

THE EAST AFRICAN POWER AND LIGHTING COMPANY LIMITED.

Comments on Verbatim Report of Evidence;
Given before the Committee of Inquiry.

THE EAST AFRICAN POWER AND LIGHTING COMPANY LIMITED

Comments on Verbatim Report of Evidence given before the Committee appointed by the Government of Kenya to enquire into the Company's application for Extension of Licences.

Alterations to the original typescript where these were obviously necessary have been made but the evidence is still very far from being complete. There are considerable gaps and this is doubtless due to the method of procedure adopted which at times consisted of questions being asked of a member of the Committee sometimes before an answer to a previous question had been given and often at a time when two or more members of the Committee were carrying on a conversation.

The shorthand writer has told Mr. Glade that he had abbreviated his notes very considerably using his discretion as to what appeared of any importance because in the short time for making the transcript he could not possibly have got the whole record out in full.

Page 26 - line 14 et seq.

It is difficult to know what point the Postmaster General was endeavouring to make but the answer given to his question was to the effect that in the Nairobi area the transmission system from the hydro stations into Nairobi was to a large degree a distributing main by virtue of the fact that it was tapped at various points along its route for supply to sisal factories.

Page 27 - line 1 et seq.

Immediately after the General Manager's reply to the Postmaster General it was stated either by him or the Chairman that the original document referred to was available for the confidential information of the Committee.

Page 27 - line 29 et seq.

The statement made by the Postmaster General in respect of the time to complete the Maragua-Tana works is not in accordance with the evidence given before the 1929 Tribunal.

Page 28 - line 17 et seq.

The verbatim report here does not make sense. The point the Postmaster General was trying to make was that the figures submitted to the Tribunal in 1929 in respect of the capital expenditure on the Maragua-Tana Scheme were false. It was very carefully explained that this Company had thought it politic to use in evidence before a Committee appointed by the Government estimates prepared by the Consulting Engineers to the Government. It was further explained that we did not disagree with the estimates given in evidence before the 1929 Tribunal and that if the Company could work down to these figures then it would be in the interests of everyone.

Page 28 - line 29 et seq.

The report does not reflect the actual statements made. It was explained by the General Manager that it was not possible to finalise the design of the Tana dam before test borings had been made in the bed of the river either by diamond drilling or some other method; also, that this could only be undertaken during periods of low river flow. It was also explained by him that due to the cost of carrying out this work the Company would not be justified in incurring such expenditure until it was definitely decided that the Scheme was going ahead.

Page 42 - line 26 et seq.

After the Postmaster General asked this question he referred to his letter of 12th December 1934 to Mr. Gill, which he read out in full. The Postmaster General in response to a request from Mr. Gill then read the latter's reply dated 13th December 1934.

Dear Mr. Fitzgerald,

I am in receipt of yours of yesterday's date, and I have not written you before in connection with our talk on the 26th ultimo because I have been waiting to meet the Directors of the East African Power & Lighting Co. Ltd. and they were not able to arrange a meeting until yesterday.

I attended this meeting, and I am authorised to inform you that the Company are satisfied with the present arrangement that we should act as Auditors both to the Company and also as appointed by the Government under Section 43.

If our appointment is continued on these lines, we would suggest that any queries you have should be referred to us, and such queries will be dealt with to the best of our ability. We think these queries should, in the first place, come to us, and of course would in due course, if necessary, be referred to the Directors of the Company. We think this would meet your point and, provided there are no great differences of opinion between yourself and the Directors of the Company, we think we can do our duty in the dual capacity but it must be understood that, as Auditors, we are entirely independent of either the Board of Directors or yourself and that we cannot lean to either side.

If you desire a further talk on the matter, I shall be pleased to attend on you.

Yours sincerely,

(Sd) E. P. Gill

Pages 50 - 55

The record is very much abbreviated as each admission by Mr. Eckersley was only obtained after considerable hedging on his part, but it contains the gist of what he did eventually admit.

Page 54 - line 21 et seq.

Mr. Eckersley was presumably here referring to an enquiry he made as to how the cost of street lighting maintenance was arrived at.

Page 56 - line 20 et seq.

Mr. Eckersley very definitely said after this that Mr. Scott

had no brief to give evidence on behalf of the Municipal Council.

Page 58 - line 4 et seq.

The point that Captain Kirton was trying to make was that he felt that small rural consumers in the vicinity of the 40 k.V. transmission lines were penalised by not being able to obtain a supply of electricity from these mains at a relatively low figure. The General Manager explained that tapping of the main transmission to Nairobi at many points by means of small transformers would have the effect of endangering the continuity of supply to Nairobi itself.

Page 58

After Captain Kirton had given his evidence Mr. Slade asked him a number of important questions, but as the shorthand writer has no record of any of these questions they cannot be inserted in the transcript. The gist of these questions was:

1. Whether Captain Kirton had any particular suggestions to propose, to which he replied that he had not.

2. Whether it was really the cost of installation of the cost par unit, or some in which the Nairobi District Council objected, after disconnection, became clear to Captain Kirton and not know which, if either, of these they objected to.

3. Whether there would be any alternative to an extension being granted to this Company, to which he replied that the Council are none.

Page 59 - line 24 et seq.

Mr. Evans is not quite correct here in the large, "small consumer, the Kalimbi Estate, used in 1935 408,331 units but the average small consumer uses considerably less than this. In 1935, East Africa Limited, of which Mr. Evans is the Manager, consumed 111,676 units.

Page 67 - lines 16 and 17 et seq.

This particular part of the evidence does not make sense and there must have been another question at this stage.

Page 67 - line 29 et seq.

There is obviously an omission in the evidence here.

Page 69 - line 14 et seq.

At this point Mr. Slade definitely invited every member of the Committee to put to him any question which he considered the Company had evaded or not answered, or any further question which any member wished to put. He thereafter paused for some moments to enable any question to be put but none were forthcoming.

Page 71 - line 3 et seq.

Mr. Slade was referring to a statement which Mr. Scott had made (not appearing in the record) to the effect that he had more than 1000 consumers behind him. Mr. Scott was

referring to the result of the plebiscite but this is not clear from the report of the evidence.

Page 75 - 1924 et seq.

This remark made by the Attorney General has no bearing on the previous paragraphs but was in respect of certain remarks made by the Postmaster General which had nothing whatsoever to do with the matter under consideration by the Committee.

IN CONCLUSION.

It should be noted that the Committee of Enquiry sat for three mornings and three afternoons. The typewritten report by the Court stenographer of the evidence consisted of 75 pages and was made up as follows :-

1st Day - Morning	27	pages
" " Afternoon	6	"
2nd Day - Morning	18	"
" " Afternoon	6	"
3rd Day - Morning	10	"
" " Afternoon	8	"

The nominal hours of the sittings were 10 a.m. to 1 p.m. and 2.15 p.m. to 4 p.m., but on the first day proceedings did not commence until 10.30 a.m. and on the last day finished at 3.15 p.m.

AIR MAIL

KENYA
No. 51
CONFIDENTIAL.



38082/1

GOVERNMENT HOUSE
NAIROBI
KENYA

RECEIVED
25 MAY 1936
O. O. REGY

May, 1936.

Sir,

I have the honour to refer to your Confidential despatch of the 30th March regarding certain matters connected with the operations of the East African Power and Lighting Company Limited in this Colony, under cover of which were transmitted copies of correspondence addressed to and received from that Company concerning representations on the subject of transmitting to Section 2(1) of the Electric Power (Amendment) Ordinance, 1934, and more particularly regarding the composition of the Committee of Enquiry which had been appointed to enquire into and report upon the application submitted by the Company for the renewal of various generating and distributing licences held by it in the Nairobi area, and any objections which might be received to that application.

2. In furnishing you with my observations on the points raised by the Company I have assumed, from the terms of the enclosure to your despatch under reply, that the Company has acquiesced in the final of your letter No. 38062/36 of the 4th March, which follows the terms of my Confidential despatch No. 4 of the 8th January, and that it is not necessary for me at this stage to comment further on the question of an amendment to the Ordinance of 1934. The remaining points outstanding which have been raised by the Company would therefore appear to be as follows:

- (1) The composition of the Committee of Enquiry.
- (2) The Company's contention that it would be difficult for them to raise the capital

necessary/

THE RT. HON.
J.H. THOMAS, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DEPARTMENT OF STATE, LONDON.

copy (log. work) to G. Dwyer
Dwyer

necessary for the development of the Karagwana Scheme without the renewal of the period of the various licences for a minimum term of 25 years.

(3) The Company's view of their obligations to the Colony.

3. Before commenting on the first of these points, I take this opportunity of informing you that the Company's application that the period of the various generating and distributing licences held in the Nairobi area should be extended in order that they should expire in 1972, was considered by my Executive Council on the 3rd April, when the report of the Committee of Enquiry was laid before the Council. Council duly advised acceptance of the recommendation of the Committee that the licences should be extended for a term of approximately 5 years only in order to expire in 1952 and I concurred. The Company was informed in this sense on the 9th April. Intransmitt for your information, the accompanying copy of the Committee's Report to which I have occasion to refer below.

4. The composition of the Committee is set out in detail at page 3 of the Report. It consisted of three official members, the Attorney General (Chairman), the Postmaster General, and the Chief Mechanical Engineer, Kenya & Uganda Railways & Harbours Administration, and four non-official members, two representatives of the Nairobi Municipal Council, the Chairman of the Nairobi District Council, and a representative of the local Sisal Growers.

In the letter of the 13th March which formed the second enclosure to your despatch, the Company makes no comment on the appointment of the Attorney General as chairman, nor would it appear that I can usefully do so.

With/

(3)

With regard to the appointment of the Postmaster General, however, the Company states that he was opposed to the immediate extension of the licences for reasons unknown to the Company, and expresses the opinion that it would have been more proper if he had been called on as a witness before the Committee, instead of being appointed to it. The reasons for this suggestion are not clear. The Postmaster General was the officer who had been for the past ten years administering the Electric Power Ordinance in this Colony, and had it not been for his imminent retirement from the Service he would indeed have been the most suitable officer to act as Chairman; as it was, his theoretical and practical knowledge of the subject qualified him as a most essential and valuable member of the Committee, and a tribute to the services he rendered there was in fact unanimously paid to him by the members, and recorded in their Report.

The Company's objection to the third official member, the Chief Mechanical Engineer, Kenya & Uganda Railways and Harbours Administration, is based on the fact that he was a representative of a large consumer of electricity and for this reason, in the terms used by the Company, "being in commercial relations with the Company, may or may not be impartial". This objection is not, in my opinion, valid. The appointment of a Committee composed of persons who were not consumers of electricity, was obviously impracticable, and was never seriously considered; indeed I incline to the view that a public utility company of this kind should be prepared to accept the position by which their right to be granted what was, from their point of view, a valuable concession, should be

scrutinized/

scrutinized and judged by chosen and responsible representatives of the public consumers of the commodity they supply. A similar objection is made by the Company to the appointment of the representative of the local Sisal Growers; you will, however, observe that this gentleman was in favour of granting the Company's application in full, and submitted a Minority Report which is reproduced as an annexure to the Report.

5. The remaining members of the Committee were the representatives of the Nairobi Municipal Council, and the representative of the Nairobi District Council. The Company takes exception to their appointment on the ground that both bodies had submitted formal objections to the application. It is the case that both bodies had so objected, and that the Municipal Council circulated its ratepayers with a view to ascertaining to what extent public opinion as represented by them, supported the objection made by the Council. The results of this questionnaire are shown at page 19 of the Report, but it will be observed that the Town Clerk, in submitting the figures for the information of the Committee, was careful to state that he did not wish to attach undue importance to the overwhelming majority which had declared itself in favour of the objection. My view is that the body presiding over the affairs of the town which is the largest consumer of the Company's electricity was entitled to be represented on any committee enquiring into questions involving the future supply of electricity to the town. I would, moreover, point out that when the time came for individual representatives of this body to be appointed it was known that the Municipal Council had already passed a resolution in opposition to the Company's application,

and care was accordingly taken to select one Councillor who had voted in favour of the resolution, and one who had voted against it.

The District Council, which covers an area more extensive than, and different from the Nairobi Municipal Area, Council, was represented by its Chairman, a gentleman of proved ability and integrity who, I am confident, gave an unbiased opinion solely on the merits of the Company's case.

6. 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 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 prejudge 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; this brings me to the second point raised by the Company, their contention that extension for a minimum term of twenty-five years was essential to them for financial reasons.

7. Reference to pages 9-11 of the Report will show beyond all reasonable doubt that there was not in the minds of the Committee any misunderstanding or lack of appreciation that this contention was the essence of the Company's case. Other contentions made by the Company, that development was essential in the light of estimates for future

and demand, and that the hydro-electric scheme known as the Maragua-Tana scheme was the most suitable and economic, were accepted by the Committee without question; and the examination of the Company's case by the Committee was accordingly framed, as stated at page 14 of the Report, with a view to testing the validity of the Company's statement that capital could only be raised on favourable terms if the application for extension for a term of 25 years were granted.

8. The nature of the questions put to the Company to be found, together with their replies, at pages 14 and 15 of the Report, indicate clearly that the Committee, assured as it was of the desirability of the Maragua-Tana scheme, wished to be further assured that the extension required was essential to the development of the scheme. The reasons for the Committee's insistence that this should be proved beyond all reasonable doubt I will deal with below. It will be observed from the Report that the Company's replies to these questions, or the statement of its future intentions were not so conclusive or so definite as the Committee had hoped. Against the evidence furnished by Mr. Highfield's letter, which is reproduced as an appendix to the Report, and to which I venture to suggest that due weight was given, was the fact that the Company had experienced no difficulty in raising a sum of £251,000, inclusive of a share premium of Shs. 6/50, in 1934. It was agreed on behalf of the Company that this sum had been raised for the development of the Pangani concession, the licence in respect of which was for a term of 60 years; but it was admitted by the Company that this capital had been raised, at least to a certain extent, on the general financial standing of the Company to which the success of the Nairobi undertaking

had substantially contributed, and would presumably continue so to contribute. At that date the licences in respect of the Nairobi undertaking had approximately 13 more years to run. It was this consideration, taken in conjunction with certain other factors, which led the Committee to the decision it took.

9. Those factors are explained in the Report in some detail and I do not propose to enlarge upon them here. I have no comment to make on the Company's view of their obligations to the public of this Colony. The fact however remains that rightly or wrongly they have raised a very considerable degree of public opposition. The Committee could not fail to be aware of this, but I am satisfied that they realized that much of it was prejudiced, ill-informed and unjustified. At the same time, however, they took the view that it was a factor that could not be entirely discounted or ignored; and taking into account certain facts, also detailed in the Report, which transpired during the Enquiry, and giving due weight to the financial considerations adduced by the Company they made the recommendation which I was advised to accept by the Executive Council.

10. After consideration of the decision communicated to them, the representatives of the Company in Nairobi asked for and were granted an interview with me, at which they stated that this extension of five years would not serve their purpose, and that they therefore desired to withdraw their application. After some discussion the Chairman of the Company agreed to refrain from withdrawing the application immediately, and I undertook at the same time to forward to you certain further representations made by the Company. I accordingly transmit the accompanying copy of a letter, with enclosure, received

from

from the Company, for your consideration.

11. The only new factor which would appear to be contained in these representations, is an intimation from the Company's brokers that in view of the extension of the licences for a period of 5 years only, they are not prepared to underwrite the proposed issue. I have no comments to make upon this except to say that some such intimation, based on the contingency they could not have failed to foresee, might well have been given to the Committee of Enquiry.

12. You will realise, no doubt, that when consideration was given in Council to the extension of the Company's licences a decision had to be made in the light of such technical advice as was available in the Colony. Should you, however, deem it necessary in the light of further technical advice available in the United Kingdom to direct that the decision should be reconsidered, I shall be glad to be furnished with an full and detailed reason and, possibly, where, in view of the degree of public feeling in the matter, I would request your permission to publish.

I have the honour to be,

Sir,

Your most obedient, humble servant,

H. G. ...
BRIGADIER-GENERAL
G. O. V. E. R. N. O. R.

(Copy)

THE EAST AFRICAN POWER & LIGHTING COMPANY LTD.

Nairobi,

PRIVATE AND
CONFIDENTIAL.

5th May, 1936.

The Hon. the Colonial Secretary,
Nairobi.

Sir,

As requested by His Excellency the Governor at the interview which he very kindly granted to Mr. Odum, Mr. Athwa 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 me to get the whole subject up being in advance until he received the final decision of the Secretary of State on the subject. His Excellency stated he was referring the matter to him together with his representatives that made this meeting on behalf of this Company.

I have the honour to state that my Company will consider the matter as in advance until further communication is received from the 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 Licences on being assured by His Excellency (after he had heard the views of the Attorney General on the application) 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 AND LIGHTING
COMPANY LIMITED.

(Ed.) H.F. Ward,

Chairman.

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 16(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 regret, I would suggest that the consequences of the decision in offering only a further five years' extension is that in the terms 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 on a certain extent on hypothetical grounds although we had at our disposal the best available financial advice and we further had the benefit of this report. However, my Company's correct position 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 wish to assure Your Excellency that the decision which you has only been reached after grave consideration & an extreme measure of reluctance.

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.

REPORT of a COMMITTEE OF ENQUIRY, appointed by His Excellency the Governor in Council under the provisions of Section 125(6) of the Electric Power Ordinance, 1919, as amended by the Electric Power (Amendment) Ordinance, 1934, to enquire into and report upon the applications (and any objections received thereto), made by the East African Power & Lighting Company, for the extension of the various Generating and Distributing Licences as set out in General Notice No. 1399, published in the Official Gazette of the 12th and 19th November, 1935, from the respective dates of determination thereof until the 20th May, 1972.

1. THE COMPANY'S APPLICATION AND THE APPOINTMENT OF THE COMMITTEE.

1. The East African Power & Lighting Company Ltd., a limited Liability Company incorporated in the Colony and Protectorate of Kenya, are licensees under the following Generating and Distributing Licences issued under the Electric Power Ordinance, 1919:-

- 1. LOCAL GENERATING LICENCE NO. 2, dated 24th March, 1926 (Term 25 years from 24th March, 1922). (1947).
- 2. GENERATING STATION LICENCE NO. 2 (concurrent with Local Generating Licence No. 2). (1947).
- 3. GENERATING STATION LICENCE NO. 3 dated 13th April, 1931, (concurrent with Local Generating Licence No. 2) (1947).
- 4. LOCAL GENERATING LICENCE NO. 5 dated 20th February, 1926. (Term 25 years from 20th February, 1926). (1951).
- 5. DISTRIBUTING LICENCE NO. 2 dated 24th March, 1922. (Term 25 years from 24th March, 1922). (1947).
- 6. DISTRIBUTING LICENCE NO. 5 dated 20th February, 1926. (Term 25 years from 20th February, 1926). (1951).
- 7. DISTRIBUTING LICENCE NO. 6 dated 20th May, 1926. (Term 25 years from 20th May, 1926). (1951).
- 8. DISTRIBUTING LICENCE NO. 7 dated 2nd October, 1930. (Concurrent with Distributing Licence No. 6). (1951).

The terms of the licences confer on the Company under certain conditions, a monopoly of the generation and supply for purposes of sale, of electrical energy in the Nairobi area.

2. It will be observed that these licences are due to expire between 1947 and 1951. Under Section 1B(4) or/

note:
Licences in
brackets
are due to
expire

of the Electric Power Ordinance, 1919, as amended by Section 2(4) of the Electric Power (Amendment) Ordinance 1934, the licensee may "within a period of not more than five years or such greater period as the Governor in Council may in any particular case permit, and not less than three years from the date fixed for the termination of the licence, make application to the Governor in Council for a renewal of such distributing licence after public advertisement in the manner prescribed."

The most important licence held by the Company, and the one described by them as the "Principal Licence", is Distributing Licence No. 2, dated the 24th March, 1922, which is held for a period of 25 years, expiring on the 23rd March, 1947. Under the provisions of the section quoted above the Company would not, without the specific permission of the Governor in Council, be permitted to apply for a renewal of this licence until 1942 at the earliest, and 1944 at the latest.

3. In a letter dated the 22nd October, 1935, the Company made formal application for permission to apply for the extension of this, and the various other generating and distributing licences held in the Nairobi area, as enumerated in the first paragraph of this Report, in order that they should expire in 1972, instead of in 1947 and 1950 respectively. The letter which contained the application and which set out reasons for its necessity is reproduced as Appendix I of Annexure A. It was there stated that in applying for an extension at this stage, the Company was acting on the advice of its financial advisers in London, who were of opinion that owing to the rapidly dwindling period of the Nairobi licences, it would become increasingly difficult to secure on favourable terms the additional capital required for the development of the Maragua-Tana hydro-electric scheme.

This

This and other arguments advanced by the Company will be considered in detail at Section III below.

On the 25th October, His Excellency the Governor in Council decided that the Company should be permitted to apply in the prescribed manner for an extension of the various licences and the Company submitted their formal application to the Governor in Council on the 14th December 1935. In accordance with the terms of Section 125 of the Electric Power Ordinance, notice of the intended application was given by public advertisement, formal notice was duly served on the local authorities concerned, in this case the Nairobi Municipal Council and the Nairobi District Council, and public and local authorities, and other persons or bodies who might be desirous of making any representation on or objection to the application were warned by public advertisement that such representations and objections must be submitted to the Governor in Council and a copy furnished to the applicants on or before the expiration of the 60 days from the date of the application as stated in the notice, i.e., the 14th December.

The first notice of the application appeared in the Official Gazette of the 12th November, 1935, and appeared simultaneously in the N.M.A. It became apparent almost immediately that there was a considerable degree of public and private opposition to the application.

Meetings were held and resolutions passed by public and commercial bodies, and a number of letters both from representatives of these bodies and from private individuals appeared in the press. The tenor of all these expressions of opinion was, almost without exception, opposed to the Company's application; and it appeared that there was a certain public uneasiness at the prospect of an extension until 1972 of the licences held by the Company in the Nairobi area. There were, however, at the same time, indications that much

of the opposition consisted of uninformed and unsupported criticism, such as is frequently levelled against public utility services of this kind, and that there was a growing feeling in certain quarters that the question was in danger of being prejudged, and that steps should be taken to prevent any further stimulation of public feeling which would render proper consideration of the questions at issue, so far as the public was concerned, difficult and doubtful. It seemed, moreover, impossible to avoid the inference that some, at least, of the persons expressing opposition to the application were making it an occasion and an opportunity of ventilating certain grievances based on personal experience which might well have been dealt with in other ways, and discussing such subjects as tariffs and meter rents of which they could not be expected to have any technical knowledge. On the 26th November the Nairobi Municipal Council by a majority decided to take a plebiscite of Nairobi ratepayers on the question of extension, and on the 28th the General Manager of the Company through the medium of the press appealed to consumers generally to appoint in their own interests a representative body of consumers to examine and report on the matter.

It was under these circumstances that the Governor in Council on the 14th December, 1935, decided, on the advice of the Commissioner General as the officer administering the Electric Power Ordinance, to announce that in due course action would be taken under the provisions of Section 125(6) of the Ordinance, as amended by the Electric Power (Amendment) Ordinance, 1934, to appoint a Committee on which consumers would be represented, to consider the objections to the Company's application and such other matters which might be referred to it. This announcement was published in the press on the 16th December.

On the 31st January, 1936, the Governor in Council appointed/

appointed the Committee whose report is now under consideration. The appointment was published in the Official Gazette and in the Press.

II. THE COMMITTEE, PERSONNEL, AND TERMS OF REFERENCE AND PROCEDURE.

The Committee as appointed consisted of the following persons:-

- The Attorney General (Chairman).
- The Postmaster General.
- Mr. K. C. Strahan (The Kenya and Uganda Railways and Harbours Chief Mechanical Engineer).
- Two representatives of the Nairobi Municipal Council.
- The Chairman of the Nairobi District Council.
- and Captain Evans (representing the local Eisel Growers).

Messrs. George Blowers and R. F. Gicker were subsequently appointed as representatives of the Nairobi Municipal Council on the recommendation of that body.

The terms of reference of the Committee were to enquire into and report upon the applications (and any objections received thereto) made by the East African Power and Lighting Company Limited for the renewal of the various Generating and Distributing licences as set out in General Notice No. 1399 and published in the Official Gazette of the 12th day and the 19th day of November, 1935 from the respective dates of determination thereof until the 20th day of May, 1936.

Formal objections were received from the Nairobi District Council on the 18th November, 1935, and the Nairobi Municipal Council, on the 5th February, 1936. The latter was supported by detailed reasons.

The procedure adopted by the Committee was laid down as follows in a letter sent by the Secretary, to the applicants and objectors:

.....the following procedure will be adopted during the deliberations of the Committee -

Annexure
H
Annexure

1. The applicants will first give evidence (not on oath) in support of their application and advance any arguments that they may desire;
2. All objections to the application and any arguments in support will then be heard seriatim;
3. Any arguments on behalf of the applicants in answer to the objections.

Should the Committee consider it necessary the applicants will be permitted to call evidence in rebuttal."

III. THE COMPANY'S CASE.

On the 5th January, 1956, the Postmaster General as the officer administering the Electric Power Ordinance had sent a questionnaire to the Company containing, inter alia, certain questions in connection with the Company's application and the policy which it proposed to adopt with regard to the Maragua-Tana hydro-electric scheme. This questionnaire is of some importance to the Report since it ultimately formed a basis for the Committee's examination of the Company's case. It is reproduced as Annexure D.

The Company replied on the 26th January to the effect that the information called for in the questionnaire would, in their opinion, be more appropriately given in evidence to the Committee, when appointed, should the Chairman of the Committee so desire. Accordingly, on the appointment of the Committee the questionnaire was referred to the Attorney General as Chairman, and the Company was asked to furnish the information required, and to attend the first meeting of the Committee which it was proposed to hold on the 13th February. At the meeting held on that date representatives of the Company attended and made a formal application for adjournment/

adjournment on the grounds that owing to the absence on sick leave of the General Manager, their case was not complete; and that the objection submitted by the Municipal Council was received on the 5th ^{FEBRUARY} which left them insufficient time to prepare a reply. The Town Clerk, on behalf of the Nairobi Municipal Council, objected to an adjournment. The Committee, however, after consideration felt that it would be undesirable under the circumstances to insist that the Company should proceed with their case and granted an adjournment until the 2nd March. The Company was legally represented at this and subsequent hearings.

In the interval between those dates the Company furnished written replies to the Nairobi Municipal Council's objection and the Postmaster General's questionnaire, which are reproduced as Annexures E and F, together with a Memorandum (Annexure G), setting out their case in full. It was stated, during the course of the proceedings before the Committee, that the whole of the Company's case was fully set out and explained in the memorandum and in the letter of the 22nd October referred to in 1, paragraph 3, above, which was submitted as an enclosure to the memorandum. It was on the points raised therein that evidence on behalf of the Company was adduced and on the basis of which their case was presented.

Annexure E.
Annexure F.
Annexure G.

That case may be summarized as follows:-

1. The urgent necessity of providing additional generating plant to meet the growing electricity requirements of the Nairobi area.

Opinions by technical officers of/

of Government were quoted to show that owing to deforestation, soil erosion, and agricultural methods, the dry-weather flows of the Kenya rivers which feed the existing generating stations are diminishing. This opinion is confirmed by records kept by the Company. It was shown that it had been found necessary in October last before the short rains to curtail supplies to certain small estates during the day time. A statement of maximum demand and generating capacity in respect of the Nairobi area served by the four generating stations of Tana, Wala, Masco and Parklands was submitted by the Company and it was shown that it was not safe to anticipate any considerable increase in the dry-weather capacity of the existing hydro electric stations even if an improvement in rainfall conditions should take place.

2. The Maragua-Tana Scheme.

The hydro electric development known as the Maragua-Tana scheme, the first stage of which was completed in 1933 at a cost of £71,000, utilizes the fall on the Maragua River in the vicinity of its confluence with the Tana. The next stage of the scheme would be the building of a dam, headworks and canal. The scheme as a whole is reported on by a succession of experts who without exception recommend its adoption. In 1927 the London managers of the Company, Messrs. Bellair Hearty & Co., reported that the Maragua-Tana scheme was the "only possible development if economy and future requirements were taken into consideration." This conclusion was fully endorsed by the Consulting Engineers to the Crown Agents, who, in consultation with another well known firm of Consulting Engineers reported as follows to the Crown Agents for the Colonies, in respect of this/

this scheme:-

"Briefly put we are of the opinion that the Scheme proposed on the Tana River by the licensee as 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."

A full report of their Consulting Engineer was submitted by the Company and is at Appendix VI of Annexure A.

3. The Question of Finance.

At this stage in the proceedings the Company may be said to have produced strong prima facie evidence that (a) there was a considerable danger of possible failure in the future on the basis of existing plant to supply a demand which was steadily increasing and (b) that the Karagua-Tana Scheme was the most economical and desirable means of ensuring that the danger should be removed and future estimated demands satisfied. It may be stated here as it is formally stated in the Committee's findings that the Committee accepted the conclusions drawn from this expert evidence.

It is the Company's contention, a contention which forms the very substance of their case, that their application for extension is made by reason of the financial requirements with which it would be faced in connection with the development of the Karagua-Tana Scheme. In its briefest and simplest terms this contention may be stated as follows:

1. Supply is in danger of decreasing and demand is estimated to be rising.

Figures are produced in support of both contentions.

2. The Karagua-Tana Scheme is generally admitted to be the most economical and suitable

suitable in every way.

3. To develop this scheme the Company will be involved in a total capital expenditure of £300,000.
4. This capital must be raised from the public, and under existing conditions of the various licences concerned, i.e., expiration in 1947-51, the Company's chances of raising capital on favourable terms would be prejudiced.

In his conduct of the Company's case, the lawyer who represented them stated to the Committee that he could no better amplify this contention than by quoting from the memorandum submitted by the Company. The relevant passage reads as follows:-

24. On more than one occasion it has been stated at public meetings and in the press that this Company could quite easily raise the capital for the development under consideration even if the licences for which this development has to be raised were liable to expire in 1947. It is submitted that these statements have been made without any study of the position or the most elementary knowledge of finance.

25. 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, head-works, and banal which would have a life of over 100 years, and these works would not be employed to their capacity for at least another 25 years.

26. 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/

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 would be met by the additional increase in business in subsequent years but it is suggested that the Directors of this or any other Company would be deserving of severe censure if they endeavoured to raise additional capital for a purpose of this sort without regard to making good these interest and amortisation charges.

27. The Company's London financial advisers have stated very definitely that due to the rapidly dwindling period of the Nairobi licences it will become increasingly difficult to raise capital for this development. In order that there could be no possible misunderstanding the opinion of a very well known and eminent Consulting Engineer was obtained, and a copy of his report, the original of which is in the hands of Government, is attached. (Appendix VII of Annexure A).

28. He says inter alia

"To summarize 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."

The inference from this, to quote again from the memorandum, was that "it would not be possible for this Company to proceed with the Maragua-Tana scheme without the extension of licences applied for." The alternative would be the supplementation of the existing generating plant by means of fuel units, a process described by the Company in this case as "uneconomic and piecemeal development". The consumer would be liable to the inconvenience of fluctuating and uncertain supplies and to the possibility of increased tariff.

Replies to Sundry Criticisms.

Evidence that certain criticisms with regard to tariff, exclusive distributing licences and the periods of licences was adduced to show that this criticism was uninformed and unsupported by fact.

Conclusion.

The essence of the Company's case as presented to the Committee, and the case upon which the Committee based its ultimate finding, is perhaps best expressed by another passage from the memorandum which was quoted in full by the Company's representative. -

"... 33. 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 Mana Hydro-Electric Scheme, and that negotiation on the part of Government entailing a piecemeal type of development must inevitably cause hardship to those 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."

Before the conclusion of their case the Company formally asked that their original application for extension of licences should be amplified in the following way. By the original provisions of Section 1B(a) of the Electric Power Ordinance, the local authority within whose jurisdiction the area of supply was situated could apply

"At least six months preceding the expiration of a period of forty-two years from the date of the distributing licence, 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, or such shorter period as is specified in that behalf in the distributing licence, ~~to the Governor in Council for the~~ application to the Governor in Council for the revocation of the existing distributing licence as to the whole or part of the area of supply, and for the issue to them of a distributing licence for such area or part thereof."

In effect it could apply at six months' notice at any stage of the tenure of the licence. By Section 5(1) of the Electric Power (Amendment) Ordinance, 1934, the following clause was substituted:

"Within/

"Within six months after the expiration of a period of forty-two years from the date of the distributing licence, or such shorter period as is specified in that behalf in the distributing licence, or within six months after the expiration of every subsequent period of seven years, or such other period as is specified in that behalf in the distributing licence, such local authority shall make an application to the Governor in Council for the revocation of the existing distributing licence as to the whole or part of the area of supply, and for the issue to them of a distributing licence for such area or part thereof."

To this amendment there was, however, added a proviso

that "the provisions of this sub-section shall not apply to any distributing licence granted before the commencement of this Ordinance but the provisions of paragraph (a) of Section 19 of the Principal Ordinance, as the same appeared in that Ordinance before the coming into operation of this Ordinance, shall continue to apply to any such distributing licence."

and this again was qualified by Section 17(e) of the Electric Power (Amendment) Ordinance, 1934, amending Section 125(b) as follows:-

"Provided that the provisions of section 19 of this Ordinance shall be deemed to continue to apply to any licence so renewed or extended under this section unless the Governor in Council shall otherwise direct."

The Company asked that His Excellency the Governor in Council be advised to direct that the provisions of Section 19 should not apply to these licences if renewed. The effect of this would be that the local authority would be entitled to apply to take over the licence at six months' notice up to 1947 but after that date during the period of renewal, would be governed by the provisions of Section 19(a) as amended, i.e. they would only be able to apply within six months after the expiration of a period of 42 years from the date of the distributing licence, that is, 1964, ~~unless~~ unless they so applied before 1947, the present date of expiry of the licences.

IV. EXAMINATION OF THE COMPANY'S CASE BY THE COMMITTEE AND THE COMPANY'S REPLY.

1. The Committee's examination of the Company's case was based, as has been indicated above, on the questionnaire of the 5th January prepared by the Postmaster General. The Company's first contention, i.e., that the Maragua-Tana scheme was the most suitable and economic for meeting growing demand and removing the danger of future shortfall in supply was accepted by the Committee. Questions were accordingly framed with a view to testing the validity of the further contention, that capital could only be raised on favourable terms if the application for extension were granted.

2. In view of this contention perhaps the most important questions put were those numbered 9, 10, and 11 in the Postmaster-General's questionnaire to which written replies were furnished as follows.

Question 9

"If the Company's application is refused, to what extent is it estimated that the raising of capital for further development will be effected?"

Answer

"It is difficult, if not impossible, to give any accurate estimate as asked for without a full knowledge of the purposes for which the extra capital would be required, and the amount of that extra capital."

Question 10.

"If the present application for renewal of the Company's licence is refused, is it the Company's intention to adopt the recommendation made by Mr. J.S. Highfield in the final paragraph of his letter of the 8th November, which accompanies the application?"

Question 11.

"If the answer to 10 be in the affirmative, what is the alternative method proposed by the Company by which the necessary additional generating plant is to be provided to meet demands for power to the end of the licence period? What are the estimated capital costs of such an alternative scheme and what will be the effect on prices of electricity to consumers?"

(Annexure D).

Answer to Questions 10 and 11 -

"In view of the fact that a continuance of an efficient electrical supply for Nairobi and District, offered at as cheap a rate as is possible from time to time under conditions ruling, appears to be of really vital importance to the consumers in this area, and to the Colony itself, the Board, its technical advisers and its Executive, have concerned themselves so far exclusively with these problems.

Such problems admittedly include the question of extension of the Company's generating resources as and when circumstances demand; but in this respect attention has so far been concentrated on the Maragua-Tana Scheme; and, owing to the time required to be given to current practical questions, it would not be economic to consider contingencies preventing the development of that scheme, while contingencies it is hoped may not arise.

It will also be appreciated that the Directors of the Company have neither the right nor the power to commit the Company to any fixed policy of future development.

All that it is possible to say at the moment is that with only 11 years of the present licence to run, of which if the Maragua-Tana Scheme is carried through, only 8 can be effective, with additional capital expenditure estimated to be required within a year of the licence expiring, and with no actual idea as to how the value of capital works at the expiry of 11 years could be returned to the shareholders, the Company can see no way of meeting the position that would be other than a grave handicap to the consumers in this area."

It was stated before the Committee, on behalf of the Company, that they had nothing to add to the written replies. It will be observed that none of the replies give the definite answers the Committee had hoped for.

3. The next question was in regard to the estimated cost of the Maragua-Tana Scheme. This was the second question in the Podimeter-General's questionnaire and, with the answer, is reproduced below:

Question 2.

"It is understood that the first stage, already completed, of the Maragua-Tana Scheme has cost approximately £78,000. It is stated in the Company's application that a further sum of approximately £306,000 will be required to complete the scheme. This makes a total cost of £378,000. In evidence given on behalf of the Company before the Special Tribunal appointed in 1929 to consider the Maragua-Tana Scheme, the estimate for the whole scheme was placed at £200,000 or £210,700 if transmission line costs are included. I shall be glad to learn how the large discrepancy between the two estimates is accounted

"accounted for.
NOTE: I would here observe that the Company's estimate in regard to development at Seven Forks placed before the Tribunal closely approximates to the estimate furnished by the experts who recently investigated the possibility of development at that point.

ANSWER

The actual cost of the first stage was £71,661. The major item in the cost of the proposed development is the dam across the Tana River, apart from height and length the chief items effecting expenditure are foundations and maximum flood flow. The details of the former can only be determined after test borings have been taken, and expenditure on this is not justified until a definite decision has been arrived at to proceed with the scheme. In regard to maximum flood flow very little data is available. Considerable study has and is being made in consultation with the Government Hydraulic Engineer. Further, the method of controlling flood water can be varied and to a large extent is dependant on the life expectancy of the Power Station. It is not known what figure the Consulting Engineers to the Government took in respect of the flood flow or the method they had in mind for dealing with flood water. If the scheme is proceeded with every effort will be made to improve on the Consulting Engineers' estimates as this is obviously in the interests of all concerned. Their estimates were used as this Company considered that Government would prefer to accept the figures of its own advisers."

The answer to the question shows that there is as yet no firm and final estimate of the cost of the scheme.

A further question regarding the capital raised for the purpose of developing the Pangani Concession is question 5 of the Postmaster-General's questionnaire.

Question 1

"It has been stated on behalf of the Company that the 195,000 Ordinary £20/- shares, which were issued early in 1934 at a premium of Sh. 5/50 per share, were for the purpose of the Pangani Concession in Tanganyika. Is it the Company's case that they were able to issue these shares at the premium mentioned solely and entirely on the merits of the Pangani Concession and without any relation to the Company's general financial standing towards which the revenue from the Nairobi Undertaking has contributed substantially?"

Answer

"It is quite obvious that a prospective investor would take the Company's general financial standing into account."

Here again the Company had nothing to add to the written answers furnished.

V. THE OBJECTORS' CASE AND THE COMPANY'S REPLY.

1. The only objections received to the application, as has been stated above, were submitted by the Nairobi Municipal Council and the Nairobi District Council, the former of which was supported by detailed reasons, and is reproduced as Annexure C. The Company's reply to that objection is reproduced as Annexure E.

The two main reasons for their objection advanced by the Municipal Council were as follows:

- a) that the application is premature; that no sufficient reason is disclosed for making application for the renewal of their licence more than eleven years before the expiration thereof;
- that additional capital is immediately required is not disputed, but that additional capital will only be available if the period of the existing licence is extended, is emphatically denied.

On the last occasion the Company required additional capital, at a time when money commanded a higher rate of interest than it does today. The Company experienced no difficulty in obtaining the necessary capital, that is conclusively established by the fact that the shares were issued at a premium.

The preference shares of the Company carry interest at the rate of 7% per annum. No difficulty whatsoever will be experienced in raising all the additional capital the Company requires on more favourable terms than 7% per annum. On first-class securities money is available for investment at

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The two main reasons for their objection advanced by the Municipal Council were as follows:-

- (a) that the application is premature, that no sufficient reason is disclosed for making application for the renewal of their licence more than eleven years before the expiration thereof and that additional capital is immediately required is not disputed. But that additional capital will only be available if the period of the existing licence is extended, is emphatically denied.

On the last occasion the Company inquired additional capital, at a time when money commanded a higher rate of interest than it does today, the Company experienced difficulty in obtaining the necessary capital; that is conclusively established by the fact that the shares were issued at a premium.

The preference shares of the Company carry interest at the rate of 7% per annum. No difficulty whatsoever will be experienced in raising all the additional capital the Company requires on more favourable terms than 7% per annum. On first-class securities money is available for investment at

"4½ per annum. The Council have received offers of loans up to £250,000 at the latter rate of interest....."

If the Company's application were granted the result would be to increase the market value of the present shares, and to enable the Company to issue shares at a premium.

That, it is suggested, is the principal reason for making the application for a renewal of the Company's existing licences eleven years before the dates of expiry of such licences, but it is submitted that that is NOT a sufficient reason to justify the present application."

In reply to this contention the Company stated that the arguments advanced in favour of the application (as set out at Section III above) were sufficiently strong to rebut any suggestion that the application was premature.

(b) That the position of the Municipality as the local authority for the Municipality of Nairobi will be prejudiced by the Company's application.

The reasons for this contention are fully set out in paragraph 2 of the Objection submitted by the Municipal Council (Annexure C) and replied to in paragraph 2 of the Company's written reply to that objection, reproduced as Annexure E. The Company's contention was that the proposed amendment to Section 19(a) which, admittedly it was doing everything in its power to obtain, would affect the position of the Municipality; but that the question of such amendment did not affect the question of extension because once the Ordinance is amended, the position of the Municipality would be the same whoever was licensee.

Further objections concerned with maximum prices, provision for depreciation, maximum dividends, overhead lines and meter rents were ~~submitted~~ by the Town Clerk on behalf of the

the Municipal Council. The Company's reply to these objections was that since provision existed in the Ordinances for their control, they were not ~~materially~~ ^{strictly} relevant to the issue.

The Town Clerk furnished for the information of the Committee certain figures concerning the plebiscite of ratepayers referred to above which were as follows:-

Approving the Municipal Council's objection	No. 1910
Disapproving the Municipal Council's objection	141
Spillt papers	14
	<u>Total 2065</u>

He stated, however, that he did not wish to attach undue importance to the result of the plebiscite.

The only evidence given on behalf of the Nairobi District Council dealt with such subjects as heavy costs of installation in districts outside the Nairobi Municipal but inside the Nairobi District Council area, and urged a reduction in tariff.

VI. COMPANY'S REPLY - GENERAL.

In general, the Company replying in rebuttal of arguments brought up by the various objectors, and in reply to various questions put by the Committee added little to the written replies already furnished. The only outside evidence called by them in reply to objections was given by a consumer on a large scale in the Nairobi area who stated before the Committee that he was perfectly satisfied with the service supplied by and the rates charged by the Company. It was stated that they wished to stand or fall by the memorandum submitted; that the case for the application set out was a sufficient rebuttal of any suggestion that the application was premature; and that other objections dealing with such matters as meter rents, tariff, overhead lines,

lines, deposits, etc. were irrelevant in so far as they could be dealt with under the relative provisions of the Ordinance. Finally they wished, in anticipation of any conditional extension of the licences, to emphasize that they could not accept extension other than unconditionally, that they were not inclined to and not in a position to bargain, and that they wished for an unconditional granting or refusal of the application on its merits.

FINAL DISCUSSIONS AND FINDING.

The Committee met on the 9th March for final consideration of the Company's application, the objections which had been heard, and the report which should be submitted to the Governor in Council.

The discussion which took place and certain conclusions reached by the Committee may be summarized under the following heads. These conclusions form the basis upon which the Committee make their finding, and are reflected in the conditions precedent set out in the Rider to that finding.

(i) The Company's request for an unconditional Recommendation.

with regard to the Company's request for an unconditional granting or refusal of the application on the merits of their case, the Chairman pointed out that by the terms of reference of the Committee and the Section (1216) of the Ordinance under which it was appointed, the Committee was in no way bound to comply with this request; that in his opinion the Committee which was in its nature advisory to the Governor in Council should properly embody in their report such opinions and recommendations as they considered desirable.

(ii) The Maragu-Tina Scheme.

The Committee accepted the conclusions drawn from the expert evidence adduced by the Company to prove

- (a) the urgency of providing increased generating capacity in the Nairobi area, and
- (b) the fact that the Maragua-Tana is the most suitable and economic scheme.

The question of capital expenditure was discussed: it was recalled that the Company had estimated their further total capital liabilities in connection with the scheme at £300,000. This figure was based on an estimate made by the Consulting Engineers to the Crown Agents: in evidence before the Tribunal given in 1929 the figure had been quoted at £200,000. In evidence before the Committee the General Manager of the Company had stated that the Company were still prepared to work on the basis of this smaller figure. It was further pointed out that of the whole estimate, only £130,000 at the most would be required by 1947.

(iii) The Raising of Capital.

The necessity for the extension of licences as a means of raising capital had been repeatedly put forward as the basis of the Company's case. It had been suggested that the sum could be provided from the Company's resources, but it was recognised by the Committee that the provision of capital was a matter of policy and the management of the Company were entitled to decide upon this, more especially as the present time was generally acknowledged to be favourable for the raising of new capital.

(iv) A Suggested Solution.

The Company had admitted that 195,000 £1-7/8 shares had been issued in 1934 in respect of the development of the Pangani Concession, at a premium of Shs. 6/50; it was further admitted on behalf of the Company that this capital had been raised on the strength of the Company's general financial standing, to which the profits/

profits derived from the Nairobi undertaking had substantially contributed. At that time the Principal Licence (Nairobi Distributing Licence No. 2 of the 24th March, 1922) had 13 years to run, a factor commonly taken into account by experts, according to the Company's contention. It was suggested therefore that if this Licence were now extended by 5 years, i.e., to expire in 1952, giving it a further current tenure of 16 years, the Company would be in a relatively better position from the point of view of raising capital than they had been in 1934, when the licence had only 13 years of current life and when they had experienced no difficulty in obtaining a net sum of £251,000 (including premium).

(v.) The Company and the Public.

In contemplating this solution, the Committee took into account the advantages which would be conferred on the local consumer by the development of the scheme, recognised the services which had been performed by the Company in the past and endeavoured to meet the Company in the main contention in their case. The Company had, however, asked for an extension of 25 years and not 5, and in contemplating the latter alternative, the Committee were taking into account the impression which had been created during these proceedings that the Company did not enjoy, to the fullest extent, the confidence of the public, which a utility service of this kind should normally enjoy. Certain members of the Committee, for example, pointed out that there was a certain degree of public dissatisfaction on the question of meter rents and the system of deposits, and were anxious that these matters should be enquired

into.

In drawing attention to this public dissatisfaction, due regard is paid to the nature and validity of this and some of the arguments advanced/

advanced against the application, and to the fact mentioned by one of the Committee, that only two formal objections were made. At the same time, however, both these objections came from local authorities representing numbers of private consumers; and the volume and variety of opposition which was expressed to the application, even though in many cases it was ill-considered and uninformed could not in the opinion of this Committee be completely disregarded, or taken other than as an indication of the fact that the Company had not the full confidence of the public.

(vi.) Accounting: Depreciation, etc.

It was recognised by the Committee that certain domestic affairs of the Company would inevitably come under discussion and careful consideration was given by the Committee to the Company's contention that such matters were irrelevant to the issue. In the Committee's opinion, however, the domestic affairs of a public utility service are not entirely its private property; a Committee, or for that matter an officer, acting in the interests of consumers is entitled to information as to the internal working of such a service. In this connection two such matters come under consideration.

(a) Accounting: The intention of the Board in laying down a special system of accounting, is to ensure that a true and full picture of each separate undertaking is furnished. To this end such items as Headquarters salaries, Depreciation reserves, etc., which in an ordinary commercial balance sheet are shown as Head Office accounts must be allocated to various undertakings. It is recognised that such allocation can only be approximate, but when representatives of the Company referred to them as "purely nominal allocations" the Committee was very far from satisfied with the position. This question is reflected and dealt with in greater detail in item 6 of the Conditions Precedent attached to the Rider.

(b)

(b) Depreciation.

The Ordinance requires that depreciation on fixed assets shall be calculated "as is usual". It was admitted by the Company and stated to be a common commercial practice that depreciation was calculated, not solely on such factors as the estimated life, and cost, and nature of the various articles, but that the general financial and revenue position of the Company were also taken into account. This is dealt with in items 3 and 4 of the conditions precedent.

A further conclusion which the Committee has been unable to avoid during the conduct of and in the light of evidence brought out during these proceedings, is that the officer administering the Ordinance on behalf of the Government has not in his relations with the Company evinced that measure of co-operation and assistance from the Company as he might properly have expected to receive from a public utility service; instances were quoted of cases where the Company had shown a disposition to stand on their legal rights rather than to approach a problem in a spirit of helpfulness. ~~This is reflected in item 3 of the conditions to the Rider.~~

It was in the light of these reasons and in the recognition that, on the merits of the Company's case, an extension of five years would assist them in attaining the object of the application that the granting of such an extension was discussed. It was further felt that the time between the present and 1952 should properly serve as a further period of probation during which the Company would have the opportunity to prove to the satisfaction of everyone that they were beyond all question fitted to serve the public at whose hands they had received and were asking a valuable concession.

2. The Chairman briefly outlined the alternatives before the Committee as follows -

- (a) Unconditional granting of the application.
- (b) Unconditional refusal of the application.
- (c) Conditional granting.

The first proposal was unanimously rejected, and the second defeated by 5 votes to 2. The Chairman then stated that the first thing to decide in connection with third alternative was the term of years. The proposal of a five year unconditional extension was then put to the Committee and was carried by four votes to two, one member abstaining from voting. At a later meeting, convened to consider the report in draft, the abstaining member, after consideration gave his vote against the proposal.

The FINDING of the Committee and the recommendation it therefore makes to the Governor in Council, is as follows:

That Distributing Licence No.2 held by the East African Power & Lighting Company Ltd. (for a term of 25 years) and dated the 22nd March, 1922, be extended by 5 years so as to expire on the 23rd March, 1953; and that the other generating and distributing licences enumerated in paragraph of this Report should be extended so as to expire on the same date. The Committee recommends in respect of the company's supplementary application, that His Excellency the Governor in Council should not exercise his powers under Section 19 of the Electric Power (Amendment) Ordinance, 1934, to direct that the provisions of Section 19 of the Electric Power Ordinance as amended should not apply

to the

the extended period of the licence."

MINORITY REPORT.

annexure
G.

The memorandum reproduced as Annexure G is submitted by Captain L.F. Egan, as a Minority Report.

RIDER.

The Committee wishes to add to its FINDING a Rider that if the Governor in Council should contemplate the granting of any extension of a period of more than 5 years, that the following Conditions, unanimously recommended by the Committee, should be Conditions Precedent to the granting of any such extension:

1. Maximum Prices. By Section 69(2) of the Electric Power Ordinance, 1919, the Governor in Council, on receipt of representations, after such enquiry as they may think fit, may make an Order varying the prices or method of charges stated in the licence, provided also that the prices and methods of charges 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 Committee recommends that the Ordinance be amended so that the period of five years for revision may be altered to three years.

Maximum Dividends. Section 45(b) of the Electric Power Ordinance provides that,

"When payment shall have been made or provided for of all expenses incurred by the undertaking (not being disbursements properly chargeable to capital) the balance of net revenue or profit shall be available for distribution as the Licensee thinks fit. Provided that when the net profits from the undertaking paid as dividends on the paid-up shares capital shall at any time have amounted to a sum equal to ten per centum per annum on such paid up share capital from the date of its being so paid up, the dividend payable on such paid up share capital

the extended period of the licence."

MINORITY REPORT.

The memorandum reproduced as Annexure G is submitted by Captain L. F. Evans, as a Minority Report.

Annexure
G.

RIDER

The Committee wishes to add to its FINDING a Rider that if the Governor in Council should contemplate the granting of any extension of a period of more than 5 years, that the following Conditions, unanimously recommended by the Committee, should be Conditions Precedent to the granting of any such extension:-

1. Maximum Prices. By Section 69(2) of the Electric Power Ordinance, 1919, the Governor in Council, on receipt of representations, after such enquiry as he may think fit, may make an Order varying the prices or method of charges 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 Committee recommends that the Ordinance be amended so that the period of five years for revision may be altered to three years.

2. Maximum Dividend. Section 45(A) of the Electric Power Ordinance provides that,

"When payment shall have been made or provided for, of all expenses in respect of the undertaking (not being distributed properly or payable to capital) the balance of net revenue or profit shall be available for distribution as the Licensee thinks fit. Provided that when the net profits from the undertaking paid as dividends on the paid-up shares capital shall at any time have amounted to a sum equal to ten per centum per annum on such paid up share capital from the date of its being so paid up, the dividend payable on such paid up share capital/

share capital from any net revenue or profits from the undertaking in excess of ten per centum per annum may be increased by one quarter of one per centum per annum for every one and one quarter per centum by which the average price charged to consumers for the supply of electrical energy is reduced below the maximum price stated in the licence subject to the provisions of section sixty-nine(1) and (2) of this Ordinance."

The Committee recommends that the Ordinance should be amended so as to make it clear that the terms of the Section should apply to both Preference and Ordinary shares and by the deletion of the phrase "from the date of its being so paid up" so as to ensure that the consumer should get full advantage of any profits in any and every year in excess of 10%.

3. Depreciation. - Section 46(3) of the Electric Power Ordinance lays down that:

"When and after the supply of electrical energy from or through any part of a licensee's works or undertaking has begun there shall appear in the accounts of the undertaking from year to year 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."

The Committee considers that a more specific and fixed standard should be adopted in estimating the amount which should be allocated to the Depreciation Reserve and that this should be affected by the amendment of the Ordinance or by the insertion of a suitable clause in the licence.

The Committee, in making this recommendation, has in mind the possibility at some future date of amounts being added to the credit of the Depreciation Fund account which would militate against the presentation of a true picture of the Company's profits during any working year and would deprive the consumer from obtaining the benefit of those profits in the shape of reduced tariffs.

4. General Reserve Account. The Committee recommends that a fixed standard should be adopted in connection with the allocation of funds to the General Reserve, which should include any Investment Reserve.

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B. The position of Individual Undertakings.

Section 41 of the Electric Power Ordinance reads as follows:

"Where any public or local authority, company, person, or body of persons, holds a licence or licences under this Ordinance, the accounts of each and all such undertakings shall be subject to the provisions of this Ordinance and shall be kept separate and distinct and in the manner and form prescribed under this Ordinance."

In the Committee's opinion the intention of the Ordinance is clear and seems to be that the consumer in any given area should be able to see by the Company's accounts the exact financial position of any undertaking operating in his area. It transpired during these proceedings that certain allocations of share capital were to a large extent nominal. As an example of this, a sum of £162,000 was allocated during the year 1934 to the share capital account of the Nairobi undertaking. It was subsequently diverted to the use of the Pangani undertaking in Tanganyika Territory.

Unless the intention of Section 41 is carried out as far as possible there is a danger of a consumer in a prosperous area operating a successful undertaking not receiving the proceeds of the substantial profits that may be made in the shape of reduced tariffs, and of their being diverted as usual to finance less prosperous areas.

The Committee therefore recommends that the Company should be approached with a view to the examination of the possibility of the provisions of this Section being put in effect.

The Committee realise that there will be a certain amount of difficulty involved in putting the provisions of this Section into effect in that certain allocations could at best be only approximate. It is considered, however, that every effort should be made to ensure that each undertaking should stand on its own financial basis and its accounts be produced in a form readily intelligible to the ordinary consumer. They therefore recommend that the

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Unless the intention of Section 41 is carried out in far as possible there is a danger of a consumer in a prosperous area operating a successful undertaking, not receiving the proceeds of the substantial profits that may be made, in the shape of reduced tariffs, and of their being diverted as capital to finance other prosperous areas. The Committee therefore recommends that the Company should be approached with a view to the examination of the possibility of the provisions of this Section being put in effect.

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the Company should be approached in this sense and that an approved scheme should be submitted for consideration.

The Committee wish to make it clear that they recommend these conditions only as Conditions Precedent in the event of the Governor in Council deciding to extend the Licences by any period exceeding five years.

RECOMMENDATION:

The Committee wishes to make the following recommendation to the Governor in Council, independent of the acceptance or otherwise of its FINDING, with reference to Section 43 of the Electric Power Ordinance which provides that the annual statement of the accounts of the undertaking should be audited by such competent and impartial person as the Governor in Council appoints or approves.

"That in view of the fact that it has been shown that the Company's business account is of necessity kept in a different manner from that laid down in the Ordinance and as the Company is extending its operations to Tanganyika Territory the Committee is of the opinion that the stage has now been reached where it is desirable that separate firms of auditors should audit the licensee's accounts on their behalf and on behalf of the Governor in Council respectively."

The Committee would like to place on record their appreciation of the manner in which the Postmaster General elucidated the various difficulties which arose during their deliberations and the able way in which he endeavoured to safeguard and explain the interests of the consumer.

The Committee would also desire to express their thanks to His Honour the Chief Justice for placing at their disposal the services of one of his shorthand reporters.

In conclusion the Committee would like to thank the Secretary for his courtesy and ability in all matters relating to the Committee and in particular for the celerity with which he produced the first draft of this report thereby enabling the Postmaster General to record his approval before leaving the Colony.

- (Ed.) W. HARRISON, (Chairman)
- Attorney General,
- K.C. STRAHAN
- Chief Mechanical Engineer, Kenya & Uganda Railways & Harbours Administration.
- M. FERGUSON
- L.F. EVANS
- A.H. COCKER
- GEO. BLOWERS
- T. FITZGERALD

After the signing of the report the Committee stated that they wished to place on record their great appreciation of the tactful and courteous manner in which the Chairman had presided over their deliberations.

- (Ed.) K.C. STRAHAN
- L. FERGUSON
- L.F. EVANS
- A.H. COCKER
- GEO. BLOWERS

N.J.B. SABINE, Secretary.
 23rd March, 1936.

MINORITY REPORT

As representing the Sisal Industry I would like to state on their behalf that, as far as I can ascertain, the Industry as a whole is quite satisfied with the Power Company's attitude. As an individual consumer of a fairly large amount of current, approximating to half a million units per annum, I would like to state my personal satisfaction in my dealings with them and as regards services rendered from time to time, of which I can quote instances if desired. Further, I have always received the utmost courtesy from all members of the staff with whom I have come in contact. At the same time the Sisal Industry would welcome and does anticipate a reduction in rates, if the Larague-Tena scheme is carried through. During the past years I am of the opinion that we have been fairly treated in the adoption of a sliding scale dependent on the price of sisal. This scale entailed a minimum charge of 2 cents per unit, with the price of sisal below £17 per ton and rose by half cents per unit for every pound rise in price above £17 with a maximum of 12½ cents per unit with sisal at £20 or over. As a matter of interest this maximum price has not been enforced but the sum of 10 cents per unit has been charged even with sisal prices at their present price. This has been of great help to sisal growers and was a purely voluntary gesture by the Power Company. I feel bound to bring forward these points in their favour, as we have heard a great deal of evidence tending to discredit the Company, mostly based, I venture to state on supposition.

The Objectors are in a very small minority, I submit, especially in view of the fact that ample time was allowed for anyone with views on the subject to bring forward such views, but, in point of fact, only one objector has appeared with any real case, with which I do not find myself in agreement, with the exception perhaps of supplementary points raised in connection with the extension being granted.

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The question of "bargaining" was touched upon as a possible

possible point of importance to the country and, as I see it, this is actually the case, though it is not specifically stated. The introduction of large and fresh capital to the country depends upon the Company being granted its extension. This in my opinion would be very strongly supported by all right thinking people who have the welfare of the country as a whole at heart, and in this connection why use reserves if fresh capital can be raised, and is this not a world-wide practice with both Governments and private concerns under present conditions?

The Company's reserves took up a prominent part in the late discussions. It seems to me that the point, apart from the fact that any licence is worth a certain amount, depreciation reserves "as is usual" (a somewhat loose definition) reserves would appear to have little interest to the consumer in any particular year and in examining a company, except in so far as it affects the Company's financial position, in order that the Board may see whether or not the Company was likely to become financially embarrassed.

It appears that the form of accounts which the company must submit under the provisions of the Power Ordinances are quite incomprehensible to the man in the street but it would appear that they do represent a true picture if examined by anyone competent to do so, and it would appear from evidence that, after these Government accounts have been presented, a representative of the Postmaster General is given access to the Company's detailed balance sheets in respect of each branch, to enable him to reconcile the two sets of accounts and it seems to me that owing to the incomprehensible nature of the Government's accounts to the man in the street, that it is incumbent on some Government official to examine the Company's affairs in order to ascertain if too large a return is being made on the capital invested in respect of any one licence. If it is agreed that the examination of the Company's

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The Company's reserves took up a prominent part in the late discussions. It seems to me that the point, apart from the fact that any business is bound to have depreciation reserves as is usual (a somewhat indefinite) reserve would appear to have little interest to the consumer in any particular case and I am speaking as a consumer, except in so far as it affects the Company's financial position, in order that the consumer can see whether or not the Company was likely to become financially embarrassed.

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Company's detailed balance sheets and the Statutory returns shows-

- (1) The Capital invested in any one undertaking in respect of fixed and loose assets and working capital;
- (2) the balance of revenue over expenditure in respect of electricity supplies

it would appear that anyone competent to advise Government in respect of the Company's activities, would be able to decide for himself or as a result of expert advice, decide what was a reasonable amount to allow in respect of depreciation, obsolescence and other reserves.

In deducting the figures arrived at under (2) he should be in a position to calculate the per centage return on capital invested in any one undertaking and as a result advise His Excellency the Governor in Council whether the return on Capital under all circumstances, was reasonable or not.

If the return, in his opinion, was too high he would presumably advise His Excellency the Governor in Council to cause an enquiry to be made and thereafter the latter would exercise the powers he has under the provisions of Section 69(2) of the Electric Ordinance.

I must admit to a certain confusion mentally, after the long and detailed discussions in which we have been involved. As a member of this Committee, appointed by Government to enquire into the application made by the East African Power & Lighting Company for the rate of 10 ct. etc. I feel I have listened to a great deal of very interesting but extraneous matter not actually relevant to the main issue, but rather expressing certain dissatisfaction apparently experienced over a number of years during which the Company have been operating. Whilst not disputing the rights or wrongs of such dissatisfaction, I am unable to gather why these questions were not taken up, in due course, under the provisions made under the Ordinance. From the consumer's point of view it would tend to show, either that:

that he is not interested as long as he gets his supply of electricity and service. It would seem that opportunity had been taken, in the appointment of this committee, to bring up every point in the nature of complaints which would appear to have been accumulating for a considerable number of years. I submit that these affairs could have been dealt with long before this, and if that course had been taken it would have left this Committee with a clear issue for decision unclouded by a mass of unsatisfied and unventilated grievances).

In favouring an extension of the licence I am only interested in the cases brought forward by the Objectors and can only say that I was not favourably impressed. The Municipal Council's objections are more or less unsubstantiated and are based on examples of great cities in Europe; some, however, of their minor points are worthy of consideration in the event of the extension being granted. The one consumer who appeared on the side of objection can, to my mind, be discounted as he made no case whatever except that nationalization seems to be his object in respect of everything. The District Council seemed to me to offer objection without any constructive criticism or alternative and, apart from making a formal objection appeared satisfied with existing conditions as a matter affecting a very wide area, apart from the country as a whole, representation by objectors would appear to be exceedingly limited and unrepresentative.

Due credit must be allowed to this Company in the part they have taken in the rapid progress of this country, a progress which has been beset by every imaginable difficulty. As a resident of 22 years I am in a position to make comparisons and I can only say that this country has every reason to congratulate itself on the facilities which it now enjoys, brought about by the persistent faith of private enterprise and it is this faith that we must be very careful not to undermine and which it is up to us to encourage for our future benefit.

benefit.

It is with these views that I make the definite statement of being in favour of the extension applied for, being granted;

(Sgd.) L.F. Evans.