

EAST AFR. PROT.
25284

C. O.

25284

23 JUL 08

1908
July
Previous Paper
22861

Lake Magadi Scheme

cannot hold that requirements of
Treas^r letter of the 10th July have been satisfied &
sets out modifications to the proposed agreement wh. it
is considered must be complied with

Mr. Read.

We have discussed his letter this
afternoon with Sir P. Girouard, Mr. Walter
Samuel, & Dr. Hertz. Mr. Samuel is
clearly of opinion that the Treasury
requirements as to a Govt^t first charge
on the royalty (and even the modified
form of this proposed as an alternative)
and as to the removal of the maximum
limit of one penny a ton per mile for
the railway rate make it useless to
negotiate further. His form will accordingly
not be signed. Our best hope is that

sent to
right for conf (S.O. 2/20/08)

U.S. & W. DOMESTIC
25284

with their withdrawal as a test, we may
be able to push in to the Treasury
a letter sufficiently strong to induce the
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JAB

July 28.

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WAB

July 28

184
In reply to this Letter the following
Number should be quoted.

25284

REC'D
28 JUL 1909

TREASURY CHAMBERS. 318

15056

Urgent



July 1909

Sir,

The Lords Commissioners of His Majesty's Treasury having carefully considered Mr. Fiddes' letter of the 16th instant (22861/1909) further respecting the terms of the Agreement with Messrs M. Samuel and Company for the working of the Soda deposits of Lake Masadi in the East Africa Protectorate request that the following reply may be laid to the Earl of Crews.

My Lords admit that the information furnished in your letter under reply throws a more favourable light upon the financial aspect of the arrangement, but they regret that even so they cannot hold that the requirements of the Treasury letter of the 8th instant have been satisfied.

It is true that the full expenditure of £350,000 contemplated in the Agreement may not have to be found immediately, but in instalments having a more or less definite relation to the output of soda. There is nothing, however, in the draft agreement which My Lords have before them to prevent a claim being preferred against the Government for the immediate outlay of all the capital required; and My Lords consider that this part of the agreement should be carefully drafted to ensure that the rate at which the expenditure is incurred is made strictly dependent on the output.

Under Secretary of State

output of soda, in approximately the proportions specified in your letter. They would be glad to receive the assurance of the Secretary of State upon this point.

Assuming, however, that these conditions are fulfilled, they only afford a presumption of security for the Government's expenditure. The ultimate security must depend on the solvency of the Company, the effective control over its working of the deposits and on the conditions of the soda market.

My Lords are prepared to accept the Company's well-known position as a sufficient safeguard in respect of the first of these conditions; and They consider that the provisions of the draft lease, as explained in the letter under reply, satisfy all reasonable requirements in respect of the working of the undertaking, provided that infraction of the provision as to bona fide, continuous, effectual and vigorous working will involve a cancellation of the lease and a consequent reversion of the Branch Railway to the Government. They infer from the terms of Mr. Fiddes' letter that this condition is to be imposed, but on this point also They would be glad of further assurance.

It must, however, be remembered in this connection that the working of the deposits might be affected in various ways, such as by labour troubles, fire, or Acts of God, so as to reduce the output of soda without rendering the Company liable to any penalty. These contingencies it is difficult to guard against except by additional Guarantees which the Company, as My Lords understand, decline

decline to give, but they must be taken into account in considering the financial aspects of the agreement.

The chief element of risk, however, appears to Their Lordships to reside in the uncertainty of the soda market. The period of repayment has been calculated at 30 years and, under the agreement as it stands, for a considerable part of this period the Government can look to practically no profit from the arrangement. It is, however, impossible to predict what the condition of the market will be so far ahead, especially as affected by the large output of soda contemplated under this scheme.

Should market conditions render the continued working of deposits unprofitable, it is to be observed that the Branch Railway would not prove a very valuable asset. As far as can be foreseen at present, the Railway will be of little use except for the soda traffic, and if the latter should cease, its value would consist only in the selling price of the rails. My Lords understand that after, say, 20 years the value of the rails would be very much depreciated and when the expenses of disposal are taken into account almost negligible.

The fact that the Company have declined to afford additional guarantees seems to show that they share Their Lordships' uncertainty as to the future, and that the risk is probably greater than Lord Crewe appears to believe. In any case My Lords would not feel justified, in view of the comparatively small share of the profits to be taken by the Government, in entering upon an undertaking of this character without greater security.

In

In the absence of adequate guarantees on the part of the Company, My Lords consider that this can best be obtained in the following way.

As proposed in the draft agreement, My Lords prefer that the Government should only find the sum required for the improvement of the main line (this sum was stated in the printed memorandum to be £150,000, ~~as a minimum~~, while the sum required for equipping the Branch line with rolling stock was put at £200,000. In the letter under reply, however, the total expenditure required is stated to be £350,000 as "an outside figure". My Lords would be glad to be informed on what grounds Lord Crew now feels able for the first time to suggest that £350,000 will probably be the outside limit of expenditure and whether reduction of outlay is to be looked for in contraction of the expenditure on the main line or on the rolling stock.)

The sum to be provided by the Government would not be expended immediately but in instalments such as ~~the~~ described in the letter under reply. The rolling stock etc. on the branch line should be provided by the Company, who for that purpose should be empowered to issue Debentures. It should be made clear that the Company alone would be responsible to the Debenture holders for the capital and interest on the Debentures, and that the Government liability would be limited to the specific payments to which I now proceed to refer.

Under the draft agreement the whole of the Royalties, and 10% of the gross receipts for traffic, are possible

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payable to the service of the Debentures. My Lords have already pointed out the financial objections to this arrangement.

They would be prepared, however, to accept the Agreement as it stands, subject to the various modifications suggested in this letter, if a sufficient amount of the Royalties were reserved to pay 5% (i.e. interest at 3% and sinking fund at 2%) on the amount of Capital expenditure incurred to date, from time to time, by the Government in improving the main line, or, in other words, if the Government expenditure were given a first charge upon the Royalties.

In view of the uneven distribution of the profits under the arrangement as it stands, My Lords think that such a claim is only reasonable. They would also point out that, if the prospects of the undertaking are as favourable as Lord Crewe represents, the proposal will have little or no appreciable effect, inasmuch as the Royalties would be sufficient to repay the Company's Debentures, as well as to replace the Government expenditure, and that in fact the Government are only asking the Company to bear a risk which Lord Crewe assures Their Lordships can be disregarded.

My Lords apprehend, however, that the Company may not be prepared to take this view of the situation, and in deference to Lord Crewe's representations of the importance to the Protectorate of the successful issue of these negotiations, They would be prepared, should the Company absolutely refuse to accept the above terms, to make the following modified proposal, which it will be observed lies midway between the proposal just described and the Company's original claim.

Instead of requiring that the whole of the interest and sinking fund on the Government expenditure should be paid out of the royalties before any sum was applied to the service of the Company's debentures, My Lords would agree to an arrangement under which the Royalties were appropriated in equal parts to the payment of 5% on the Government outlay and to the service of the Debentures respectively, the whole of the balance if any of the Royalties being paid to the Debenture holders after the Government's claim had been satisfied. Under either proposal My Lords would agree to the payment to the service of the Debentures of 10% of the gross receipts from the Company's traffic. (It is assumed in respect of both these proposals that the rate of accumulation for the repayment of the Debentures will be 4%. My Lords however, would be glad to receive further information on this point, as well as on the question of the payment of the interest on the debentures in respect of any year in which the Royalties were insufficient for this purpose. In the first year of the agreement for example this contingency is likely occur, and it is not clear whether the interest payments are to be cumulative).

This is the utmost concession which My Lords are prepared to make, and in the unfortunate event of the Company's refusal to accept these terms My Lords would not feel justified in continuing the negotiations.

My Lords must moreover make a further stipulation as regards the railway rate of 1d. per ton-mile under Clause II (c) of the agreement. In view of the uncertainty

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This is the utmost concession which My Lords are prepared to make, and in the unfortunate event of the Company's refusal to accept these terms My Lords would not feel justified in continuing the negotiations.

My Lords must moreover make a further stipulation as regards the maximum rate of 1d. per ton-mile under Clause II (c) of the agreement. In view of the uncertainty attending

attending labour and other conditions in the Protectorate, Their Lordships must insist on the withdrawal of this restriction. They consider as already explained that the Company's position is sufficiently safeguarded by the limit of the Government's profit to $1/15^{\text{th}}$ per ton-mile and while they are prepared to witness the minimum limit of $2/15^{\text{th}}$ per ton-mile and to agree to an assurance being given that the Government will not ask for a greater profit than $1/15^{\text{th}}$ per ton per mile, My Lords could not assent to the maximum limit proposed.

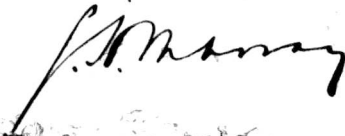
On the other hand My Lords would raise no objection, if these requirements are met, to the grant to the Company of the right to work minerals on the terms proposed.

My Lords note the remark in Mr. Fiddes' letter that there will be no difficulty in arranging that, if at any time the lease is terminated, the Government shall enter into absolute possession of a part of any rolling stock bought with the proceeds of debentures issued by the Company proportionate to the amount of the repayments made by the Government to the Company; and Their Lordships request that, if the Company accept the proposals above made, provision may be made for this in due course.

I am,

Sir,

Your obedient Servant,



Shell House,

104-5 Bishopgate St. Within,

LONDON, 27th July, 1909.

Mr. Butler, Esq.,

COLONIAL OFFICE,

Whitehall, S. W.

Dear Mr Butler,

I am much obliged for your letter of yesterday, but regret the renewed delay exceedingly.

It seems to me that the whole matter is one of extreme simplicity and that the Treasury ought to be able to make up their minds, but that they won't say "Yes" and don't like the responsibility of saying "No", and are therefore delaying indefinitely, leaving to us the responsibility of breaking off matters. You will quite realise that we cannot continue in this way. In the first place, we have Dr. Herz and Mr Shelford bound to us here at present. Both these gentlemen are meantime refusing other work, and in justice to them we must either give them a definite engagement soon, or tell them that they are free.

As far as we are concerned ourselves, we are also put to continual expense in Solicitors' Fees, etc., much of which is entirely unnecessary.

Yours faithfully, I propose to sign as

holiday to-morrow. If I had not had any chance
of receiving a definite answer from the Treasury, I should
remain, but I am bound to say that it does not appear to me
as if we should. Judging from your letter the most we can
hope for is a modified refusal which would in no way meet our
views.

Under these circumstances, I hope that you will
be able to give me something definite to-morrow.

I remain,

Yours very truly,

Walter R. Samuel