Mr Blair
J

1920
– Jany

Last previous Paper.
M/
3951

Nairobi Electric Power Co. Concession

Is draft letter which suggests should be sent to the Company.

Mr. Bate
Sir H. Read

Mr. McBlair's proposal is as usual fluid & attempts, but there are some points which we ought to make up if my idea that we ought to indicate to the Co. that we understand to be implied by their surrender under the concession and Mr McBlair's idea that we cannot prejudge the rights in their letter of 1918 (68484) unanswered we accepted.

Until a decision is taken on the general question of their being exempted from the Tax & and in the points mentioned above has been taken I do not add to my

Nairobi Elec. Power Co.
Concession
11 Mar 20
M/10230/20

Subsequent Paper.
M/
7287

(26069—4 10) Wt. 26689—35 50,000 11/19. H. Sk. G. 122/41.

9/12769/20

Minute & memo on 3951, but or
attempt to draft a letter to Mr.

W.C.S. 29.1.20

I agree with Mr Bottomley on 3951, but I do not see what is to be gained by writing as proposed by Mr. M. Island.

I think all that it is necessary to point out to Mr Low is that as they have insisted on their legal rights the whole incidence in future must be regulated solely by reference to the terms of the concession as that alone can now be extended. Upon any such reference the legal rights provided for therein of that the terms of the concession will be strictly enforced — including such detailed matters as Mr Bottomley proposes — except that the matters in that minute (1) might be omitted.

H.S. 29/1/20

Let us have a draft for consideration

alone
H.S.
29/1/20

P.S. I have
with an alternative draft.
I have discussed the original draft with

with Mr Bustle, who thinks that from the legal point of view the comments on the various clauses in para 4 of the draft, with the exception of the last two sentences which are misinterpreted in the new draft, are not required & that the mention of inconsistency is superfluous & should be deleted. As regards para 2 of the draft

5

As regards para 3 of the original draft it will be seen from the minute on 3951 that legal authorities both in the Port & in the C.O. are of opinion that we cannot dispute the interpretation of this sentence & that we must abide by the strict letter of the concession. The point raised in the second sentence of para 2 of the draft is covered by para 2 of the draft which is a portion of the construction of the terms of the concession. It seems unnecessary to retain the last paragraph of Mr Bottomley's minute. The draft letter to the Secretary of State is in my view unsatisfactory, because it leaves the impression that we shall come to an intolerable state of affairs if we go into detail

I prefer the shorter draft.
H.S.
29/1/20

draft

The Minister of [illegible]
Re: The Niagara Falls [illegible]
Convention of 1906

Sir,

Having the honour to state that [illegible] to the decision contained in the communication of Mr. J. H. Moss, with which the [illegible] concurred, to forward the contention of this Company that Main Convention of 1906 is extended to 1931 the date of the original convention, without being subject to the provisions of the B.N.A. Act 919, that in my opinion, in communicating the decision to the Company, the Department [illegible] in order that [illegible] to be carried [illegible] the same [illegible] many [illegible] clearly defined.

Further, as I complained, [illegible] considerations [illegible] the Company [illegible] of Department could [illegible] the [illegible] advantages [illegible] of [illegible] a [illegible] of the [illegible] a [illegible] communication [illegible] the [illegible] [illegible] knowledge [illegible]

As verbally communicated to you at the meeting at the C.O. on the 19th inst. the Sec. of State has decided to permit your ~~contention~~ ~~that~~ claim to be allowed to continue to exercise the rights granted to you by the agreement of 26 July 1906, until the date fixed therein for its termination on the 7th April 1931 [illegible] your being restored to the possession of the E.P. Estate 1929.

[illegible] of [illegible] other [illegible] the [illegible] of the [illegible] [illegible] the [illegible] Commercial Chief [illegible] referred [illegible] that [illegible] alternative [illegible] by you to the effect [illegible] to your interest [illegible] a Licence subject to [illegible] unless you were [illegible] compensated in respect of [illegible] and [illegible] the complication [illegible] [illegible] [illegible] [illegible] [illegible]

secured to you in every way and the immeasurably greater scale of operations made possible to you under such a Licence, the grounds advanced in support of your claim were controverted by the facts in the foregoing and also that in view of the exceedingly lengthy period which was [illegible] to you [illegible] your operations [illegible] that you have not done so [illegible] that on the other hand [illegible] been subjected [illegible] the [illegible] in consequence [illegible] approved [illegible] State [illegible] the general [illegible] which you [illegible] the [illegible] called for [illegible] [illegible] the [illegible] a Licence [illegible] your [illegible] of [illegible]

[illegible]

[illegible] 35 cents per lamp. In June 1914 an agreement for a further term of [illegible] was entered into between your Council and the Mon. Town. Metal filament lamps of 32 C.P. requiring only 40 watts were substituted in the distribution in July 1915, and there was a reduction of charge to the Corporation supply by 50 cents per lamp, requiring 60 watts per lamp. This change was effected.

The 1914 agreement offered in 1918 and during negotiations for the renewal your Memorialists quoted a price for an electric [illegible] of lighting of [illegible] lamps [illegible] the Corporation [illegible] lamps [illegible] Corporation [illegible] Act 1915-19. The [illegible] Legislative Council [illegible] from [illegible] Local Government Board [illegible] 1918-19. The charge for the supply for the street lamps would be increased [illegible] the Mon. Town [illegible] approximately [illegible] [illegible] about [illegible] [illegible]

[illegible] letter from [illegible] acknowledged on the [illegible] to the effect that [illegible] [illegible] been [illegible] [illegible] [illegible] [illegible] of your Corporation [illegible] [illegible] the charge for a supply of electric [illegible] the Municipal Commissioners of Narrandera for the lighting of the [illegible] lamps, [illegible] be completed [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] charges for supplies. [illegible] from clause 13 that the [illegible] clause 11 [illegible] to be [illegible] the Municipal Commissioners [illegible] cost of the [illegible] lighting [illegible] the Municipal Commissioners [illegible] [illegible] Particulars are as regards other [illegible]

[illegible] after investigation [illegible] the Municipal [illegible] lighting, [illegible] [illegible] 16 [illegible] lamps for 6 hours [illegible] per month [illegible] for by the Mining [illegible]

[illegible] charge for [illegible]
[illegible] you have [illegible]
[illegible] Clause 13 for the whole
period of your present flat rate
charge. By these clauses we
are charged the higher twenty five
cents per 40 watt lamp per month,
with deductions for various quantities
over 7 in number, and business users
pay two rupees per 40 watt lamp
per month, for an unrestricted time
[illegible] these you have always
resisted. The reply to the Mem.
[illegible] following day.
[illegible] Clause 19 you were required
to lay in the Park the accounts
under the Concession. This you did
not do and the [illegible] informed the
[illegible] Mem. these accounts could
not be seen as they were kept in
[illegible]
Come now to the subject of your
letter [illegible] Regard to
[illegible] the Council allow the Government
[illegible] to pay without [illegible]
[illegible] disagreement.
[illegible] the subject of [illegible] in [illegible]
[illegible] to the [illegible] of [illegible] the
[illegible] of [illegible] hereafter to
[illegible] the [illegible] have to [illegible]
[illegible] [illegible] these allegations
[illegible] [illegible] to make any specific charge.

[illegible] necessary [illegible]
into the matter at very length [illegible]
[illegible] the [illegible] from the
[illegible] in his possession [illegible]
that these allegations are entirely [illegible]
unfounded and that the very reverse is
the case. The [illegible] to understand
how if your Board of Directors have
knowledge of these facts they could [illegible]
support the allegations made on their
behalf.

On the subject of the Demand [illegible]
of power which has been received on
various occasions you state in the
[illegible] paragraph 2 (a) of your letter [illegible]
to the above that which you have [illegible]
that your consumers did not [illegible]
any obligation to provide [illegible] This
is understood to mean that you [illegible]
consider that you are under no obligation
to provide any other [illegible] than
[illegible]
[illegible] contention the [illegible]
[illegible] and requires
you shall [illegible] that [illegible]
in law [illegible] of [illegible] if you
[illegible] under your concession
[illegible] to be [illegible]
[illegible] Clause 2 [illegible]
for and [illegible] the [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] to give [illegible]

to maintain a sufficient supply of that commodity to the public.

This is the essence of your contract. It is only incidental to the purpose of this contract that you asked for and obtained the right to use certain water courses — one only of which you have put into [illegible].

[illegible] given all that you [illegible] to say, you and God-[illegible] [illegible] with the ~~[illegible]~~ rights [illegible].

[illegible] from the specific provisions of the contract, it cannot possibly be [illegible] that the exclusive right to [illegible] to the [illegible] enjoyment of which [illegible] authorisation, does not [illegible] any obligatory obligation to supply.

It is [illegible] to the contract how you generate the supply. The performance [illegible] of the contract would have [illegible] in the matter to both parties. God would have ~~[illegible]~~ prevented [illegible] of steam plant. In this [illegible] the longer you exercise the freedom [illegible], which is yours, without reference [illegible].

[illegible] the reference to the question of your [illegible] in connection with the obligation [illegible] paragraph (b) [illegible] to, you state therewith the [illegible] that of the May 1911 no notice [illegible] has been given to you, and that

with regard to the default of 1911, "the Govt were quite satisfied with the measures then taken by the company and took no further action."

On the same matter you stated ~~[illegible]~~ to the Prot Govt in your letter of 27/4/16, para 3, that —

"the steps were formulated before the shortage of water season of the next year (1912). The results anticipated were obtained and the record can be found by the contents of day complaint of inadequate water supply in that year."

Both of these statements are [illegible] Govt did not approve [illegible] as alleged, and the records of [illegible] show that three communications with reference to your inadequate [illegible] were made to you in 1912, viz. on 7/4/12, 27/4/12, and 2/8/12.

In the last of these letters you [illegible] "the Excellency would be glad to know what steps you propose to take to provide a remedy. He would remind you that the interests of existing power of power and light users must be conserved because a larger reserve for the supply of electricity is under consideration." This expressly [illegible] the attitude [illegible] from consistently [illegible] before the Govt ~~[illegible]~~.

The Govt's complaints [illegible] received since 1911, and [illegible] only

[illegible] steam driven [illegible] water driven plant of 360 Kilowatts in full working order.

The plant installed at No 2 Fall, Niagara might be capable of an output of 360 Kilowatts if the minimum flow of the river was sufficient to drive it, which it was not. In your letter of 27/7/16 to the Prof. [illegible] stated that in 1912 you were going to move to No 1 Fall one of the machines from No 2.

"which by the experience gained in 1911, had been proved to be not usable there."

On various occasions since that experience referred to you have found that the minimum flow of the river was barely sufficient to drive one of the machines at No 2 Fall with an output of 120 Kilowatts.

Therefore the maximum capacity of your water driven plant does not be calculated at more than 120 Kilowatts. [illegible] to be [illegible] fact, while the demand for [illegible] power [illegible] has been remedied [illegible] 57,000 [illegible] unprovided [illegible] water driven plant.

[illegible] steam [illegible] the [illegible] of your letter [illegible] to be your desire to provide adequate reserve for generating or increasing the [illegible] supply [illegible] in your letter [illegible] regarding the suggestion that [illegible] existing defaults. As [illegible] to you at the meeting of the 19th [illegible] generating capacity of your plant is concerned you have been able to [illegible] for a certain number of years, [illegible] when the seasonal [illegible] increased the flow of the Niagara River to an [illegible] you to put into service temporarily one or both of the portable machines at the generating station.

Referring to the suggestion existing [illegible] from persons [illegible] to be [illegible] to make statements as to the capacity of the plant [illegible] and as best to be installed [illegible] makes the following [illegible]

[illegible] from these statements [illegible] of a [illegible] of 600 Kilowatts, which [illegible] increased to 720 Kilowatts [illegible] of 360 Kilowatts.

[illegible] plant is stated to comprise

[illegible]

The Under Secretary of State for the Colonies

Reference The Nairobi Electric Power Company Concession of 1906.

.....

Sir,

I have the honour to state with reference to the decision arrived at, on the recommendation of Mr. J.H. Rider, with which I fully concurred, to permit the contention of this Company that their concession of 1906 is extended to 1931, the date of its normal termination, without being subject to the provisions of the Electric Power Ordinance, 1919, that in my opinion, in communicating this decision to the company, the points raised in their letter of 1.12.19 should be reviewed in order that the position may be clearly defined.

Further, as I completely fail to understand how the company's Board of Directors could support the contentions advanced on their behalf if they had a knowledge of the true position, a communication of the nature suggested may lead them to that knowledge and will strengthen the hand of the Government in any future action which might become necessary, in fact may be necessary in some respects to make such action possible.

For your assistance I suggest that the communication to the company might be drafted on the following lines:-

As verbally communicated to you at the meeting at the Colonial Office on the 19th instant, the Secretary of State has decided to permit your claim to be

be allowed to continue to exercise the rights granted to you by the Concession of 26th July, 1906, until the date fixed therein for its termination on the 7th April, 1931 without your being subject to the provisions of the Electric Power Ordinance 1919.

For the purpose of giving effect to this decision the Government of the East Africa Protectorate will introduce in the Legislative Council the Bill of an Amending Ordinance, forthwith.

The claim above referred, and now permitted, was alternative to that made by you to the effect that it was not to your interest to accept a Licence subject to the Electric Power Ordinance unless you were fully compensated in respect of certain specified matters and until considerable modification of this Ordinance had been effected, at least in so far as you were concerned, but in what manner was not apparent.

After full consideration of this alternative claim, and after hearing Counsel on your behalf, the Secretary of State concluded that apart from the great benefits immediately secured to you in every way and to the immeasurably greater scope of operations made possible to you under such a Licence, the grounds advanced in support of your claim were controverted by the facts in his possession, and also that in view of the exceedingly lengthy period which has been accorded to you in which to formulate and present your objections to this Ordinance and that you have not done so, and that on the other hand the Ordinance has been subjected by the Secretary of State

and

and the Protectorate Government to all the consideration and criticism to which it was possible to submit it and by competent authorities is universally approved, the Secretary of State has further concluded that the general and undefined objections which you have expressed could not be substantiated and that a modification of the provisions of the Ordinance was not called for by the public interest or by any other of a true nature.

Notwithstanding these conclusions the Secretary of State with the full concurrence of the Protectorate Government was ready and offered to concede the extension of the period of a Licence to you for that portion of your Area within and adjacent to that of the Municipality of Nairobi - any division of this portion only being possible with your consent - to 42 years in place of the 25 years now stated in the Ordinance and under which your Licence for the remainder of the area - not in any township area - can be held by you in perpetuity.

Further the Secretary of State also with the full concurrence of the Protectorate Government while quite satisfied that it was not necessary, and in fact was not to a Licensees advantage but as it might be considered that it was a matter of opinion, was ready and offered to concede the extension of the period for conversion to standards from 4 years to 7 years or such longer period as the Governor in Council might approve.

Any other matter which with all the time accorded you for that purpose you could have shown might be matters of opinion, or otherwise an improvement in this legislation, although unduly belated, would have received similar consideration.

Your

Your incomprehensible action in refusing the terms offered leaves the Secretary of State no alternative but to require you forthwith to fulfil the obligations imposed on you by the Concession of 1906.

Relating to this requirement and in reply to your communication of 1.12.19, I have to call your attention to the following matters:

(a) By clause 3(4) of your concession you are prohibited from diminishing the flow of the river below your works. This condition you have broken repeatedly throughout the period of your concession by stopping the entire flow of the river for varying times up to 17 or 18 hours per day for months at a time. The cause of this default must be remedied by you immediately as apart from your obligations in the matter, forthcoming water legislation will necessarily contain provisions which will deal with this matter without reference to anything contained in your Concession.

(b) By clauses 8 and 16, you are required to provide such equipment etc. as will give and maintain a sufficient supply of electricity. Apart from the provisions necessary for generating such an amount of electricity as would give and maintain a sufficient supply, you have been in default under these clauses for a number of years. It is apparent to the Secretary of State from the correspondence which passed between yourselves and the Government in 1914 and 1915 that you have been aware of this for a considerable period. The letter of the Protectorate Government of 29/4/15 to your then Acting Managing Director, Mr. E. A. Monkhouse, directed your attention to a number of communications, including those just referred to, previously

previously addressed to you on this subject. This letter you merely acknowledged with a remark to the effect that previous to its receipt, the correspondence referred to had been perused.

Further reference to this subject is made in a subsequent paragraph of this letter.

(c) Clause 11 of your Concession specifies the manner in which the charge for the supply of electricity to the Municipal Committee of Nairobi for the lighting of the street lamps, shall be computed. Clause 13 provides that you shall not show any undue preference with respect to your charges for supplies. It is obvious from clause 13 that the provision in clause 11 was intended to benefit the Municipal Committee, if a low cost of the previous oil lamp lighting made that possible. In any case the Municipal Committee are entitled at least to the same treatment as is accorded to other people.

It appears that after investigation of the cost incurred by the Municipal Committee for oil lighting, this was found to be, approximately, six cents per lamp per night, and the price for the supply per 16 candle power electric lamp for 6 hours per night was fixed at two rupees per lamp per month; the bulbs being paid for by the Municipal Committee.

The lamps installed were of the carbon filament type, requiring a supply of 56 watts per lamp. In June 1914 an agreement for a further term of 4 years was entered into between yourselves and the Municipal Committee. Metal filament lamps of 32 candle power but requiring only 40 watts were installed, to be substituted in July 1918, without any increase of charge to the Committee for the supply, by 50 candle power lamps requiring 60 watts per lamp. This change was effected.

The 1914 agreement expired in 1918, and during negotiations

negotiations for its renewal, your manager quoted a price for an extension of the time of lighting of certain lamps, which was considered reasonable; some delay occurred in these negotiations and on 1.5.19 the quotation referred to was withdrawn, it was stated on instructions from your London office, and the Committee informed that from that date - 1.5.19 - the charge for the supply for the street lamps would be increased by what the Municipal Committee state with reference to these 60 candle power lamps, is approximately 50 per cent, while the consumption of electricity is only about 7 per cent greater than that of the 16 candle power carbon filament lamps first in use.

Further it appears that in the matter of your changes for public lighting you have been in default under clause 13 for the whole period of your present flat rate charges. By these, domestic users are charged one rupee, twentyfive cents per 40 watt lamp per month, with reductions for various quantities over 7 in number, and business users pay two rupees per 40 watt lamp and three rupees per 60 watt lamp per month, for an unrestricted time supply, while you have always restricted the supply to the Municipal Committee to 6 hours per day.

(d) By clause 19 you are required to keep in the Protectorate, the accounts under the concession. This you do not do and have informed the Protectorate Government that these accounts could not be seen as they were kept in London.

Generally on the subject of your letter of

1/12/19

1/12/19, the Secretary of State desires to say that he cannot allow the contentions made therein to pass without noting his disagreement.

On the subject of what in effect amount to allegations against the Protectorate Government of showing hostility to yourselves, the Secretary of State has to point out that in making these allegations you have failed to make one specific charge.

It is not considered necessary to enter into this matter at any length, but the Secretary of State desires to say that from the facts in his possession he is satisifed that these allegations are not only totally unwarranted, but that the very reverse is the case. The Secretary of State fails to understand how, if your Board of Directors have a knowledge of these facts, they could possibly support the allegations made on their behalf.

On the subject of the serious shortage of power which has recurred on various occasions you state in effect in paragraph 2 (C) of your letter, with reference to the steam plant which you have installed that your concession did not impose on you any obligation to provide such plant. This is understood to mean that you do not consider that you are under any obligation to provide any other than water driven plant.

With such a contention the Secretary of State distinctly disagrees and requires that you shall clearly recognise that neither in law nor in equity could your obligations under your concession be so limited.

By clause 2 of your contract you asked for and obtained the exclusive right to supply electricity in a certain area, and you undertook in consideration of the price to be paid, to give when required and to maintain

maintain a sufficient supply of that commodity to the public.

This is the essence of your contract.

It is only incidental to the purpose of this contract that you asked for and obtained the right to use certain water powers - one only of which you have put into service.

You were in fact given all that you asked; that is to say, you - not Government - asked for this contract with its rights and obligations.

Apart from the specific provisions of your contract, it cannot possibly be contended that the exclusive right to supply, to the impossibility of the impairment of which you attach great importance, does not entail on you a compulsory obligation to supply.

It is immaterial to the contract how you generate the supply. Were it otherwise the provisions of the contract would have given rights in the matter to both parties and Government might have prevented the introduction of steam plant. In this matter however you exercised the freedom of action which is yours without reference to Government.

With

With reference to the question of your default in connection with the obligation just referred to, you state in paragraph 2 (A) that with the exception of that of May 1911, no notice of default has been given to you and that with regard to the default of 1911 "the Government were quite satisfied with the measures then taken by the company and took no further action."

On the same matter you stated to the Protectorate Government in your letter of 27th July 1916 paragraph 3 that :-

"The steps were completed before the shortage of water season of the next year (1912) The results anticipated were obtained and no record can be found by the company of any complaint of inadequate supply in that year."

Both of these statements are incorrect. Government did not express satisfaction as alleged and the records of the Protectorate Government show that three communications with reference to your inadequate supply, were made to you in 1912, viz. on 7th June 1912, 27th August 1912, and 2nd September 1912.

In the last of these letters Government concludes :

"His Excellency would be glad to know what steps you propose to take to provide a remedy. He would remind you that the interests of existing users of power and light must not be overlooked because a larger scheme for the supply of electricity is under consideration".

This expresses the attitude which has been consistently maintained by the Protectorate Government.

Government.

The default complained of has repeatedly recurred since 1911, and unless you adopt competent steps for its remedy, may again recur.

This default may briefly be stated to be your failure to provide adequate means for generating or maintaining a sufficient supply.

On this point, in paragraph 2 (D) of your letter you protest - in the present tense - against the suggestion that there is any existing default. As was pointed out to you at the meeting of the 19th inst, so far as the generating capacity of your plant is concerned you have been able to say this for an uncertain number of months every year when the seasonal rains have increased the flow of the Ruiru River so as to enable you to put into service, temporarily, one or both of the surplus machines at this generating station.

Referring to the suggested existing default you then proceed in the same paragraph by way of proving that such is not the case, to make statements as to the capacity of the plant now, and about to be installed, on which the Secretary of State makes the following observations.

> It would appear from these statements that you have at present plant of an effective capacity of 600 Kilowatts, which will shortly be increased to 720 Kilowatts, for dealing with a maximum load of 340 Kilowatts.
>
> This plant is stated to comprise additional to steam driven machines, water driven plant of

360 Kilowatts, in full working order.

The plant installed at No.2 Fall Ruire, might be capable of an output of 360 Kilowatts if the minimum flow of the river was sufficient to drive it, which it is not.

In your letter of 27th July 1916 to the Protectorate Government you stated that in 1912 you were going to move to No.1 fall, one of the machines from the present works No.2. - "which by the experience gained in 1911, had been proved to be not suitable there".

On various occasions since the experience referred to you have found that the minimum flow of the river was barely sufficient to drive one of the machines at No.2 fall with an output of 120 Kilowatts.

Therefore the effective maximum capacity of your water driven plant dare not be calculated at more than 120 Kilowatts.

Your inexplicable failure to recognise or to show practical appreciation of this fact, while the demand for the supply of electricity was continually increasing, means that the default of 1911 has not been remedied.

That on the contrary as you were informed by Government on 5th February 1915 it had then recurred in a more aggravated form than ever before.

This water driven plant is supplemented by two steam driven machines, the past performance of which cannot possibly be claimed to have been satisfactory.

Assuming reasonably good maintenance

and

and behaviour of this plant the combined continuous effective capacity of the steam and water driven plants - during the months of low water - must be estimated at not more than 240 Kilowatts.

When the third steam driven machine which you state is now on its way to the Protectorate, is installed, the maximum capacity of your whole plant will be equal to four machines, or 480 Kilowatts.

nder the best conditions of control electric station engineering, including the most suitable types of machinery, the continuous effective capacity of such a plant would not be calculated at more than that of three machines, or 360 Kilowatts.

If it is assumed that the continuous effectiveness of your plant will be 300 Kilowatts within the next few months it must be noted that on your own figures this will do little more than meet the requirements of present connections.

o provision is made for additional requirements now apparent or for those which will mature in the near future.

Among these may be mentioned the lighting of Government Second Class and subordinate officers bungalows and Government workshops where the present motive power is to be replaced by electricity.

This is also the case with regard to Kabete Laboratory, en route to which, as your Manager has ascertained there is a considerable

load

load to be catered for. A large amount of building is proceeding and is contemplated in Nairobi which will require supplies for both power and lighting purposes. Supplies are now required for cooking.

Obviously these demands will amount to a considerable total which from the complacent nature of your statements on the subject of the capacity of your generating plant, does not appear to have entered into your calculations.

Under these circumstances it should be apparent to you that the augmenting of your generating plant or means of supply either by the redistribution of the present or the provision of additional machinery, or by other expedient is a necessity which calls for your earnest and immediate attention.

Further on the subject of the default referred to in paragraph (b) (page 6) it should also be apparent to you that the same attention is called for on the subject of your distributing equipment.

In this connection the Secretary of State would remind you that whereas in the past you have been able to control the demand for the supply of electricity to a very great extent by the measure of activity or otherwise which you cared to display in fostering it, the conditions have now changed by the appearance in your area of energetic competitors whose business it is to create an increased demand by selling to the public all the electricity consuming devices possible. Of such devices domestic cooking and other apparatus will undoubtedly form a large part, for the connection of

which

which the capacity of your distributing equipment is inadequate.

Under the circumstances in which this letter is written the Secretary of State does not consider it necessary to enter upon a refutation of the other matters raised beyond saying that in no case are they substantial

The Secretary of State also desires it to be understood that after conveying his decision as first referred to the object of this letter is to remove any doubt or ambiguity which you may entertain as to your present and future position.

Further that while the notice of default of 1911 might be held to be still effective that notice and any notice given to you by this letter will be regard ed as waived. Any default which may now exist or which may occur hereafter will be dealt with by the Protectorate Government in the manner prescribed by your concession.

The Secretary of State trusts however that the contents of this letter will receive your earnest consideration and that judicious and appreciative action on your part will promptly be evinced in the public interest.

Rd Amd 10250

Downing Street,
4 Feb ~~January~~, 1920.

DRAFT.

The Secretary,
THE NAIROBI ELECTRIC POWER AND LIGHTING CO.LTD.

MINUTE.

Mr. Bottomley, 31.1.20.
Mr. Bushe, 31/1/20.
Mr.
Mr. Grindle.
Mr. H. Lambert.
Mr. H. Read. 2/2/20
Mr. G. Fiddes. 2
Mr. Emery.
Lord Milner.
Mr. Conson.

Sir,

I am directed to acknowledge the receipt of your letter of the 22nd of January, enclosing a copy of the shorthand notes taken at the meeting of the 19th of January at which the position of the Nairobi Electric Power and Lighting Co. was discussed.

2. The result of that discussion was to show that the Company desired that the original concession of 1906 should remain in full operation. The S. of S. after full consideration has decided to agree to this solution of the question, but he desires me to make it clear that, as the Company have insisted on their legal rights, the whole matter must in future be regulated solely by reference to the terms of the concession, that there cannot be extended to them any facilities or privileges not provided for

Make extra copies for
(to be sent later).

for therein, and that the terms of the Concession will be strictly enforced in the future.

As the representatives of the Company were informed at the discussion, the provisions of the temporary Ordinance as to the maintenance of electric supply were taken from the new Ordinance, and when the general Ordinance comes into force the Maintenance of Electric Supply Ordinance will be repealed, so that these provisions will not affect the Nairobi Company in view of the fact that they will be exempted from the operation of the general Ordinance. At the same time, the experience in the case of the Mombasa Electric Lighting Company, which led to the passing of the Maintenance of Electric Supply Ordinance, shows that circumstances may arise in which the Govt. must make provision for safeguarding an important public service, and it is therefore not possible to say that, in the event of continued default of any kind on the part of the Nairobi Electric Power and Lighting Company, emergency legislation will not be introduced.

Generally, it is to be understood that the Concession is to be read by itself and not construed in the light of any past corres.

On the receipt of your reply to this letter, arrangements will be made for the preparation of an amending Ordinance which will remove from the operation of the Electric Power Ordinance the area covered by the Concession of the Nairobi Electric Power and Lighting Company.

I am,

(Signed) H. J. READ.

Downing Street,

~~January~~, 1920.

DRAFT.

The Secretary,

NAIROBI ELECTRIC POWER AND LIGHTING CO. LTD.

Sir,

I am directed to acknowledge the receipt of your letter of the 22nd of January, enclosing a copy of the shorthand notes taken at the meeting ~~at the C.O.~~ at which of the 19th of January ~~when~~ the position of the Nairobi Electric Power and Lighting Company was discussed.

2. The result of that discussion was to show that the Company desired that the original concession of 1906 should remain in full operation. The S. of S. after full consideration has decided to agree to this solution of the question, but he desires me to make it clear that, as the Company have insisted on their legal rights the whole matter must in future be regulated solely by reference to the terms of the concession, that there cannot be extended to them any facilities or privileges not provided for

MINUTE.

Mr. Bottomley, 31.1.20

Mr. Fiddes 31/1/20

Mr.

Mr. Grindle.

Sir H. Lambert.

Sir H. Read.

Sir G. Fiddes.

Mr. Amery.

Lord Milner.

(See alternative draft letter)

for cons.

extra copies for Sir W. Clarke at later)

for therein, and that the terms of the Concession will be strictly enforced in the future.

2. It is to be understood that the arrangement now agreed to is (as was the discussion of the 19th January) without prejudice to either side as regards the question whether the Concession was actually extended to 1931 at the end of its first ten years of its currency, and the question whether there has been, or is, a default in the supply of electricity. The S. of S. also desires to guard himself against appearing to accept the views expressed in your letter of the 21st December, and in particular the implication under C in that letter that the Company are under no obligation to supply electricity in excess of that which can be obtained from the plant at their disposal under the Concession.

(68484)

I venture to think that this should go in. G.A.S.

On particular Clauses of the Concession, it is considered desirable to make the following comments with a view to clear the position in order that ~~there may be misunderstanding in the future.~~ for the very future.

Clause 3. The provision of water by the Govt. for the Company's purposes is limited to the ~~purposes~~ mentioned in the clause and subject to the conditions therein laid down. ~~In particular,~~ attention ~~must be~~ drawn to the provision of sub-clause 4 to the effect that the "Contractor shall not diminish the flow of water in such river below such point as last aforesaid". The Company will appreciate that ~~water other than those specified~~ in the Concession must be reserved for other purposes.

Clause 18.

Perhaps attached in a footnote to this

Clause 18. It should be understood that the consent of the Govt. will not be given to any proposal of the Company to assign, sub-let, transfer or otherwise dispose of the Contract. It will be open to the Company to dispose of their business to anyone who can obtain a licence from the Govt. to supply Nairobi with electricity under the terms of the new Electric Power Ordinance or other general legislation of the Prot. for the time being relating to electricity.

Clause 21. The S. of S. appreciates the hope expressed by Mr. Leslie Scott, K.C., M.P., in the course of the discussion that an ample supply of electricity will be maintained in the future, and he desires it to be made clear that the Govt. have no wish in any way to ~~press hardly on the Company.~~ make the Company's position difficult. On the other hand, it is the duty of the Govt. to ensure that an adequate supply is in fact provided and for this purpose the right to give notice under Clause 21 will be freely exercised. The provisions of this Clause are very favourable to the Company, as it would be possible for them to continue default for 5 months 29 days without risking forfeiture of the Concession, but it is ~~essential~~ will be required that no ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~should~~ be permitted. As the representatives of the Company were informed at the discussion, the provisions

of

of the temporary Ordinance as to the maintenance of electric supply were taken from the new Ordinance, and ~~I am to confirm what was said at the meeting that~~ when the general Ordinance comes into force the Maintenance of Electric Supply Ordinance will be repealed, so that ~~its~~ new provisions will not affect the Nairobi Company in view of the fact that they will be exempted from the operation of the general Ordinance. At the same time, the experience in the case of the Mombasa Electric Lighting Company, which led to the passing of the Maintenance of Electric Supply Ordinance, shows that circumstances may arise in which the Govt. must make provision for safeguarding an important public service, and it is therefore not possible to say that, in the event of continued default of any kind on the part of the Nairobi Electric Power and Lighting Company, emergency legislation will not be introduced.

Clauses 22 and 23. The S. of S. is anxious that the Company should ~~understand~~ know that there is no present intention of the supply of electricity being taken over by the Govt. It is impossible to forecast what the conditions may be when the Concession expires or is determined, but the Clauses provide definitely for the alternative of the undertaking not being taken over by Govt., and the Company must clearly understand that no prospect can be held out that they will get back the capital already spent or any capital required for the further supply of electricity. It was for this reason that it was provisionally agreed that the Company would be willing to take advantage of the provisions of the new Ordinance (as it is to be amended) in view of the long term which they would secure under the provisions of the new Ordinance.

5. Finally, ~~Subject to the above comments~~, it is to be understood that the Concession is to be read by itself and not construed in the light of any past corres.

6. On the receipt of your reply to this letter, arrangements will be made for the preparation of an amending Ordinance which will remove from the operation of the Electric Power Ordinance the area covered by the Concession of the Nairobi Electric Power and Lighting Company.

I am, etc.,