

EAST AFR. PROT

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REC
NO 23 JAN 20

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Electricity Supply Order

1920

22 Jan

Last previous Paper.

*copy the third note taken at meeting
Colonial Office on 19th Jan*

2859

Bushe,
H. Read,

I attach (1) the notes of the principal points which I made after our official discussion on the 18th December when we thought that the Company would attend on the following day, (2) the manuscript of Mr. McBlain's draft licence which has been incorporated in the shorthandwriter's notes.

It seems impossible to force the Ordinance on the Nairobi Company as there is no getting over the fact that the Govt. in its executive capacity is disallowing it on technical grounds and we cannot bring them under the Ordinance by agreement. There is no alternative but to let the Concession run for the 11 1/2 years still outstanding.

Although the question whether the Concession was actually extended in 1916 when the first 10 years came to an end, has been reserved, legal authorities both in the Prot. and in the C.O. are of opinion that we cannot dispute the extension and this seems co-

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obscured at the time by the discussion both of the proposed removal of the Company's power station to the Thika Fall and by the discussion of the draft Ordinance, but it is perfectly clear that the Prot. Govt. did not, as they might have done, warn the Company that they must consider the possibility of a being extended, and that unless a certain amount of work would be made, they must consider the possibility of a preference.

The Company's reason for ^{refusing} wishing to come under the Ordinance was their distrust of the P.W.D. They had no chance of escaping the definite penalties for defaults laid down by the Ordinance and under the vague and ^{uncertain} provisions of Clause 31 of the Ordinance, but certainly lose the benefit of a long period of time to get a return on the capital they invest in the certainty of getting back the value of their ^{plant} and plant at the end of the time (possibly on very handsome terms if the business were taken over by the Local Authority). On this point they rely on being able to get from someone the ^{value} expropriation given by Clause 32 of the Ordinance, namely, compensation - nominal value plus ^{and} good-will etc.

As the Gov. and Mr. McBlain do not object to the Concession remaining in force, there is no reason why we should object. Mr. McBlain's change of front must be attributed to (a) the fact that his attitude has been that of a ^{despotic} despot who wishes to force everyone to do what he thinks best for them, and that he sacrifices little or nothing by allowing an exception, (b) his desire to prevent the Company holding up the operation of the Ordinance indefinitely, (c) the fact that the Consulting Engineers do not support him all the way.

I have not at this stage attempted to

draft a letter to the Company but I annex a note
containing the outline of what I suggest we should
say.

was 29.1.20

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Outline of suggested letter to the Company.

(The notes in square brackets are not intended for communication to the Company).

The arrangements to be without prejudice to either side as regards -

(1) the question whether the concession was actually extended at the end of the first 10 years, and

(2) whether there has been ^{any} always a default in the supply of electricity.

With regard to the particular clauses of the concession: see (3) and (4).

Clause 3. The provision of water by the Government to be limited to the Falls and conditions laid down in the Clause. Other Falls must be reserved for other purposes.

[It will be remembered that on 28/5/1914 we told the Company, in connection with their coming under the Ordinance, that the Govt. would supply all the water they needed.]

11. [Annas. This must stand though it is an added currency complication. The Anna is 1/16th of an Indian rupee and we cannot say that it is 1/16th of any rupee current for the time being.]

16. [This general clause seems to have no penalty attached other than Clause 21.]

17. The condition that the Company's business is confined to the District shall not be relaxed.

their business to anyone else and that no business from

the Government to supply Nairobi under the terms of the general legislation of the Prov. for the time being.

19. [Mr. McLain attaches importance to our insisting on this condition, which has not been observed in the past. But is it any use? See on Clause 20.]

20. [We assume for the purpose of discussion that the concession has been extended to 1931. As the power to require a reduction of charges was to be exercised before the extension we had no such power left.]

21. Note Mr. Leslie Scott's hope that an ample supply will be maintained in the future, and say that the Govt. have no desire in any way to press hardily on the Company, but that, in order to ensure that an adequate supply is in fact provided, the right to give notice under the Clause will be freely exercised. Point out that under this Clause the Company may continue default for 6 months, 30 days without risking forfeiture (if the consumer would have a remedy in the Courts), but it is essential that any such abuse should be prevented. Refer to the Maintenance of Electric Supply Ordinance and to the reference to it at the discussion. Confine what was said there to the effect that the provisions of the Emergency Ordinance are contained in the general Ordinance and that when the latter comes into force the Emergency Ordinance will be repealed so that the Nairobi Company being exempted from the general Ordinance will be free from the application of the clauses contained in the Emergency Ordinance. Add however, that the experience in the case of the Nairobi Company, which led to the passing

of the Maintenance of Electric Supply Ordinance shows that circumstances may arise in which the Government must make provision for safeguarding an important public service, and that it is not possible to say that in the event of continued default such emergency legislation will not be introduced.

22 and 23. Emphasise the fact that there is no present intention of the Govt. taking over the supply of electricity. 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 Govt. not taking over the undertaking, and the Company must clearly understand that no ^{prospect} ~~pledge~~ ^{will not} can be given that they will get back capital already spent or capital required for further supply. Say that it was for this reason that it was thought that the Company would be willing to take advantage of the provisions of the new Ordinance.

Say that subject to the above the Concession is to be read by itself and not considered in the light of any past correspondence.

In the course of corres. about the original concession, the proposed transfer to the Thika and the application of the new Ordinance, it is impossible to say that there has been nothing which might lead the Company to expect something which would be a breach of which it is impossible to predict conditions. I have checked my mind as that it is very likely that at some time in the past the Company have been told that if the transfer failed it was expected that the Municipality would take over the undertaking and that the Municipal Committee was to all intents and purposes the Government. The first proposal of

THE NAIROBI ELECTRIC POWER & LIGHTING COMPANY, LTD.

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50, MARK LANE

LONDON, 22nd January,
1920

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SIR,

We beg to enclose a copy of the shorthand
Note taken at the Meeting at the Colonial Office on
the 19th inst. in regard to the request made to
us to take effect.

Yours truly,

SIR,

Your obedient servants,

for The Nairobi Electric Power & Lighting Co., Ltd.

J. A. Hignett

Secretary.

THE CHIEF SECRETARY OF STATE
FOR THE COLONIES,

COLONIAL OFFICE,

S.W.1.