cent on these preference shares and the premium instead of being issued at 4 per cent, you pass on the fruits of the success of the Nairobi undertaking.

The Honourable The Attorney General: I don't think we will ever agree on that point.

The Honourable The Postmaster General: Supposing Nairobi was operated as a separate undertaking and you were able to put shares on the market in London at Shs.6.50 premium. The whole of that Shs.6.50 would accrue to the benefit of the Nairobi undertaking. Under the present arrangement it does not necessarily accrue to the Nairobi undertaking. It may go elsewhere. Therefore, under the group system the position of the Nairobi consumer is definitely prejudiced.

Mr. Gill: You say so. I don't know.

Mr. Cocker: Arising out of this discussion I gather from the Postmaster General that it would be in the interests of the consumer in Nairobi if the Company were not allowed to take away money from the Nairobi undertaking and putting it elsewhere ?

Mr. Gill: It may go elsewhere and be used to more advantage.

Mr. Cocker: If they take away Nairobi money they should be able to apply it to the benefit of Nairobi consumers.

Mr. Gill: The Directors have to find sufficient money to carry out works and pay their accounts in the course. The accounts are very complicated and very few people are able to understand them.

Mr. Blowers: They were asked to put up suggestions and they didn't do so.

Mr. Eckersley: Of the £195,000 capital which was raised in 1934, for the Pangani concessions, there has been £163,000 allocated against the Nairobi undertaking. If additionally capital were required for the Nairobi undertaking, would it be possible to realise all these investments in the Pangani concessions ?

Mr. Gill: It would possibly be - yes.

The Honourable The Postmaster General: Are you satisfied with the existing arrangement in which the Company's auditor is also the Government auditor ?

Mr. Gill: Quite satisfied.

The Honourable The Postmaster General: You feel you can be impartial ?

Mr. Gill: There was a time when you were not satisfied. Our first duty is to the shareholders and the investing public. Once we are satisfied with these form of accounts everything is all right and the next thing is to put it into Government form. It would be a waste of time and money in having two auditors go through the same set of books.

The Honourable The Attorney General: There is one point to be

cleared up. Where are two Balance Sheets, the Company's and the Government's, and they have little resemblance to one another.

Mr. Gill: The Company's Balance Sheet is one Balance Sheet and the other comprises four Balance Sheets.

Mr. Strahan: What interest has any one section of the community in the Company's workings in any one place if the Company is operating throughout the country - that is a company that spends money in different places. What interest does Nairobi have in the ultimate Balance Sheet or profits apart from the service given?

Mr. Gill: They have no interest at all.

Mr. Slade: With reference to investments and reserves allocated to a particular undertaking, can the Nairobi undertaking be prejudiced in any way by the allocation of these investments and reserves?

Mr. Gill: I don't think so. It goes into the working account.

Mr. Slade: As to the consumers or public concerned with the allocations of investments and reserves?

Mr. Gill: I don't think so.

Mr. Slade: Would you say that the Company's reserves were available for all the Company's undertakings as the Directors decide?

Mr. Gill: Yes.

Mr. Slade: Does the Company's Balance Sheet show particular allocations of reserves and investments to particular undertakings?

Mr. Gill: No.

Mr. Slade: The Postmaster General has suggested that the burden of the issue of new capital at 7 per cent has fallen upon the Nairobi undertaking. Is that so?

Mr. Gill: I don't think so.

Mr. Eckersley (For Municipal Council): Before I begin to deal with the objections I propose to comment on the evidence which has been put forward in support of the application. I have attended a good many applications of one sort and another and I must say that I have not attended one which has been supported by such flimsy evidence that has been called in this case on behalf of the application. You were told seventeen or eighteen days ago that the Company was not prepared to proceed with the application in the absence of material witnesses and an adjournment was granted. These essential witnesses have appeared before you and they gave their evidence and after having heard them I suggest that the evidence they gave amounts to practically nil. It must have struck the members of the Committee the extreme reluctance and the witness exhibited in answering the questions. Their attitude was "we are here to give evidence but we don't propose to say anything at all." But if the Committee likes to ask us questions we shall answer them. It is surprising that there has been a marked disinclination to give evidence at all, amounting almost to a refusal, and that is the kind of evidence on which you are asked to recommend to the Governor in Council to grant an extension of licence. The Memorandum upon which the Company are relying very largely in support of their application have not been called as witnesses before you.

Mr. Slade: The people who prepared this Memorandum are here.

Mr. Eckersley: There are a number of letters here. In fact the application seems to be founded on a letter by a gentleman named Mr. Highfield. The main evidence is put forward in written statements and so forth and those who are opposing the application were entitled to have a copy of this Memorandum. But I don't complain of that. The Company may say this is very confidential and therefore I am not entitled to a copy. I shall proceed with the

objections, a copy of which has been furnished to each member. The main objection by the Municipal Council is that the application is premature. The only reason that is disclosed in the Memorandum for making the application now is that they cannot raise sufficient capital at a reasonable rate of interest unless they have an extension of their licences granted. They put forward a statement by some expert gentleman who has given it as his opinion that they will not be able to raise capital unless they get an extension. It does not require expert advice to come to such a conclusion. But capital can be raised at a very much lower rate of interest than 7 per cent on preference shares and there will be no difficulty in raising money at a very reasonable rate of interest whether this application is granted or not. The Company raised £195,000 in 1934 in respect of the Pangani concessions but there is nothing in the accounts as published to indicate anything about the Pangani concessions. The amount which appears under the Nairobi undertaking shows the £162,026 was raised in respect of the Nairobi undertaking. It further transpires in issuing a circular inviting subscriptions for this capital, no mention was made of the period. The reason why the Company was able to raise this money at a premium was on the strength of the undertakings in Kenya. If they had attempted to raise this money solely on the Pangani concessions it is highly probable that they would not have raised the amount of capital at a premium. It was stated this morning in evidence that if any proportion of that £195,000 which was raised for the Pangani concessions were required for any of the other undertakings it would be quite easy for the Company to use that money. There is no necessity for the Company to apply for any other capital. They have it. They have £162,000 credited to the Nairobi undertaking unexpended. They come to you and ask you to

agree to recommend not only a renewal of their existing licence to 1972 but also to recommend the development of the Maragua-Tana Scheme. I suggest that these two matters are entirely separate. It may be that this Committee may say "We will recommend the Government to agree to a renewal of the licence until 1972" but that does not necessarily mean that the Maragua-Tana Scheme will be developed. That would have to be considered by the Governor in Council. The Company may say "We don't recommend it" but that would not prevent the Company being granted permission to go on with the Maragua-Tana Scheme. The question of amortisation is an entirely new feature which has been simply dragged in. The reason for making this application so long as eleven years before the date of expiry of the licence is certainly to take advantage of the present money-market but I do submit it is not a sufficient reason for making the application so far in advance of the expiration date of the existing licence. It should have been made in the normal period described in the Ordinance, between 1942 and 1944. The position at the moment is that the Council can apply at six months' notice for a distributing licence for Nairobi. There is nothing to prevent them doing that now. Efforts are being made by the Company to the Secretary of State for the Colonies with a view to having the proviso to Section 3(1) of the Electric Power (Amendment) Ordinance of 1934 repealed and the Council objects to this. It is not unusual in all services of this description that there is a proviso made for the acquisition by the local authority of an undertaking or part of it. The local authority have had this under consideration as to whether an application should be made for a distributing licence for Nairobi but the Council were not prepared at that time to make the application, but it was pointed out that the existing licence would expire in 1947. On this ground they decided to leave it over. Now this application has precipitated the whole

agree to recommend not only a renewal of their existing licence to 1972 but also to recommend the development of the Maragua-Tana Scheme. I suggest that these two matters are entirely separate. It may be that this Committee may say "We will recommend the Government to agree to a renewal of the licence until 1972" but that does not necessarily mean that the Maragua-Tana Scheme will be developed. That would have to be considered by the Governor in Council. The Company may say "We don't recommend it" but that would not prevent the Company being granted permission to go on with the Maragua-Tana Scheme. The question of amortisation is an entirely new feature which has been simply dragged in. The reason for making this application so long as eleven years before the date of expiry of the licence is certainly to take advantage of the present money market but I do submit it is not a sufficient reason for making the application so far in advance of the expiration date of the existing licence. It should have been made in the normal period described in the Ordinance between 1942 and 1944. The position at the moment is that the Council could apply at six months' notice for a distributing licence for Nairobi. There is nothing to prevent them doing that now. Efforts are being made by the Company to the Secretary of State for the Colonies with a view to having the proviso to Section 3(1) of the Electric Power (Amendment) Ordinance of 1934 repealed and the Council objects to this. It is not unusual in all services of this description that there is a proviso made for the acquisition by the local authority of an undertaking or part of it. The local authority have had this under consideration as to whether an application should be made for a distributing licence for Nairobi but the Council were not prepared at that time to make the application, but it was pointed out that the existing licence would expire in 1947. On this ground they decided to leave it over. Now this application has precipitated the whole

agree to recommend not only a renewal of their existing licence to 1972 but also to recommend the development of the Maragua-Tana Scheme. I suggest that these two matters are entirely separate. It may be that this Committee may say "We will recommend the Government to agree to a renewal of the licence until 1972" but that does not necessarily mean that the Maragua-Tana Scheme will be developed. That would have to be considered by the Governor in Council. The Company may say "We don't recommend it" but that would not prevent the Company being granted permission to go on with the Maragua-Tana Scheme. The question of amortisation is an entirely new feature which has been simply dragged in. The reason for making this application so long as eleven years before the date of expiry of the licence is certainly to take advantage of the present money market but I do submit it is not a sufficient reason for making the application so far in advance of the expiration date of the existing licence. It should have been made in the normal period described in the Ordinance between 1942 and 1944. The position at the moment is that the Council could apply at six months' notice for a distributing licence for Nairobi. There is nothing to prevent them doing that now. Efforts are being made by the Company to the Secretary of State for the Colonies with a view to having the proviso to Section 3(1) of the Electric Power (Amendment) Ordinance of 1934 repealed and the Council objects to this. It is not unusual in all services of this description that there is a proviso made for the acquisition by the local authority of an undertaking or part of it. The local authority have had this under consideration as to whether an application should be made for a distributing licence for Nairobi but the Council were not prepared at that time to make the application, but it was pointed out that the existing licence would expire in 1947. On this ground they decided to leave it over. Now this application has precipitated the whole

agree to recommend not only a renewal of their existing licence to 1972 but also to recommend the development of the Maragua-Tana Scheme. I suggest that these two matters are entirely separate. It may be that this Committee may say "We will recommend the Government to agree to a renewal of the licence until 1972" but that does not necessarily mean that the Maragua-Tana Scheme will be developed. That would have to be considered by the Governor in Council. The Company may say "We don't recommend it" but that would not prevent the Company being granted permission to go on with the Maragua-Tana Scheme. The question of amortisation is an entirely new feature which has been simply dragged in. The reason for making this application so long as eleven years before the date of expiry of the licence is certainly to take advantage of the present money market but I do submit it is not a sufficient reason for making the application so far in advance of the expiration date of the existing licence. It should have been made in the normal period described in the Ordinance between 1942 and 1944. The position at the moment is that the Council could apply at six months' notice for a distributing licence for Nairobi. There is nothing to prevent them doing that now. Efforts are being made by the Company to the Secretary of State for the Colonies with a view to having the proviso to Section 3(1) of the Electric Power (Amendment) Ordinance of 1934 repealed and the Council objects to this. It is not unusual in all services of this description that there is a proviso made for the acquisition by the local authority of an undertaking or part of it. The local authority have had this under consideration as to whether an application should be made for a distributing licence for Nairobi but the Council were not prepared at that time to make the application, but it was pointed out that the existing licence would expire in 1947. On this ground they decided to leave it over. Now this application has precipitated the whole

matter. The amount of profit which the local authority are allowed to make is substantially less than that which the Company are allowed to make. I suggest there may be some advantage in the local authority having a distributing licence. Objection is being taken that the maximum prices authorised by the Company's distributing licence are too high and they should be reduced. Whenever an application is made for a licence of this description the price which the Company as licensees are allowed to charge is one of the most important factors connected with the licence. Because the Company have decided to make their application 1 1/2 years before the expiry of the existing licence does not render that question immaterial and the position is that what the Government do decide to grant this application for renewal of licence to 1972 this question of prices should certainly be considered. It is quite possible that steps may have been taken before now to obtain a revision of the prices but it is clear that the maximum prices which the Company are allowed to charge are more than are actually necessary. In the event, depending so much on what the Government decide, it is quite possible that there will be very little return and the Company may wish to increase their prices. There is nothing to prevent them doing so under their licence at the moment. I would not presume to suggest as to what the prices should be but the Municipal Council ask that there should be a reduction in the prices.

The next objection is - that provision for depreciation is not being made by the Company in accordance with the requirements of Section 45 of the Electric Power Ordinances. The amounts set aside by way of depreciation fluctuate enormously. You have in one year as much as five times as much as in the previous year. In regard to buildings and machinery, the accounts show a lack of any definite basis for making depreciation. A standardised rate of depreciation is necessary otherwise it is possible for the Company by making greater

matter. The amount of profit which the local authority are allowed to make is substantially less than that which the Company are allowed to make. I suggest there may be some advantage in the local authority having a distributing licence. Objection is being taken that the maximum prices authorised by the Company's distributing licence are too high and they should be reduced. Whenever an application is made for a licence of this description the price which the Company as licensees are allowed to charge is one of the most important factors connected with the licence. Because the Company have decided to make their application 1 1/2 years before the expiry of the existing licence does not render that question immaterial and the position is this that if the Government do decide to grant this application for renewal of licence to 1972 this question of prices should certainly be considered. It is quite possible that steps may have been taken before now to obtain a revision of the prices but it is clear that the maximum prices which the Company are allowed to charge are more than are actually necessary. In the event of spending so much yearly it is quite possible that there will be very little return and the Company may wish to increase their prices. There is nothing to prevent them doing so under their licence at the moment. I would not presume to suggest as to what the prices should be but the Municipal Council ask that there should be a reduction in the prices.

The next objection is - that provision for depreciation is not being made by the Company in accordance with the requirements of Section 45 of the Electric Power Ordinance. The amounts set aside by way of depreciation fluctuate enormously. You have in one year as much as five times as much as in the previous year. In regard to buildings and machinery, the accounts show a lack of any definite basis for making depreciation. A standardised rate of depreciation is necessary otherwise it is possible for the Company by making greater

or less provision for depreciation in any particular year to decrease or increase the amount of net profit remaining for distribution to its shareholders by way of dividend. There is need for a basis of some kind.

With regard to paragraph 5 of the Municipal Council's objections, I agree this would necessitate an amendment of the Ordinance. The present provision in the Ordinance permits of an increase of profit over 10 per cent whenever there is a reduction in the average price of 12 per cent below the maximum prices stated in the licence. The provision in the licence should be repealed. It is too elastic. In the event again of the application being granted, this is a point which we would ask the Committee to consider.

In regard to Objection No. 6, one would understand at the beginning when the Company first started that it was necessary that they should provide overhead lines. There is no objection to that system of transmission in rural areas but where you have got closely populated areas the Municipal Council do suggest that there should be underground cables. The company should be urged to provide underground cables in populated areas.

Referring to Objection No. 7, if you will turn to the accounts for the years 1934 and 1932 you will find that a certain amount of loss is shown in this respect. The accounts for 1932, for the year ending 31st December, show a loss on the sale of lamps and contracting work of Shs. 23,344 cents 49, and in 1934 the loss was Shs. 5,892 cents 69. I daresay it is possible for the Company to come along and say that this loss is not in respect of contract work but on the sale of fittings.

Mr. Slade: They will.

Mr. Eckersley: Whether it is in regard to contract work or the sale of fittings I suggest that the Company should not

carry out work of that description. Section 138(1) of the Electric Power Ordinance provides :-

"(a) A licensee shall not directly or indirectly have any interest in any other business of an electrical nature within his area of supply, excepting that he may undertake the supply by sale or hire of electrical motors, cooking, heating or domestic and industrial appliances of such a nature as to require for their operation or use a supply of electrical energy originating from the works or system of a licensee.

You have capable electrical contractors and there is no reason why the Company should be allowed to carry such work on in view of the provisions of Section 138(1). In a place like Nairobi, we suggest that the Company should discontinue their activities in this direction. It would have assisted not only ourselves but also the Committee if these accounts had shown the loss on lamps, the profit on contract work and the loss on fittings. It is impossible for the average individual to make or tail of them.

Objection No. 3 is that the charges for meter rents are excessive. That this Company has paid particular attention to its consumers is a definite claim put forward by the Company but this particular concern of the Company is not very apparent when you consider the charges that are made for meter rents. I have here correspondence on the point from Mr. Vincent, who is chief engineer.

Mr. Slade: If the Committee is going to consider that letter I would be very pleased if Mr. Vincent would come here for cross-examination.

Mr. Eckersley: I would like to do that.

The Honourable The Postmaster General: Might I suggest that we have got all the information we require. I as officer under the Ordinance went into the matter very carefully and it seemed to me that it would be sounder policy to allow the Company to supply the meters subject to the control which is exercised by the Governor in Council.

Mr. Slade: Am I to understand that that letter from Mr.

Vincent will be disregarded ?

The Honourable The Attorney General: I don't think it is necessary to call Mr. Vincent. I don't think it would affect this application in any way whatever.

Mr. Eckersley: We will take Objection No. 9. The Company must have known for a considerable time that they have been getting perilously near the total generating capacity. The Council offer no objection to the Company's application for an additional area in the Native Reserve to go on with the Maragua-Tana Scheme but they submit this should be the subject of a separate application. The Company say that "Before we propose to do anything we must have the Maragua-Tana Scheme and we must have an extension of licence for which we apply now". The Municipal Council submit that it is not for the Company to say they don't propose to do anything to remedy the present state of affairs if that scheme is not sanctioned. They have got to.

Objection No. 11 is that paragraph 5 of the Company's Memorandum on their application for a renewal of their licence is not supported by fact. The recommendations contained in the "Weir Report" (which is referred to in the Company's Memorandum) have not been adopted by Parliament.

Mr. Slade: Mr. Eckersley said that no expert opinion is necessary to see how easy the Company could raise capital for any periods. Do you really adhere to that, Mr. Eckersley ?

Mr. Eckersley: By realising on your Pangani securities you get all the capital you want.

Mr. Slade: It is quite easy to raise capital regardless of the purpose for which it is raised ? Would you agree that the purpose in view was important ?

Mr. Eckersley: Yes. There would be no difficulty in raising

capital for that purposes because the shareholders know perfectly well that there will be no danger whatso ever.

Mr. Slade: You admit that it is an important consideration ?

Mr. Eckersley: It is a consideration. If £195,000 was raised two years ago, I cannot see any reason why it should not be raised now.

Mr. Slade: It was raised for an express purpose ?

Mr. Eckersley: I have learned so.

Mr. Slade: That purpose was obviously financially sound ?

Mr. Eckersley: I don't know anything about it.

Mr. Slade: Can you offer any opinion as to how the circumstances of raising that capital compares with the circumstances of raising the capital now contemplated ?

Mr. Eckersley: No.

Mr. Slade: If you have no information as to what sort of scheme the money was raised for in 1934 how can you compare the two ?

Mr. Eckersley: I am not comparing the two.

Mr. Slade: You say the company has a considerable amount of reserves. On what figures do you base that ?

Mr. Eckersley: On the public accounts of 1934.

Mr. Slade: Would you be surprised to learn that they have been reduced by spending money on the Pangani scheme for the purpose for which it was raised ?

Mr. Eckersley: If that was the purpose, it occasions no surprise. What occasions me surprise is why this considerable amount of money is shown under the Nairobi account.

Mr. Slade: The Company could easily raise the money by selling its shares in the Pangani concessions but otherwise it has got to go to the public ?

Mr. Eckersley: You have got to go to the public if you don't raise it by realising your shares in the Pangani concessions.

Mr. Slade: Dealing with Objection No. 2. If the Compa gets

capital for that purposes because the shareholders know perfectly well that there will be no danger whatsover.

Mr.Slade: You admit that it is an important consideration ?

Mr.Eckersley: It is a consideration. If £195,000 was raised two years ago, I cannot see any reason why it should not be raised now.

Mr.Slade: It was raised for an express purpose ?

Mr.Eckersley: I have learned so.

Mr.Slade: That purpose was obviously financially sound ?

Mr.Eckersley: I don't know anything about it.

Mr.Slade: Can you offer any opinion as to how the circumstances of raising that capital compares with the circumstances of raising the capital now contemplated ?

Mr.Eckersley: No.

Mr.Slade: If you have no information as to what sort of scheme the money was raised for in 1931 how can you compare the two ?

Mr.Eckersley: I am not comparing the two.

Mr.Slade: You say the Company has a considerable amount of reserves. On what figure do you base that ?

Mr.Eckersley: On the public accounts of 1934.

Mr.Slade: Would you be surprised to learn that they have been reduced by spending money on the Pangani scheme for the purpose for which it was raised ?

Mr.Eckersley: If that was the purpose, it occasions no surprise. What occasions me surprise is why this considerable amount of money is shown under the Nairobi account.

Mr.Slade: The Company could easily raise the money by selling its shares in the Pangani concessions but otherwise it has got to go to the public ?

Mr.Eckersley: You have got to go to the public if you don't raise it by realising your shares in the Pangani concessions.

Mr.Slade: Dealing with Objection No.2. If the Company gets

AM

the Ordinance amended your position under the amended Ordinance is going to be the same whether the Company gets an extension or whether somebody else steps in?

Mr. Eckersley: I agree.

ADJOURNED - RESUMED, 2.15 p.m.

Mr. Slade: Am I right in saying that the Nairobi Municipal Council never raised any objection to the amendment of Section 19(a) made in 1934? You didn't oppose that amendment?

Mr. Eckersley: No.

The Honourable The Attorney General: It was passed on their behalf by a select committee. As originally drafted that proviso was not in.

Mr. Slade: In regard to Objection No. 3, in any application for extension, the question of prices is a primary consideration.

Mr. Eckersley: I do suggest it would be.

Mr. Slade: You do agree that the question of prices could be dealt with at any time?

Mr. Eckersley: Periodically under Section 69(2). They could be revised periodically.

Mr. Slade: But you would not go so far as to say that it was directly tied up with the question of the extension?

Mr. Eckersley: I think it would be a proper time to consider the maximum prices that were to be charged when consideration was being given to an application for extension of licence.

Mr. Slade: If it could be dealt with independently is there any particular point in dealing with it at the same time as the application for extension?

Mr. Eckersley: You cannot preclude us from raising the question now.

Mr. Slade: You insist there is a particular point?

Mr. Eckersley: Yes, I do.

Mr. Slade: You go on to say that the Company has not made proper depreciation. Do you say the Company has committed

a breach of the Ordinance ?

Mr. Eckersley: Perhaps unwittingly.

Mr. Slade: In what way do you consider this particular question related to the question of the extension ?

Mr. Eckersley: If an extension of licence is to be granted I suggest that the Ordinance should be very strictly complied with in connection with this question of depreciation.

Mr. Slade: Would it not be better to take steps under the Ordinance to force the Company to do what is right ?

Mr. Eckersley: We have taken steps already. There should be a different basis for making the depreciation. I merely call attention to the enormous disparity between the amounts.

Mr. Slade: In connection with Objection No. 5, would you agree that it is hardly a question for dispute here ?

Mr. Eckersley: Yes, I would.

Mr. Slade: Then as to the system of overhead lines ?

Mr. Eckersley: I certainly do think there is very sound reason for insisting on underground cables. The Board of Trade insist on underground cables in populated areas. In closed built up areas underground cables are certainly to be desired.

Mr. Slade: You appreciate that underground cables would involve every consumer who would have to bear the expense of re-wiring ?

Mr. Eckersley: Possibly.

Mr. Slade: You know he would ?

Mr. Eckersley: If it is an alteration of the system I don't see why it should. It devolves on the electricity undertakers.

Mr. Slade: You are aware that in the Electric Supply Laws there is no obligation on the Company at all to do anything other than it has done ?

Mr. Eckersley: No obligation at present.

Mr. Slade: It would be a matter of statutory amendment of the

Company have to do these things you suggest ?

Mr. Eckersley: Not a statutory amendment. You can do it by the Rules and Regulations, under the Ordinance.

Mr. Slade: Your statements in regard to contract work are based on the public accounts.

Mr. Eckersley: That is the evidence I have. The accounts for 1932 show a decided loss.

Mr. Slade: Have you any other evidence on which you base these statements ?

Mr. Eckersley: Not that I can produce here.

Mr. Slade: Before making these statements you didn't enquire at the Company to make sure ?

Mr. Eckersley: No, I took it from the public accounts.

Mr. Slade: Have you any reason to suppose now that it is actually the contract work that leaves the Company with a loss ?

Mr. Eckersley: I should say it is certainly not the sale of the timber.

Mr. Slade: If you had actually made enquiry you could have been satisfied that things were not as you understood them.

Mr. Eckersley: Possibly. But I asked for information after I came here and did not get it. After that experience I didn't make any further enquiry.

Mr. Slade: The Government has power to revise the Company's right to carry out contract work at any time. Are you suggesting that the Government has forgotten about that power ?

Mr. Eckersley: It may be one of these cases where the Government's attention should be specially drawn to it.

Mr. Slade: You are ready to agree that Objection No. 8 be left where it is ?

Mr. Eckersley: I am willing to agree that the matter be left where it was left this morning.

Mr. Slade: Your ninth objection then, with regard to the Maragua-Tana Scheme. You do agree that the scheme is a

desirable and economical method of development.
Mr. Eckersley: So far as I ascertained, that would appear to be the case.

Mr. Slade: Had the Municipality the intention of taking over and carrying on that work?

Mr. Eckersley: I don't think the Municipality ever had any intention of doing anything of the kind. I agree that it would be better to develop the Maragua-Tana Scheme rather than having recourse to fuel-burning engines.

Mr. Slade: In view of the stated decision of the Municipality there is no one to carry on this work but the Company. Do you want the Company to do it?

Mr. Eckersley: There is no objection to the Company doing it. We have no objection whatever but we object to it being made the reason in this premature application by the Company for a renewal of licence.

Mr. Slade: I would like you to say whether you have objected to the interests of the consumer in this matter.

Mr. Eckersley: The Company are quite right in taking steps to develop the Maragua-Tana Scheme to supplement their present generating plant.

Mr. Slade: Do you really expect the Company to go ahead with that without an extension of licence?

Mr. Eckersley: I do not.

Mr. Slade: Are you aware the Government gave its authority for the application to be made now?

Mr. Eckersley: Yes, from the very fact that it has been made.

Mr. Cocker: Do you really think that money could be raised locally for this particular purpose?

Mr. Eckersley: I have no information on that.

Mr. Cocker: Has the Municipal Council expressed any opinion as to whether or not they would be prepared to take over from the Company?

Mr. Eckersley: You are a member of the Council and you know

that the Council considered this very seriously in 1933 and it was postponed on the understanding that the Company would be making a request for renewal of their licence in 1942. I don't blame the Company for making the application. Naturally if they want to they can.

Mr. Cocker: The crux of the matter from the point of view of the Municipal Council is that the application is premature.

Mr. Eckersley: The Municipal Council never got to the point of actually making an application. They originally considered making application for a distributing licence merely for Hairobr. I gave them my opinion that I very much doubted whether the Government would agree. The only application which I considered worth while was an application for the whole area. I strongly advised that they considered that in 1931 and on my advice they didn't go on with it.

The Honourable the Attorney General: I understand, Mr. Eckersley, that you want to call a witness.

Mr. Eckersley: Yes, sir, Mr. Scott.

Mr. Scott: Regarding the rents charged for electric meters, I have made an attempt to get from the Company the full details as to how they arrive at the charge and they have refused. I must ask your permission to present my case in the form of a comparison between water meters and electric meters. From a quotation in April 1935 for twelve meters of the electric variety similar to those used by the Company, the total cost was £11-2-0. Water meters which work in very difficult conditions, cost 53/- each in 1932 and it was shown that the average life of water meters was less than five years. Electric meters work in more favourable conditions. As a consumer of electricity I object to any extension of the Company's licence. The method of fixing the maximum price for consumers is laid out in Clause 69 of the Electric Power Ordinance and that clause dominates

that the Council considered this very seriously in 1933 and it was postponed on the understanding that the Company would be making a request for renewal of their licence in 1942. I don't blame the Company for making the application. Naturally if they want to they can.

Mr. Cocker: The crux of the matter from the point of view of the Municipal Council is that the application is premature.

Mr. Eckersley: The Municipal Council never got to the point of actually making an application. They originally considered making application for a distributing licence merely for Nairobi. I gave them my opinion that I very much doubted whether the Government would agree. The only application which I considered worth while was an application for the whole area. I strongly advised that they considered that in 1931 and on my advice they didn't go on with it.

The Honourable the Attorney General: I understand, Mr. Eckersley, that you want to call a witness.

Mr. Eckersley: Yes, Sir, Mr. Scott.

Mr. Scott: Regarding the rents charged for electric meters, I have made an attempt to get from the Company the full details as to how they arrive at the charge and they have refused. I must ask your permission to present my case in the form of a comparison between water meters and electric meters. From a quotation in April 1935 for twelve meters of the electric variety similar to those used by the Company, the total cost was £11-2-0. Water meters which work in very difficult conditions, cost 53/- each in 1932 and it was shown that the average life of water meters was less than five years. Electric meters work in more favourable conditions. As a consumer of electricity I object to any extension of the Company's licence. The method of fixing the maximum price for consumers is laid out in Clause 69 of the Electric Power Ordinance and that clause dominates

the whole argument. There are two interests involved - the interests of the consumer and the interests of the shareholder and they are antagonistic. Dividends can only be paid according to contributions by the consumer and accordingly the consumer wants to contribute as little as possible. The interests of the shareholders are continuously upheld by the Directors, Management and staff of the Company; they are working all the time in the interests of the shareholders and that Clause 69 is not sufficient to give us, as consumers, protection. The auditor only this morning said their primary duty was to their shareholder. What we consider is that the Company are deliberately increasing their primary load in every possible way in order to get another big lot of capital in the Nairobi undertaking, so that they can pull out bigger dividends. There should be some form of control. There must be some form of control of the way they spend their capital as well as of the rates they charge.

Mr. Scott: It is clear, Mr. Scott, that you don't like the Company very much. Are you speaking for yourself or whom do you represent?

Mr. Scott: I represent myself.

CAPTAIN KIRTON CALLED.

Captain Kirton: I represent the Nairobi District Council who lodged an objection some six weeks ago. While I have not seen the Memorandum, we do feel that in the past primary producers have not had a fair deal from the Company and we are very much afraid that if further concessions are granted to them their attitude in the tilling areas will be disastrous. The approximate acreage of coffee and sisal farms is 35,000 and 400 factories are obliged to use oil engines to develop their own power. The cost of a supply from the Company has been prohibitive, and that is the reason why the power is not available. It costs far more

there than it does in Nairobi. We object to the cost of installation and the cost per unit, and yet the whole line is running through the district.

Mr. Odam: That line is our main transmission to Nairobi and I should hesitate to tap it.

Captain Kirton: No private individual is allowed to develop water power and sell it.

Mr. Cocker: The Nairobi District Council would be satisfied if the Company's licence were extended, provided it was accompanied by certain safeguards.

Captain Kirton: Yes.

The Honourable The Attorney General: Is it the fault of the Company if you are a long way away from the line?

The Honourable The Attorney General: Mr. Stide has now to reply to the various points which have been raised. From time to time I have been making notes of the points raised and many of them I could answer. Now we might have the history of this licence. The original licence was granted in 1906 and in 1922 it came into the possession of the present Company, and its time of life was to be about 41 years. The next point is in regard to this application being made in the middle of the life of the licence. It would be wise to bring out this point and that is that it is quite easy to see how the Company would gain by this extension but we want to see the other side of the picture and that is with regard to the possibility of the Town Council being able to take over from you. There is also the point in regard to the suggested amendment of the Ordinance. It would also be wise to clear up the Nairobi accounts controversy. It is not clear to me that when Nairobi makes a profit what happens to the profit. I want you to show that Nairobi is not carrying a debt and that each undertaking stands on its own basis and that profits of Nairobi do not pay for losses in other undertakings.

You will also deal with the question of depreciation. There was the point you made that the consumers were not interested in investments or reserves. If that is correct, please explain why. Another point which came out in the objections was the necessity of this extension in order to raise capital.

Mr. Slade: In regard to the attack which has been made on the Company's credit we did not propose to call evidence as to the good character of the Company but we should like, in view of the attack, to just show that there are consumers who are satisfied and so I call one, Mr. Bargman, who is the next largest consumer to the Railway.

MR. BARGMAN CALLED.

Mr. Bargman: I am not really prepared but I understand that you wish to hear my opinion of the Company based on my experience over the last twelve years. We have analysed our figures over a certain period and found that in 1935 we used 432,000 units of power at a cost of 12.5 cents per unit. 12.5 cents per unit is quite satisfactory in present circumstances but we hope that the time will come when 12 cents can be reduced to something even more reasonable, and the only possible way to get that is to support this application for extension.

Mr. Evans: Mr. Bargman says he uses 432,000 units per annum - or at least he used that in 1935. That is just about what sisal factories use per annum. That does not include lighting.

Mr. Slade: I can't elaborate very much on what we have said in the Memorandum. The time has come when the Company must have a scheme and it comes to the point that they must have the Maragua-Tana Scheme which has been on the boards since 1927. For reasons already given the Company want to go ahead with this scheme and to do this they want to try and raise sufficient capital. To do so they must have an

You will also deal with the question of depreciation. There was the point you made that the consumers were not interested in investments or reserves. If that is correct, please explain why. Another point which came out in the objections was the necessity of this extension in order to raise capital.

Mr. Slade: In regard to the attack which has been made on the Company's credit we did not propose to call evidence as to the good character of the Company but we should like, in view of the attack, to just show that there are consumers who are satisfied and so I call one, Mr. Bargman, who is the next largest consumer to the Railway.

MR. BARGMAN CALLED.

Mr. Bargman: I am not really prepared but I understand that you wish to hear my opinion of the Company based on my experience over the last twelve years. We have analysed our figures over a certain period and found that in 1935 we used 432,000 units of power at a cost of 12 1/2 cents per unit. 12 1/2 cents per unit is quite satisfactory in present circumstances but we hope that the time will come when 12 1/2 cents can be reduced to something even more reasonable, and the only possible way to get that is to support this application for extension.

Mr. Evans: Mr. Bargman says he uses 432,000 units per annum - or at least he used that in 1935. That is just about what sisal factories use per annum. That does not include lighting.

Mr. Slade: I can't elaborate very much on what we have said in the Memorandum. The time has come when the Company must have a scheme and it comes to the point that they must have the Maragua-Tana Scheme which has been on the boards since 1927. For reasons already given the Company want to go ahead with this scheme and to do this they want to try and raise sufficient capital. To do so they must have an

extension of licence - security of tenure - and that is why the application comes up now. If the Company had had a longer period they might not have had to make this application. In regard to how the producer will gain by the extension, here again we try to show our argument in the Memorandum. Mr. Bargman's evidence helped us there. My argument is that it is generally admitted that the Maratha-Tana Scheme from the point of view of the public and the consumers, is the most economical proposition, and that being so the consumer is clearly going to benefit. Supposing the Company went ahead with that scheme without an extension, it could not reduce its rates when it has got eight effective years only to get back all it has spent. With security of tenure it would be in a much better position to reduce its rates. As to the possibility of the Municipality taking over, I take it the point there is "Why should we be allowed to interfere with their rights?" - but my point is that this extension will not interfere with the rights they have. The Ordinance now stands their position cannot be damaged if we get an extension. If it was a new licence then automatically we got the Ordinance amended so far as Section 19(a) is concerned. If it is only an extension we have to accept Government's terms.

Mr. Eckersley: I agree with Mr. Slade. The Municipal Council's rights could not be prejudiced by the application. I also agree with him that the amendment which the Company are seeking to this particular Ordinance would prejudice the position of the local authority. The period as specified in the licence is 25 years. If this application is granted it will take us up to 1972 and therefore the local authority will be affected. I readily admit that the position of the local authority is not prejudiced by the application in itself.

Mr. Slade: There are certain conditions precedent to the

extension which I should like to deal with later on. The next point is the question of accounts. First of all I would like to refer to Mr. Gill's evidence in regard to these accounts. He expressed satisfaction with the form which the Company had adopted in respect of the accounts of the Nairobi undertaking and with their practice of allocating their investments and reserves. This is one Company with undertakings here, there and everywhere. Naturally the Company has a variety of assets which don't belong in particular to one undertaking. The reserves in the ordinary way are like re-investments. The Company's idea of dealing with assets was to keep them out of the undertaking until needed but unfortunately the form of Government accounts does not allow that. In the Government accounts according to our instructions from the Postmaster General, you have got to spread these things over various undertakings. The Company made it clear that it was an allocation on a percentage basis and that allocation was liable to variation. The Company maintain the attitude that it is a nominal allocation. So far as the third point is concerned the charge to the consumer is based on Nairobi profit. Once the Company has made a legitimate profit out of Nairobi it is there for the Company to do what it likes with it. The Consumer has no share in the profits.

The Honourable The Attorney General: People say you put aside so much as a reserve and it is quite rightly shown as a reduction. It is allocated for a definite purpose. You invest a thousand pounds and you get 7 per cent interest but you say that has nothing to do with the consumer though originally you were able to deduct it from the profits.

Mr. Slade: No, sir, in case the Company have to spend ...

The Honourable The Attorney General: In fact the consumer does get a certain amount of credit for that. It is not

quite true. I say he is not interested in it.

Mr. Slade: There is another point which must not be lost sight of. The accumulated reserves are not exactly represented by funds. They may be represented by the Company's working assets. The money may be put back into the Company.

The Honourable The Attorney General: That is an investment which we hope will return you some interest. But why do you insist it as entirely nominal? You say it is for the protection of the consumer but you say it is purely nominal. I say it is a real thing. The consumer cannot touch the £100,000 but he is very interested and Mr. Odum said that it may return to him a 4 per cent interest in the usual way only instead of paying out every share at the very beginning you collect that and bring 4 per cent. It is a practical thing, not just a nominal thing.

Mr. Slade: I think it is, Sir, and Mr. Gill's evidence shows that.

The Honourable The Attorney General: I quite agree with Mr. Gill's statement but why should it be? Would you go so far as to say that it would not matter to Nairobi if all the other concerns went completely bust?

Mr. Slade: No. My point is that it is one Company.

The Honourable The Attorney General: That is what I mean. Nairobi is not really interested.

Mr. Slade: It is interested in the financial standing of the Company.

The Honourable The Attorney General: I see Mr. Gill's point that from the point of view of the Company that balance sheet is absolutely right and he is prepared to sign it and stand by it that it is right. But the question is whether it is right in regard to this particular balance sheet or the half-dozen balance sheets which you have to issue for all the undertakings in Kenya.

Mr. Slade: His specific statements must be respected in view of the ignorance of many of us.

The Honourable The Attorney General: What I felt about Mr. Gill's evidence was - "I am an accountant and I know how to put out accounts. Here is a balance sheet under the Companies Ordinance".

Mr. Slade: He certainly expressed scorn for the form but he realises his responsibility to sign a proper balance sheet.

The Honourable The Postmaster General. It is a very well to regard the operations of the company as a whole but there is one point which the Company and Mr. Gill have entirely overlooked. I suggest that these forms were prepared by far more competent accountants than Mr. Gill. Mr. Gill doesn't hold the highest qualifications in the accounting world. Is he a C.A. of the British Institute?

Mr. Slade: I don't know, but he is of high standing here.

The Honourable The Postmaster General: Is he of the standing of a great many people in London. I suggest that the Nairobi undertaking is now concerned in the alignment with the operations of the Company as a whole. We are not concerned with what you do in Kenya or Uganda or Tanganyika but with what happens here in Nairobi. It is the intention and the spirit of the Ordinance in regard to these accounts that the Nairobi consumer and the public in this area know precisely what the standing of the undertaking is. I have asked the Company in regard to their depreciation account why they don't credit that account with the interest of the balance of that account. From what Mr. Gill says and you say that account is just a matter of form. No credit goes back to the Nairobi undertaking in respect of interest on the balance of that account. If Nairobi were operated as a single Company it would have its own chartered accountant and its own assets, its own investment reserve and depreciation reserve and there is no reason why the Nairobi

accounts should not be shown in proper manner. The Nairobi undertaking is the plum and mainstay of the Company's operations. There is no doubt about that. If the Nairobi undertaking were operated separately under a separate company, with the success it has maintained, it could go on the London market and issue shares at 10/-. I challenge the Company to say that the Pangani undertaking stands on its own feet, and that it could raise money in two years.

Mr. Slade: The Company did not say that.

The Honourable The Postmaster General: This money has been raised on the strength of the Nairobi undertaking and they obtained a 6/50 premium for that money. What have they done with it? Mr. Odum said it was available and could be spent on the extension of the Pangani scheme. The Nairobi undertaking has suffered accordingly. We don't know what has happened to the Nairobi reserves. They are hidden away. The Company's answer to my question was sheer evasion. Why can't that money be made available for Nairobi? Why are we now as a result have got to go to the London market?

Mr. Slade: It may be that Mr. Gill's sworn is not so much for the actual form as against the form as interpreted. When the Company started making up these accounts they kept Head Office accounts and then were told that they must not do that, but in accordance with the Ordinance they had to be spread over the undertaking.

The Honourable The Postmaster General: The reserve is allocated to the Nairobi undertaking and that reserve is a Nairobi undertaking reserve. I don't see that it should be invested separately.

Mr. Slade: It looks as if we will get no further with this discussion. I do dispute that on the strength of the Nairobi undertaking the Company could get capital at a 10/- premium with the extension. I should also like to point out that the Company, in adopting these forms of account

did make its position clear. They did say they were doing this for the purpose of the Ordinance and for no other purpose.

Mr. Eckersley: The form of accounts under this Ordinance is precisely the same as prescribed by the Board of Trade.

Mr. Slade: Taking the accounts together there is no doubt that anybody who is experienced could gather the true position. Regarding the question of depreciation, the question was actually raised by the Postmaster General in May last year and began an interview with Mr. Odas in which they thrashed the subject out and the Postmaster General recorded a minute of the interview which I would like to circulate to all the members of the Committee. There was a slight amendment recorded in the minute, which appears from the letter attached.

The Honourable The Attorney General: You pay out a certain amount of money for your motor car. You know that it will come obsolete in a given number of years in addition to the depreciation.

Mr. Slade: All that matters is whether the Company is making too great a provision for depreciation or too little. If the Company makes too little provision for depreciation the Government can step in and say "You must reduce your maximum prices". The Company would be showing a larger profit by making provision for too much depreciation no such big profit is shown.

The Honourable The Attorney General: We are getting away from our main point.

Mr. Slade: The next question which has been raised is/our that application for getting an extension is necessary in order to raise capital. There is just one comment to make there. It is suggested that the Company is of such good standing that it would have no difficulty in raising capital. It won't always be of good standing if it adopts a course of

this kind. Mr. Eckersley says the important consideration would be the prospect of an extension of licence. There is also the question as to why the money has to be raised at 7 per cent.

Major Ward: We have considered that to ask investors overseas to take part in an industrial undertaking in a new country, that 7 per cent is a fair rate of interest. In deciding that the policy of the Board has been to see that this Company will maintain its standing in the industrial life in the City under any circumstances.

The Honourable The Postmaster General: Would it not be better policy to issue this preference share capital at 4 per cent at 20/- rather than issue at 7 per cent at a 6/50 premium. Would the Company have any objection or pursuance of recent electrical law to having their issue controlled.

The Honourable The Attorney General: The answer to that could certainly be reserved. It is obvious that the Company is not going to give away anything that it is not necessary to give away.

Mr. Slade: We should like to reserve our answer.

The Honourable The Attorney General: The previous capital was raised without saying for which purpose. The document which is before the Committee doesn't say it was for the Pangani concession.

Mr. Slade: It was made clear that the money was being raised for this particular undertaking and no person of authority would agree that money could have been raised on these terms for some less satisfactory purpose.

The Honourable The Postmaster General: There is one thing I would particularly like you to answer. Does the Company seriously contend that Pangani, standing absolutely on its own, could raise money at 6/50?

Mr. Slade: It would be difficult.

There was a proposal for a reduction in the maximum prices.

That point was also raised by the Municipal Council and during discussion the Town Clerk agreed that it was really irrelevant. The question in regard to the amendment of the Ordinance can be left outside the jurisdiction of the Committee. Our answer is that the section prescribing maximum profits is not a very important section. It is the power to revise rates under Section 69(2) that is important.

(Quoted from Will's Electricity Supply - Sixth Edition page 34.)

"Special Orders authorising the distribution of electricity do not contain any provisions limiting the profits of undertakers who are not local authorities. The control of the profits of undertakers in the interests of the consumer is normally effected by the power to revise their maximum prices."

The Honourable The Attorney General: That is the answer?

Mr. Glade: That is the answer if we have to answer it.

Mr. Cocker: Could the power produced by crude oil be cheaper than electric power supplied by the Company?

Mr. Odam: It depends on the cost of the transmission line.

The Honourable The Attorney General: How far would the Company get with this Maragua-Tana Scheme without having to ask for an extension of licence? When did you first start?

Mr. Odam: In 1927.

The Honourable The Attorney General: You have been considering it since 1927. Now before this Committee it is a condition precedent to your going on with the scheme that you must have an extension of licence.

Mr. Odam: The sooner we get a scheme through the less money we will have to spend.

The Honourable The Postmaster General: When was the first stage of the Maragua-Tana Scheme completed?

Mr. Odam: In March, 1933.

The Honourable The Postmaster General: That Scheme cost £81,000. The Company entered into that expenditure which gave you 700 k.W. with fourteen years to go. The first

That point was also raised by the Municipal Council and during discussion the Town Clerk agreed that it was really irrelevant. The question in regard to the amendment of the Ordinance can be left outside the jurisdiction of the Committee. Our answer is that the section prescribing maximum profits is not a very important section. It is the power to revise rates under Section 69(2) that is important. (Quoted from Will's Electricity Supply - Sixth Edition - page 34.)

"Special Orders authorising the distribution of electricity do not contain any provisions limiting the profits of undertakers who are not later authorised. The control of the profits of undertakers in the interests of the consumer is not made subject to the power to revise the maximum price."

The Honourable The Attorney General: That is the answer Mr. Slade. That is the answer to the question.

Mr. Becker: Could the power produced by crude oil be cheaper than electric power supplied by the Company?

Mr. Odam: It depends on the cost of the transmission line.

The Honourable The Attorney General: How far would the Company go with this Maragua-Tana Scheme without having got an extension of licence? When did you first start?

Mr. Odam: In 1927.

The Honourable The Attorney General: You have been considering it since 1927. Now before this Committee it is a condition precedent to your going on with the scheme that you must have an extension of licence.

Mr. Odam: The sooner we get a scheme through the less money we will have to spend.

The Honourable The Postmaster General: When was the first stage of the Maragua-Tana Scheme completed?

Mr. Odam: In March, 1933.

The Honourable The Postmaster General: That Scheme cost £81,000. The Company entered into that expenditure which gave you 700 k.w. with fourteen years to go. The first

stage cost £81,000 and it was the Company's intention to develop the scheme in three parts. There was a question of extension then. The Company have got to consider what the alternative would be if they don't develop the Maragua-Tana Scheme. You have not considered an alternative.

Mr. Odum: Yes, we have - as far back as 1937.

The Honourable The Postmaster General: The Company's principal objection is that they would not be justified in sinking money in Maragua-Tana unless they got an extension of their licence. The Company would have to make an attempt in some other way if they don't get an extension. Supposing that the Governor in Council say that this extension should not be granted at the present time what is the Company's position?

Mr. Slade: It looks as if the only alternative is what we have referred to as piecemeal development and we point out that if we have to do that it will be a pity because it would be uneconomical.

ADJOURNED FOR LUNCH.

MR. SLADE'S ADDRESS: COMMITTEE AS BEFORE WITH EXCEPTION OF THE HONOURABLE THE POSTMASTER GENERAL.

Mr. Slade: The Town Clerk started off by saying that he has never known of an application of this kind that has been supported by such flimsy evidence. In the evidence of the Company's Chairman, General Manager and other officers, the Government Auditors and Mr. Highfield, the Company has presented as complete a set of evidence in support of its case as anybody could possibly require. The Company's case is made complete by the Town Clerk's own evidence. He has admitted essential points in our case. First of all he admits that further development of our generating capacity is essential and that the Maragua-Tana Scheme is the most economical and desirable from the consumer's point of view. And he admits that there is no one to carry forward that

scheme except the Company. He admits that when it comes to considering raising of capital for that scheme or the expending of capital on that scheme the prospect of an extension of the Company's licence is an important consideration. In regard to that last point, if there is any doubt in the minds of the members of the Committee, I would like his evidence to be carefully examined.

The Town Clerk admitted much further than that. He said it was a very serious consideration. No say it is the very primary consideration before you raise or spend capital. These points, taken one by one, constitute in fact the whole of the Company's case. The Town Clerk also said that the Company had shown great reluctance in answering questions. That is not what we can afford to have said about us.

His objection - his first objection - is that the application is premature but it is admittedly not premature in law. It is suggested that capital could be raised by realising any of our investments in the Tanganyika subsidiary company. That cannot be regarded as a very serious proposal. The second point is that the Company has sufficient other reserves to meet this capital expenditure. As it has now been shown, the total credit reserves stands at £28,000, and that suggestion need not be pursued any further. The third point was that the Company could easily raise money elsewhere in any circumstances, with which I have already dealt.

The second objection is that the position of the Municipality in respect of compulsory acquisition would be prejudiced by an extension of the Company's licence. I have discussed that too and I hope I have satisfied the Committee that that simply is not so. An amendment to the Ordinance may be to the prejudice of the Municipality but an extension of the licence won't under any circumstances. I suggest that when the Municipal Council is not prejudiced by this application any objections on other grounds indicates rather

the dog in the manger and it is quite apparent that they are in no hurry to take over.

The third objection is in respect of the maximum prices. Our suggestion is that the local authority along with Mr. Scott may make this request without troubling this Committee and we also suggest that the members of the Committee are satisfied that the Company's prices are not in fact unreasonable.

With regard to Objection No. 4, we have from the start held that this point with reference to depreciation was not relevant. If the Company commits a breach of Section 45 of the Electric Power Ordinance its licence can be revoked and even if we got an extension, still our licence could be revoked under this section.

Objections Nos. 5, 6 and 7, which deal with maximum dividends, overhead lines and the alleged practice of taking contract work at a loss, are not very relevant and we hope we have satisfied the members of the Committee that that is so.

The 9th objection is that the Maragua-Tana Scheme has no link to do with this application. We hope that the Company's Memorandum and the Town Clerk's evidence will satisfy the Committee that the proposed scheme is the justification of the application. The Company agrees with the Town Clerk that it can't stand back and ignore the consumers.

Objection No. 10 is with regard to the Company's position. The Company's position has been bad for 28 years. They had foreseen this and that is why the Maragua-Tana scheme was put in hand as early as 1927.

Objection No. 11 concerns the Weir Report and we suggest that the Report itself must carry considerable weight; that the licensee has something to fear from compulsory acquisition at any time.

In regard to Mr. Scott I understand he is exhibited as a witness on behalf of the Municipality. He has made a complaint

that the Meter Rents are wrong. His other point was the inadequacy of Section 69(2). In England the same statutory provision is considered sufficient and with "more than a thousand consumers to back him up", not to mention the Municipal Council, Mr. Scott should have no difficulty in forcing that Section in full blast.

In regard to the Nairobi District Council, on the 20th of November we suggested to them that they should give us their reasons for objecting to this application being granted and they said "No". Captain Kirton presented his evidence fairly and frankly. The upshot of his evidence was that an extension of the Company's licence was an obvious thing.

Captain Kirton: With safeguards.

Mr. Slade: You don't specify what safeguards you want. What ever safeguards were contemplated would presumably be an amendment to the Ordinance in some form or another.

The Honourable The Attorney General: and possibly to the conditions of the licence.

Mr. Slade: We need only add that the Company is willing to consider any reasonable proposition of supplies in this or any other district. A big expense would of course be involved and somebody has got to bear it. We think Captain Kirton will appreciate the difficulties there. With the exception of a number of questions that have been asked by the Postmaster General, I think that is all the objections.

The Honourable The Attorney General: You have dealt with so many subjects that it is difficult to point to any one question you have not touched on. It might be said that the position of the man in the street is "The Company have asked for something. What are they going to give in exchange?".

Mr. Slade: One does not anticipate that the public are going to blackmail the Company by extortion. We say that this

extension is as much in the interests of the consumer as the Company.

The Honourable The Attorney General: What they are frightened for is this: They say if you are going to allow them to spend all this extra money, you are putting the chance of a reduction in rates further away into the distance. After many, many years it might possibly show a profit. Taking a long range view it might be a good thing.

Mr. Slade: With an extended period in which to cover itself the Company would not be justified in making the rates heavy. With a short period it might easily, in fact it might have to. It would make a reduction in rates difficult. To a great extent the interests of the Company and the consumers are the same and it pays the Company and the consumer to adopt economical methods. For the Company's case we rely on what is said in the Memorandum and the evidence which supports it in the appendices. I shall just state the conclusion to the Memorandum:

"It is submitted that the foregoing arguments, supported by figures and statements all of which can readily be verified by the Committee, prove conclusively that the way in which the interests of consumers can best be served is the granting of this Company's present application which will enable it to proceed immediately with the construction of the Tana Hydro-Electric Scheme, and that negation on the part of Government entailing a piecemeal type of development must inevitably cause hardship to these consumers not only during the unexpired period of the licences but also for many years after the date of expiry irrespective of who the licensee is at that particular time."

I want the Committee to understand that this is not only a question of the Company having difficulty in raising capital. Even supposing the Company had this capital, I don't see how, in face of Mr. Highfield's letter, they would be justified in spending it on this scheme. It might be of interest to this Committee to consider what alternatives to the extension of the Company's licence have been put up. In opposing a thing one should usually suggest an alternative and nothing has been suggested in

substitution of an extension of licence to enable the Company to proceed with this scheme.

Against its case the objections fall under three headings. The first is an objection to some extent to what is said in the Company's Memorandum. We hope these objections have been disposed of. The second objection is that an effort has been made to discredit the Company. The Postmaster General has more than once said that it is really a question of the credit of the Company. The Honourable The Attorney General: You could interpret it that way.

Mr. Slade: The Ordinance protects the consumer and public in every respect and it is difficult to see how the credit of the Company could be attacked at all so far as the consumer is concerned unless some breach of the Ordinance could be proved. I challenge you to prove any breach. We feel confident that none will be proved. We furnished ample evidence to show that the consumer was treated with every consideration. You see the evidence of Mr. Bargman who bears us out in that. Many of the objections are not objections at all. They are merely conditions. Every one of them is concerned with a matter that could be dealt with quite independently. They mostly suggest an amendment of the Ordinance but I cannot see how it is related to the question of the extension of licence.

The Honourable The Attorney General: If the objectors are going to press Government to alter the Ordinance it should be brought up now and not wait.

Mr. Slade: This Committee is asked to advise on the extension. Other people say "We don't object to the extension but we would like the law amended".

The Honourable The Attorney General: They say they do object unless the law is amended.

Mr. Slade: They have put up no reason. We don't want to make

this Committee feel that it is part of their duty to make independent recommendations about this or that but we do definitely protest against any recommendation that subject to the amendment of the Ordinance, the extension should be granted.

The Honourable The Attorney General: But we say "We are prepared to grant this extension but it is impressed upon Government that such-and-such things have happened".

Mr. Slade: That is perfectly fair. We have got that warning. We are not bargaining, and the consumer is going to benefit as much as we are.

Mr. Cocker: "It is up to the Committee to make any recommendations which they think fit but the Company are not bound to accept the recommendations in any way nor is the Government. We are only in an advisory capacity. Having issued the warning, I think it is enough."

Mr. Slade: That is correct. You have issued the warning, and then you say it rests with us and we protest against any definite recommendations or conditions precedent regarding the extension.

The Honourable The Attorney General: I can't follow that. Why should not the Committee if they think it is right say it? You say you have not had time to ascertain the effect of these conditions?

Mr. Slade: We have two reasons. One is that this is not the right place, and the second that they are irrelevant because they apply to other licensees. They are independent of the question of who is licensee.

An early decision by this Committee would be appreciated for this reason. Many completely unjustifiable attacks have been made in public on the Company and the Company are eager to take steps to clear its position and we can't afford to let things lay until they are cold.

THE HONOURABLE THE POSTMASTER GENERAL ENTERS THE MEETING.

The Honourable The Attorney General: Mr. Slade has just summed up the case for the Company, Mr. Fitzgerald.

The Honourable The Postmaster General: I have been, as officer under the Ordinance, very dissatisfied with the attitude which the Company have adopted towards me in answering questions. The replies from the Company have not been satisfactory more especially in view of my particular position.

Mr. Slade: Does that explain your attitude during the course of the Meeting?

The Honourable The Postmaster General: Oh, no. But it is a matter which will influence me as to whether the management of the Company at the moment is such that it would not be reasonable to expect it to be blessed with the ability to proceed with this scheme of Managua-Tana. If they could go on developing Managua-Tana and in the course of five years we could see how further they are prepared to assist the consumers the advantages proposed, it would be of considerable help. It is a point that is running through my mind. Would it not be reasonable for the Company to take upon responsible attitude and not sit back and rely on its legal rights?

Mr. Slade: It depends on the circumstances.

The Honourable The Attorney General: It is only the Governor in Council that can deal with this officially but as you know, before it gets to him there is an inquiry. The Postmaster General would be asked to investigate this and report.
