Electric Power Order

1919
Aug

See previous Paper.
50427

Drs suggested letter to Nairobi Electric Light & Power Co

See subsequent Paper.
50429

[illegible]—4 h.) Wt 14440—22. 25,000. 8/19. D & S. G. 129/41

DEATH LETTERS TO THE COMPANY.

MAIROBI ELECTRIC POWER COMPANY.

Rough Draft of suggested reply to the Company's letter of 7th April 1919.

Further to my letter of the 14th April on the subject of your communication of the 7th April 1919.

In my letter referred to I intimated to you that Lord Milner approved of Sir Edward Northey's request that he should be allowed to endeavour to arrive at a settlement with your representative in the Protectorate.

It also appears that your Mr Monkhouse, having informed Sir Edward Northey that he had some objections to make respecting the then proposed Electric Power Ordinance, was requested by His Excellency to communicate his representations in writing, and promised to do so before Sir Edward left London for the Protectorate. As these were not received Sir Edward again communicated with Mr Monkhouse who then stated that he thought that the matters involved had better be dealt with in the Protectorate. With this Sir Edward Northey agreed.

You were of course aware that the venue in this matter lay in the Protectorate as the legislation referred to was before the Legislative Council, by whom you were invited at a very early

date

date in the proceedings, to communicate to the Special committee appointed to consider the Bill of the Ordinance, any representations you might have to make respecting its provisions. No such representations were made either by you or on your behalf. I may, however, add that in the absence of any communication from you, the position of your company was very fully debated and considered by both the Special Committee and by the Legislative Council, and that, with the sole exception of an amendment which concerned the rights of local authorities, both in the committee stage and in the Legislative Council all of the provisions of the Ordinance were adopted unanimously.

In these circumstances the Protectorate Government wrote, under date 21st May, 1919, to your Chief Engineer and Manager, as follows:-

> With reference to your letter of the 22nd April, I have the honour to inform you that as the negotiations for the Thika Concession have not been concluded and no agreement exists it would appear that neither a prior licence nor an ordinary licence under the Electric Power Bill will exist if the Ordinance is enacted forthwith.
>
> Generally you are doubtless aware that the provisions of the Bill as passed by the Legislative Council make it incumbent on a prior licensee to apply under the Bill for a licence within six months after the Bill is in operation

and

and that all agreements made before the Bill comes into operation are prior licences.

As the Ordinance will be applied forthwith it will of course be open to you to make application to the Governor in Council, as prescribed by its provisions, for such licence or licences as you may desire.

The Secretary of State has decided that it is desirable that this matter should now be concluded, so far as the Colonial Office is concerned. It is therefore appropriate that I should briefly review the reasons which have led to this decision.

Under the Electric Power Ordinance all business of this nature must be transacted with the Protectorate Government.

As you are aware the decision of any matter relating to your fulfilment or non-fulfilment of your obligations under the defunct agreement of 1906, or as to the continuance of any of your powers under that agreement lay entirely with the Governor of the Protectorate.

Prior to the departure of your Mr Monhouse for the Protectorate in 1915, in your letter of 23/2/15 you conveyed in effect an assurance to this office that the object of his visit was to remove causes of dissatisfaction.

The files of the Protectorate Government demonstrate that no made (if any) strictly limited efforts in this direction.

these

These files also establish that His Excellency Sir H. Belfield informed Mr Monkhouse that any concession he might made as to the continuance or extension of your company's powers to operate would depend on their performance of the obligations incumbent on them under their agreement. This was confirmed by the Protectorate Government's letter No.100/111 of 29/4/15 to Mr Monkhouse, and acknowledged by him in his letter dated Nairobi 4/5/15. That Mr Monkhouse was not under any misunderstanding as to and accepted the precise condition on which alone the Protectorate Government were willing to consider any renewal of your company's powers in the form or of the nature in which they had previously existed, is evident by his statement in par. 3 of his letter of 8/4/15, to the Protectorate Government in which he mentions:-

"The very stringent clause in the "concession which deals with the question of "an adequate supply of electricity."

From the evidence of the Government files and from the repeated and continued outbursts of public indignation, amounting in fact to exasperation, at your callous neglect of your obvious duties in connection with the public service which had been entrusted to you, it is perfectly clear that you have signally failed to provide the "adequate supply "of electricity," the provision of which was incumbent on you. It will be futile to contend that your London office has no knowledge of these

matters.

matters. The place for their decision is, as I have mentioned above, and as you are or ought to be aware, the Protectorate, where the technical officers of Government have throughout been in frequent communication with your Chief Engineer and Manager on the subject of your inadequate provisions for the fulfilment of your obligations. His Excellency Sir Edward Northey satisfied himself by personal inquiry on the spot, that your company had not done what they ought to have done and could have done to meet their obligations, and so informed your manager.

It also appears from the records that the representations which you have at various times made or the implications contained in these representations that, in effect, you have been invited to spend money on auxiliary plant pending the removal of your generating works to Thika river, is incorrect. There has never existed any necessity for the Protectorate Government or the Secretary of State to "invite" you to provide auxiliary or other plant. The plain outstanding facts are that by the contract of 26 July 1906 you asked for the sole right of supply of electricity in the area comprised in a 15 miles radius from Nairobi. This was granted to you on the condition of your giving and maintaining an adequate supply on demand. That was the essence of your contract. You also asked for and obtained the right to use certain water powers. It was a further and

specific

specific condition of your contract that:-

"The contractor shall from time to time "provide and maintain such additional plant "machinery and other things as may from time "to time be necessary for the purpose of "meeting and satisfying any increase in the "requirements of the township."

The deliberate manner in which you have ignored your obligations in this matter from the year 1911, is aggravated by the facts relating to your denials.

It has been advanced by you that the moving of your works to Thika was considered under pressure or at least at the suggestion of Government in order that inter alia a number of small rivers on which you had been granted power rights, might be released for the use of the public. That this was not the case has been repeatedly pointed out to your Mr H.C.Bayldon and specifically so by Mr P.Gironard at an interview on Dec. 18th 1911. The fact in connection with this matter is that it was originated entirely by yourselves, vide your letter to Government of the 14th Jan. 1909.

Two significant facts in connection with this letter, which the Secretary of State does not fail to note, are (1) that you commenced to importune Government with the object of securing the control of further important water powers before you had any means of knowing, and in fact did not even suggest that the water powers already secured to you, and which you had not yet used, might prove

prove insufficient for the requirements of the Nairobi area, and (2) obviously as the only condition on which it could be expected that Government could even consider the extension of your privileges, you stated:-

"If the obligations of the contractor"
"have been carried out in the period mentioned
"in that clause."

While still failing to make use of substantially the major part of the water power granted to you under the agreement of 1906, and without having shown to Government any sufficient reason why important power rights on the Thika River should be granted to you, you continued importuning Government for these rights until in 1912 Sir P.Girouard appointed a Commission to consider your representations.

As you were well aware Government was not, at this time, electro-technically advised, and was not so advised on this matter, until the end of 1914, and the statements and figures submitted by you to this Commission were accepted by them as bona fide. On the strength of your representations the Commission recommended on the 5th July 1912, among other things, as follows:-

"We feel justified in reporting to
"Government that the total available flow in
"dry weather of all the streams available for
"use under the terms of the present concession
"of the Electric Power and Lighting Company
"will

"will not allow of the generation of power "sufficient to meet the demands of which the "company has already received notification, "and which will have to be met within the next "two years. We therefore recommend ..... "that the Company should be permitted to "institute a power station on the River Thika "at falls existing at a point some nine miles "to the East of the Fort Hall road."

From the Company's figures and statements the Commission were informed that the demand to be supplied by the company within two years, i.e., by July 1914, amounted to 716.5 Kilowatts (= 957 Horse Power). This figure was made up by superimposing on the then (stated) peak load of 324 K.W.

New power demands of	138.5 K.W.
New lighting demands of	104 "
And Capt. Morrison's order of	250 "
	716.5 K.W.

Capt. Morrison's order represented 250 K.W. of transformer capacity, the actual demand on which in May 1919, was about 30 Kilowatts.

Even omitting the circumstance of the figures given as Capt. Morrison's order, the submitting of such a statement as this to a Government or any Commission is, I regret to say an unpardonable misrepresentation which would be somewhat difficult of explanation.

It should scarcely be necessary for me to remind you that in your letter to this office of the

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New power demands of	132.5 K.W.
New lighting demands of	104 "
And Capt. Morrison's order of	250
	716.5 K.W.

Capt. Morrison's order represented 250 K.W. of transformer capacity, the actual demand on which in May 1919, was about 50 Kilowatts.

Even omitting the circumstance of the figures given as Capt. Morrison's order, the submitting of such a statement as this to a Government or any Commission is, I regret to say an unpardonable misrepresentation which would be somewhat difficult of explanation.

It should scarcely be necessary for me to remind you that in your letter to this bridge

of the

of the 7th April 1919, you remark:-

..... "That although the Company has "steam and water driven plant capable of "producing 800 H.P. to cope with a maximum "demand of under 500 H.P.a.....

Reverting to the subject of the obligation to give an adequate supply of electricity which was compulsory under your contract, the Protectorate Government, in May 1911, gave you formal notice that you were making default. Certain steps were taken by you which appear to have been principally minor modifications for the rectifications of obvious defects in your works. Writing to the Protectorate Government on the 27th July 1917, you state, par. 3, on this matter:-

"These 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."

In contradiction of the specific statement here made by you, I have before me three letters written by the Protectorate Government to yourselves as to the inadequacy of your supply, and dated respectively 7th June 1912, 27th August 1912, and 2nd Sept. 1912. In the last named letter it is stated:-

"I understand that representations have "been made to you by the Director of Public "Works

"works on the subject without result.

"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 consider- "tion."

From the few facts recounted in the foregoing it is obvious that you have been continuously in default since 1911.

You may also observe from the letter last quoted that in contradistinction to your assertion as to being "invited" to provide auxiliary or other plant obviously necessary for the competent discharge of your obligations, you are reminded that some such provision should be made. A similar reminder was given you by the Commission previously referred to, and has been frequently repeated by the Protectorate Government.

Referring to (c) of your letter of 1/4/19, I quite agree, as, I may say, also do the technical officers of (and) the Protectorate Government that were your provisions, proposed or made, of a reasonable nature there would be no occasion for Government criticism. In view however of the actual occurrences in the Protectorate in the light of which the criticism of Mr McBlain is more than justified, it seems to be particularly unfortunate for yourselves that you should refer to this matter. The contention which, by implication, you raise

raised in this par. viz: that your plant and its arrangement, being at the instance of the engineers mentioned in the 1906 agreement, would exonerate you from the consequences merited by default due to its incompetence, is untenable. Your Consulting Engineers have repeatedly demonstrated that they are acting entirely ex parte, on your behalf. In any case in the absence of any agreement as desired by the Protectorate Government such a contention falls to the ground.

As it is undesirable that any incorrect impression might be drawn from the recent correspondence I may state that your reference to:-

"Mr McBlain, a former employee of the "Company who is now the Government's electrical "Expert."

conveys such an incorrect impression as referred to and must be removed by putting the facts on record. You are aware that before making your acquaintance Mr McBlain was retained professionally by Government to advise on certain matters, which are not dealt with in this letter. In consequence of his Interim Report to Government, the Mathiga Estate Company decided on alterations being made in some work which you were effecting for them. You approached Mr McBlain with the request that he would supervise the work of the alterations referred to. As his work for Government in this matter was not completed he obviously could not undertake your work without the consent of Government. This he requested,

requested and obtained. Mr. McBlain, as you are also aware, was continuously under Government's retainer, until he was appointed to the permanent staff of the Protectorate Government Service. It is appropriate that I should add that until this appointment was taken up no mention was made to him of any of the matters in Government records concerning your Company's concession.

Coming to the matters dealt with under (d) of your letter. The Protectorate Government have, as I have already explained, ruled that no agreement exists. In any case the Legislature have decided that it is necessary in the public interest that where any agreement does exist, application shall be made for a licence under the Electric Power Ordinance within six months of its being enforced.

In this connection I must refer to your remarks in par. (b) of your letter under review. Before doing so however I must call your attention to the fact that both under your now expired agreement, and by the draft of that which was proposed, subject as mentioned to Sir H. Belfield's ruling as per the Protectorate Government's letter of 29/4/15, you undertook and were prepared to again undertake that you would be subject to any future legislation which might be enacted. In the first draft on the then proposed new concession the Government's Electrical Engineer inserted as amendments practically all of the conditions to which

which you would necessarily be subject under any future competent legislation. Relying on your bona fides relating to the interpretation of the clause making the proposed agreement subject to any future legislation Government did not demur to the deletion of these amendments at the instance of Mr Monkhouse. It was well within the ability of this gentleman to have at this time ascertained the nature of the legislation which was proposed for the Protectorate as he was informed, personally by the Government's Electrical Engineer, that the draft of the proposed Ordinance was available for his inspection at the Office of the Director of Public Works. Mr Monkhouse did not avail himself of the invitation extended.

I will here digress to remark that the statement made in par. 16 of your letter to the Protectorate Government of 27/7/16, that:-

"It was only through the illness of the "Director of Public Works which occurred "while he was in Nairobi that he was prevented "from dealing on behalf of the Company with "this matter as with others, so it had to be "postponed."

is distinctly incorrect. Mr Monkhouse was in Nairobi nearly three weeks before the Director of Public Works went to Hospital. Excepting his P.F.C. visit Mr Monkhouse only asked for, and obtained, one interview with the Director of Public Works. Concerning this interview the latter has minuted:-

minuted:-

"He (Mr Monkhouse) reiterated that the "Thika concession was finally concluded and "in his hands and appeared to exhibit an "attitude of complete disregard of local con-"trol. His remarks as to Government control "of electricity undertakings under existing "English Acts and Rules either indicated "complete ignorance of the subject or were "stupid misrepresentations which anyone in "possession of a printed copy of Board of "Trade Rules could not fail to recognise as "such immediately. He deliberately stated "that he was not prepared to admit that Govern-"ment had any right to claim an advance "description of the Company's proposals with "regard to a possible installation at Thika. "Government he informed me, would be able to "see the station when it was equipped." .....

Also in connection with Mr Monkhouse's visit to the Protectorate, the Government's Electrical Engineer notes:-

"Mr Monkhouse appeared studiously to "avoid contact with the technical officers of "Government, probably because he had no case "with which to meet them. He certainly "evinced not the slightest interest to know "the injury which he had inflicted on the "public. When at the interview at Government "House on the 14th inst. (April 1915) he

"seemed

"seemed quite injured when admitting that he
"had heard hard things said about the Company,
"and appeared to resent His Excellency saying
"in reply that the hard things were quite
"justified as the company's light had been
"just good enough to prevent him walking into
"the edge of a cliff".

The indifference exhibited by Mr Monkhouse in 1915, to the legislation which concurrently he was in effect assuring Government you would accept has characterised your attitude towards this legislation up to within the last few months.

Additional to the early opportunity afforded to Mr Monkhouse of inspecting this legislation and of the invitation given to you by the Legislative Council Committee, it is the case that you have been supplied more liberally and prior to anyone else with copies of the Bill of the Ordinance and of proposed amendments. In fact many of the provisions were discussed with your Manager before being drafted. A few suggestions were made by that gentlemen some of which were gratefully accepted and others it was pointed out to him had already been provided for. He has on various occasions expressed himself in eulogistic terms on the Ordinance and as being eager for its application.

In the light of these facts and of the publicity acknowledged and commended publicity which the Protectorate Government have throughout given

given to its proposals and objects in this legislation, it is impossible to construe your conduct in any other way than that your pretensions in negotiating the proposed new agreement that you would be subject to future legislation, were not put aside. Many other facts which are completely established by Government records, but which need not now be recounted, confirm this opinion.

It should be needless for me to point out that after the publicity which has been given to this matter and the direct invitation extended to you by the Special Committee on the Bill, your indifference or studied silence on the subject of the proposed legislation, coupled with your present protests, when the Ordinance has taken a form which precludes the possibility of the evasion by you or others, of its provisions, amounts in a most pronounced measure to discourtesy (at least) to the Legislature of the Protectorate.

Your allegation that this legislation inflicts a grave injustice on your company, is not in accordance with the facts. The only and inestimably great and grave injustice connected with this matter is that which has been and is still being inflicted by your company on the long suffering public who have been vainly depending on you not only for light but for the power required by them, and which you have variously contracted to deliver, for the purposes of their businesses. The legislation in question would be useless if it did not preclude

the

the possibility of this scandalous state of affairs being continued.

In concluding this matter I may say that this legislation was aptly described by Mr J.H.Rider when in conversation with your Manager Mr [illegible], the latter admitted that Mr Rider was correct in saying that, with good behaviour on the part of the Licensee its provisions were vastly more generous and comprehensive than anything you had ever contemplated in your agreement. Also that your statement as to:-

"These we allege to have been great

"the cause of the trouble,

by which you obviously refer to the technical officers of Government is as unjust as it is incorrect. The records, some only of which I have referred to in this letter, fully establish the fact that the "trouble" is of entirely your own making by the incompetent conduct of your agreement almost from its inception, i.e., from a time much anterior to the advent to Government's assistance of competent technical analysis of your conduct. Further that notwithstanding your defaults which that analysis exhibited the records also demonstrate that the technical officers of the Protectorate Government have made every endeavour to keep you informed of all matters in which you were interested and which would be of assistance to the correct performance of your obligations. They have also given you

advice

service, which has been acted upon by you - without acknowledgement - and have also advised you and performed other services which if acted upon and followed up would have largely rescued you from the public opprobrium under which your Company now rests.

[illegible] of the Bill as passed by the Legislative Council make it mandatory on a person [illegible] to apply under the [illegible] after [illegible]

provisional Act will be passed by the
Legislative Council, make it incumbent
on a prior licensee to apply under the
Act for a license, [illegible]
[illegible]