Blair

1919

Previous Paper.

Electric Power Order

In memo. sep

Next subsequent Paper.

EAST AFRICA PROTECTORATE.

THE ELECTRIC POWER ORDINANCE, 1919.

Letter to the

Under Secretary of State for the Colonies

from the

Electrical Engineer to the Protectorate Government.

To The Under Secretary of State
for the Colonies.

Ref. The East Africa Protectorate Electric
Power Ordinance 1919.

Sir,

I have the honour to inform you that I have had the pleasure of discussing in general terms, matters in connection with the above mentioned Ordinance with Mr Bottomley and Mr [illegible].

At this interview it was realised that the Protectorate Government had not put the Colonial Office in possession of a knowledge of many facts and circumstances of vital importance to the protection of the public interest particularly in connection with the affairs of the Nairobi Electric Power Co. It also appears to be that the Protectorate Government, or at least some of its officers, including myself, and also the public of Nairobi, have been labouring under a misconception as to the attitude of the Colonial Office, on the matters in question. As indicating the nature of this misconception, I may say that the Nairobi Cons. Consulting Engineers are reported to have informed one of their employees who was leaving for the Protectorate, that they took no notice of the officials in the Colony, as they had friends at the Colonial Office and would [illegible] all they wanted.

Although

Although this accurately described their conduct, it would have been regarded as mere [illegible] for the fact that certain statements made by the Company with the object of securing the main definite commitment of Government, coincided [illegible] point of time with steps being or [illegible] taken by Government. It is [illegible] that this misconception is attributable either directly or indirectly to inadequate information from the Protectorate, which permitted what the Director of Public Works has aptly described as the undesirable [illegible] a [illegible] form of negotiation carried on by the [illegible] which they had access to the [illegible] Office and to the Protectorate Government.

"[illegible] able to [illegible] misunderstandings [illegible] of the [illegible] to [illegible] the [illegible] have happened to suit [illegible] process for the time."

[illegible] it is incumbent on me to reveal to you as a position of the [illegible] gravity, involving as it does [illegible] public [illegible], and in some [illegible] charges against the integrity of the Protectorate Government and the Colonial Office.

[illegible] of the public servants [illegible] including essentially [illegible] defence of the public interest, [illegible] be attributed, [illegible] and circumstances entirely [illegible] serious reservation [illegible] our [illegible] statement [illegible] however [illegible] which [illegible] contains [illegible] be regarded as [illegible] impeach[illegible]

impeaching the integrity or ability of my colleagues in the service. If any mistakes have been made either in East Africa or at the Colonial Office, I respectfully ask you to consider the facts that the public supply of electrical energy is the most involved of all public services, and that it was impossible for non-technical administrative officers to realise the disaster which could and is still threatening as result from the disregard of the advice of Government's professional technical advisers, or to appreciate the nature of the undesirable difficulties into which they were partly inveigled by the adroit manipulations of the Tsavo Company, and also to consider that the war was responsible for an unusual pressure of work and depletion of staff.

With the object of presenting the present position as clearly and shortly as possible I have spent some time in revising and reducing the memorandum now being submitted. It is however incumbent on me to ensure that the present serious situation is not made worse by the insufficiency of information at your command on the subject dealt with.

I have therefore decided that it would be unwise to further abridge the matter submitted. By implication it will be understood that much could be added to what I have already written.

I say here say briefly that these memoranda show:-

That the misconduct and abuse of their powers by the Nairobi Electric Power Company

Company, has for years been a public scandal.

That the continuance of this scandal which has caused great monetary loss throughout the district has worked the public and local bodies to a state of intense indignation, which now can be placated only by measures of stern justice.

That for permitting this scandalous condition to continue, the public blame Government or the Colonial Office, or both.

That Government was from the commencement unwise in not referring the Company on the question of water power to the D.P.W., from whom at any time they could have obtained under the established and equitable Water Rules more water power than they have ever had any prospect of utilizing.

That when Government had obtained professional advice on electro-technical matters they acted in direct opposition to or in complete disregard of the advice of their technical advisers.

(An exception to this statement must be made of the period of the Administration as Acting Governor of Mr (now Sir Charles) Bourne. For until Sir Charles took the reins of Government could we get the electric power bill laid before the Legislative Council. And otherwise again as it was possible for him to do so, Sir Charles gave effect to the advice of his engineering experts. There is of course also excepted the Administration of His Excellency Sir E. Northey).

That by following the advice so persistently given

given the public interest would have been protected in 1915 and the present position could not have arisen.

That the unwisdom of Government in disregarding the opinions and advice of the experienced professional advisers of the Secretary of State and of the Protectorate Government, and the rash intrusion of non-technical officers of Government into the techniques of this involved service, have for years defeated the endeavours of the technical officers to protect the public interest, and thwarted (if not actually accomplished) Government being publicly denounced as impotent and incapable, if not worse.

That these circumstances have directly aided and abetted the endeavours and complete success of the Nairobi Company in the matter of their proposed new concession, in getting this document drafted entirely to their liking, with its unquestionable gross prejudice of the public interest. Stated shortly these circumstances as relating to the proposed concession amount to the fact that the only technical advice in which Government acted, apparently with the concurrence of the Attorney General, was that of the technical adviser of this notoriously incompetent and defaulting Company, Mr Lonhouse.

That no suggestion emanated from Government that the Company should move their works to Thika or elsewhere.

That the Company designed in 1909 to secure control of further and more valuable water powers

before

before they had any conditions as to how or when that already secured to them could be utilized.

That they then inveigled Government into "negotiations" on the subject on the grounds that in the mean time they performed their obligations.

That the statement made by their Chairman Government Commission of 1912, to justify the [illegible] for these larger water powers were gross misrepresentations, which also demonstrate incredible incompetence.

That the Company's statement that they were "invited" by Government to spend money on auxiliary steam plant pending their removal to Thika is a perversion.

That, on the contrary, they undertook by the contract of 1906, to provide any plant which might become necessary for the discharge of their obligations.

That they were aware of these obligations (vide Mr Bayldon's letter of January, 1909, and that of Mr Moulhouse of 27 April 1911)

That Government reminded them of these obligations at various states.

That the Company have scandalously ignored their obligations since 1912 (1911) and that their misconduct has aggravated to an unpardonable extent by studied and continuous misrepresentations to the public, to the Colonial Office, and to Government.

That the Company on the 10th May, 1911, received from Government formal notice of default as required under their agreement.

That

That the abatement of the default was not effected, is established by the correspondence.

That the Company on the 5th February, 1915 were informed by Government that their concession stood open to abrogation without further notice, on account of their continued default.

That Mr. Monkhouse, the Company's Consultant and Acting Managing Director of the 14th April 1915, was informed by Sir H. Belfield that it only required his (Sir Henry's) pen to cancel all the Company's powers, and that their continuance would depend on the Company fully discharging its obligations. This was confirmed to Mr. Monkhouse by a letter from Government dated 29th April, 1915.

That the venue in this matter is in the Protectorate, and the communications between the Company and Government and the Company's failures to supply, which were and still are repeatedly and publicly obvious, make it impossible in common sense to entertain any contention either that the Company had made good their default, or that Government's notice of default had been waived.

That by the 1906 agreement it was in the province of the Governor (not of the Secretary of State) to say whether the obligations of the Company had been discharged in such a satisfactory manner that the agreement might be extended.

That the Governor had decided that the Company have not so discharged their obligations.

That the Arbitrators Award, under the Street Lighting Agreement dated 17th July, 1915, is a legal

a legal judgment recorded against the Company in this respect.

That the Governor has ruled that no agreement exists and has acted accordingly.

That the eagerness and care displayed by the Company in securing the deletion from the proposed new concession of any reference to British Enactments and Board of Trade Regulations and notwithstanding the extraordinary steps taken by the Protectorate Government officers to acquaint the Company with the provisions of the proposed legislation, their studied silence on this latter subject is evidence that they had no intention of being subject to the usual conditions under which electrical supply is conducted.

That if the Company had any representations to make as to the subject they proper and in fact the only place where these could be made was to the Legislative Council of the Protectorate.

That the Company's eleventh hour antagonism to the Electric Power Ordinance, when it became obvious to them that they were not to be allowed to evade this measure which demands and will ensure the competent conduct of electrical supply, completely establishes the contention as to the motives of the Company.

That the statements made by the Company to the effect that but for the fact that the British Treasury prohibited them raising further capital they would have met all their obligations, is a deliberate distortion of the facts, as by the

exertions

exertions of Government's officers, more capital than that which they said would suffice was offered to them through Government.

That several methods by which the Company could have effected a vast and apparently required improvement in the condition of the supply of electrical energy to the public, were known and were available to them.

That the Company's non-adoption of one or more of these methods, was and is to the public and to business men and engineers of the community in particular, utterly incomprehensible.

That the only explanation for this inactivity of the Company is that the adoption of any of these methods would automatically have brought them under the provisions of the Electric Power Ordinance, i.e., would have completely annulled any prospect of obtaining this concession for the company-promoting scheme behind it.

That no doubt can be entertained on this point is evident from the fact that under the Electric Power Ordinance a bond fide and competent power supply company may obtain - almost automatically - such comprehensive powers for operation over a vast area (including all of the water powers required), and of such a liberal nature (the extent of which is automatically dependent on their good behaviour and performance), that the powers and privileges under the defunct concession and which it was sought to revive under a new one, are simply incomparable, but the Electric Power Ordinance

effectively

effectively precludes the possibility of the public interest in the public supply of electrical energy being made the subject of financial gaming-promoting speculation.

On the facts it appears to be quite plain that the Nairobi Company cannot legally contend either that the agreement exists or that they have a right to its renewal.

Also on the facts it is however incontrovertible that if any flaw admits the possibility of a legal claim, the correct course was taken in passing the Ordinance as adopted at its Third Reading. It is, of course, generally recognised that it is highly undesirable to interfere by legislation with privileges however granted even if they are anomalous and in any case, however bad the bargain might be on the one side, if the other part performed his part of the contract, it cannot be contemplated that a Legislature would interfere. In the case of the 1906 Concession to the Nairobi Company the terms were anomalous to an absurd extent. The anomaly and the absurdity were considerably aggravated by the terms of the proposed new Concession. So grossly irregular and prejudicial to the public interest were some of the provisions of both the 1906 agreement and the proposed new one, that even with competent performance so far as an adequate supply and other matters are concerned it is impossible to contemplate any legislation of a competent nature which could avoid cancelling these provisions and making the agreements with respect to [illegible] and to the

the law.

When in addition to this state of affairs, we find instead of any attempt at competent performance, that the contractor has almost from the first carelessly broken every one of his contract obligations, abused his monopoly rights to the serious and irreparable injury of the public, and continues to the very last to attempt to divert attention from his incompetence and highly reprehensible conduct by hurriedly making and repeating crassly false statements, then, I submit, it becomes the unquestionable duty of competent Government to ask the Legislature to correct the anomoly which has become a scandal.

This is precisely what has happened in the Protectorate in connection with the Nairobi Electric Power Company, and as entreaty and assistance, or the promise of stemer measures, failed to elicit from the Company the slightest practical evidence of bona fide intentions - quite the reverse - Government laid the matter before the Legislative Council and after full consideration and debate the provisions of the Ordinance were adopted unanimously.

By the immediate application of the Ordinance (which is very urgently required and the delay concerning which is causing much public uneasiness) the position will be that no question can (need) arise or be discussed as to the validity or extent of Government's ruling that no agreement exists. In any case, I examine operation Newman obtain a licence under the Ordinance. On this point the

opinions of the professional adviser to the Secretary of State, and of the Protectorate Government admit of no compromise as nothing less will or can protect the public interest.

From either the point of view of their incompetence or from that of their unconscionable conduct and misrepresentations the Company have fully deserved the cancellation of their concession at any time for years past. Therefore, the permission to apply for the necessary Licences under the Ordinance is, as the Director of Public Works has pointed out, the extent of the indulgence which can be held out to them.

On any such application being made it must necessarily be left to the Governor in Council to decide on the application, which must be made with full publicity as to intention and each of rival applicants.

If the application is granted the Governor in Council may authorize any successful applicant to acquire the Company's works. The provisions which govern such an acquisition have been elaborated with great care in order to preclude the possibility of a deserving pioneer power developer being prejudiced by the purchase. These provisions were designed at the instigation of the Chamber of Commerce and were fully considered and approved by that body and by a Select Committee of the Legislative Council. The terms of the provisions were designed to protect the very necessary and desirable element in the development of

Organisation

organisation of the power scheme of the Protectorate. It should therefore be obvious that if it becomes necessary to purchase the works of this Company the application of these provisions in the acquisition would ensure generous justice being done.

I will here conclude my reference to this Company with the information that by the law which has been in force since 190[illegible], it is not competent for the Secretary of State, or for Government to grant monopoly rights to supply in any area. Also that the Concession which was proposed was an unworkable document. That the monopoly area which it is presumed to give to the Company, Government has already been forced to allow others to enter in order to give supplies which were urgently required and which this Company had promised would be available years ago.

The plant from which these supplies are being given has been in its entirety purchased and erected during the war.

Important settlers who are engaged in large developments in what was proposed to be this Company's area, have asked that they be allowed to take supplies from works now being constructed on the Maragua River, as they decline to jeopardize their business by relying on this Company for supplies. They have been told that they may take the offered supplies. Had they been refused they would have installed their own power plants.

(initialled) J.M.B.