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ELECTRIC POWER ORDINANCE

Report on and also on effect it would have on
provision of prior licenses and on the proposed
revision of the concession of the Nairobi Electric
Power Coy.

To Sect 29/15

I have asked Mr. Patten to let me know
his further views on the extent to which
this will pinch the Nairobi Co.
There can be no doubt that they
must come under the Ordinance,
and the point is, a bearing on
the extent of the outstanding
liabilities connected with the
revision of the Concession.

In the meantime

Yours & thank you and only
if his letter to Mr. OAG is (the
to my save money in telegraph of
space where of the Co. will
be useful here)

28/1/19

2. Patten
Rider

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JHR/CB.

CARDEW, SNELL & RIDER,
CONSULTING ENGINEERS

SIR JOHN SNELL
J. H. RIDER
G. S. MOORE Esq.

C.O.
5272
REC'D
8. QUEEN ANNE'S GATE
WESTMINSTER, W. 1.
24 JAN 19

22nd January, 1919.

Our Ref. 4.

The Under Secretary of State,
Colonial Office,
S.W. 1.

Sir,

Electric Power Ordinance, 1918.

54787/1918.

As instructed by your letter of the 22nd November last, I have the honour to report herewith on the proposed Electric Power Ordinance, 1918, as passed by the Legislative Council of the East Africa Protectorate, and also on the effect which I consider the Ordinance would have on the position of Prior Licenses and on the proposed revision of the concession of the Nairobi Electric Power Company.

I regret the delay in reporting, but the Ordinance is very voluminous, and has required a considerable amount of close study.

Electric Power Ordinance, 1918.

The Ordinance is generally based upon the British Electric Lighting Acts, 1882, 1888, and 1909, and the Electric Lighting and Classes Act, 1899. It also contains a number of entirely new sections.

I do not propose to refer in any detail to the sections in the Ordinance which are extracted from either of the above named Acts, as these are all more or less standard, and of proved merit. I will deal more particularly with the new sections which have been incorporated.

The Under Secretary of State.

Section 3. Sub-section (2). This Sub-section deals with Prior Licensees. So far as I am aware, the only licences or concessions now granted are those to the Nairobi and Mombasa Companies.

The most important parts of the Sub-section are (b) and (c), which provide that all existing and future works, for the purpose of any Prior Licence, shall be subject to the provisions of the Ordinance.

In my opinion, such a provision is most essential, and I deal more particularly with this point at the end of this Report.

Section 4. Restrictions as to Generation, Supply and Use of Energy. This Section appears to be unduly drastic, particularly in items (b) and (c).

Is it really intended to prohibit any public or local authority from using any form of energy for power or lighting purposes other than electrical energy? If so, this would appear to prevent any small township or village from lighting its streets with gas, oil lamps or candles. Surely such a procedure would not necessarily require the authority of the Governor in Council?

Further, (c) would prevent any public or local authority from generating electrical energy, even on the smallest scale, for lighting its own offices or buildings without obtaining a licence under the Ordinance.

Section 7. Applications for Licences within limits of Economical Transmission from Existing Works. This Section is novel, but anticipates that which is now being considered essential in this Country to prevent waste of capital and waste of coal. I understand that the new Power Bill of the British Government, which is now in preparation, will provide for similar powers in Great Britain.

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Section 10. Sub-sections (2) and (3). Period and Renewal of Bulk Supply Licences. The British Acts for Bulk Supply Companies do not specify any period. The Section under review limits a Licence to 50 years, and in Sub-section (3) gives power to the Governor to extend the period if he thinks fit. The conditions in British East Africa are different from those in this Country, and I consider a limited period to be desirable.

There is, however, a point under section 18, Sub-section (3), which may be considered in connection with this Section. Section 18, Sub-section (3), allows a distributing licence to be for any period, whether limited or unlimited. I suggest that both bulk supply and distributing licences should be treated in the same way and be brought under the terms of Section 10, Sub-sections (2) and (3).

Section 10. Sub-section (5). This Sub-section is a direction to the Governor as to the matters which he shall take into consideration in prescribing a bulk supply area. There does not appear to be any objection to it.

Section 12. Conditions as to Further Use of Works.

I am not quite clear as to the object of this Section. The expression in lines 58, 59 and 60 "shall be true in accordance with the meaning and intention of the preceding Section" should not be necessary. If they are specially required in this Section it would appear by inference that when such words are not used in other sections, the obligations need not be "truly in accordance", etc.

Section 14. This is a new provision enabling the Governor to assist financially a bulk supply Licences.

where

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where works are required in the public interest, and may be necessary under the conditions existing in British East Africa.

Section 16. This is a special Section making the Bulk Supply Licensee responsible for the supply lines up to the point of the delivery of any bulk supply. I presume this Section is rendered necessary by the terms of the preceding Section 14, and is intended to put upon the Licensee the obligation of responsibility for supply lines which might have been provided or paid for by the Governor under the terms of Section 14. It is a question, however, whether Section 16 should not be re-drafted and made to apply specifically only to those supply lines which are provided by the Governor, because, presumably, all works of whatever nature, whether bulk or otherwise, which may be carried out by the Licensee himself, must be properly maintained, etc., and the Licensee would naturally be responsible for all works carried out by him.

Section 17. This Section refers to (a) the damages which are payable by a Bulk Supply Licensee to an Authorised Distributor for failure to supply, or for interruption in the supply, and (b) the penalties which are payable to the Government if a Bulk Supply Licensee makes default in supplying in accordance with the terms of the Regulations.

While defining a fixed sum as liquidated damages under (a) for each hour or part thereof of such failure, the Section apparently anticipates that the agreement between the parties may provide for a modification of this figure, by the use of the words "subject to any Agreement" etc. I do not think there is any objection to this, as it is really a matter between the Licensee and the

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Section 19 (h). I presume it is desirable to give consumers a locus standi when areas of supply are being reconsidered by the Governor General.

Section 19 (j). This sub-section gives power to a local authority to purchase works if an Authorized Distributor holds a Local Generating Licence. It covers the position which may arise if such purchase were made, and it is conceivable that a case may arise in the future, so that it is desirable for the contingency to be covered.

This sub-section must be read in connection with Section 20, and as the Governor in Council can, under Section 20, vary the terms under which an Authorized Distributor may be required to sell, such Authorized Distributor can have no definite knowledge as to his ultimate fate until the Governor's decision has been announced.

Sections 33 and 34. These sections deal with Local Generating Licences and are quite useful. The remarks I have made under Section 7 preceding will apply also to these sections. I think, however, that sub-section (3) of Section 34 may be very difficult to apply in practice.

Sub-section (4) of Section 34 is an exceedingly long one, and it seems a pity that it is so voluminous, especially in those parts which relate to purchase.

In the case of Local Generating and Bulk Licences it seems to me that the whole matter might well be covered by sub-section (4) (b) (ii).

In the case of a compulsory purchase it is extremely difficult to cover by legislation all points in any claim which are likely to be placed before an Arbitrator. I suggest that it would be simpler to restrict the section

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to such words as are used in the Land Purchase or similar Acts. Compulsory purchase generally means legal action, and the fewer words there are to fight over, the better for all parties.

Section 35. This Section gives wide powers to the Governor to vary areas of supply. It is a good Section, as it will facilitate progress and tend to encourage the extension of the operations of successful Undertakers. I suggest, however, that lines 16 and 17 are unnecessary.

Section 36. This Section provides for the purchase of works in that portion of an area which is transferred. I do not follow the reason for applying a different method of purchase. Section 34, sub-clause (4) (g), if adopted, should apply equally to the purchase of areas under section 36.

Section 37. This Section enables owners of adjacent Licences to co-operate and it might prove very useful.

Section 41. This Section provides for the accounts of every Licence being kept separate and distinct. In England the accounts on separate provisional orders are required by the Board of Trade to be kept separate, but in practice it has been found very difficult of application where one large Supply Authority operates under several Licences, and is really of very little advantage. I suggest that this section might be omitted.

Sections 42 - 43. These sections vary in detail from those in English Acts regarding financial matters. Personally I prefer the Sections in the English Power Acts in which dividends are restricted and are made to depend

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In order to encourage capital being invested in Electricity Supply Undertakings it would probably be advisable to avoid too many restrictions regarding a Depreciation Fund, Reserve Fund, Bonus Fund, etc. I suggest it should be left to the Governor to issue provisions from time to time.

Section 49. This Section provides that all Licensees shall supply on one standard system throughout the Protectorate, viz. the 3-phase alternating current system at 50 periods per second, and that the supply to the consumers should be given at 415 volts between any two of the three conductors of 3-phase system, or 240 volts between either of the 3 conductors and the neutral point of the system.

There is no doubt that it would be of immense advantage to have a uniform system of supply and generation throughout the Protectorate, but, as the future developments of electrical science may bring improvements in both generation and distribution, it would be desirable to include a provision which would enable the Governor to permit the use of other systems if satisfactory reasons could be given for their adoption.

Section 50. Sub-section (1) of this Section provides that all materials or apparatus used shall comply with British Standards, and further, that everything shall be constructed to the approval of the Governor.

Sub-sections (2) and (3) provide that all Specifications, Plans or Drawings shall be submitted to the Governor for approval or disapproval before any work is put in hand.

I have considerable doubt whether this Section is

to comply with the British Standards.

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questions of safety are to be considered, but it is not certain that all articles of British Standard type are necessarily suitable for East Africa. Further, it is conceivable that apparatus may fail under local working conditions because it is made to British Standards, and not specially constructed to meet local conditions.

It must be realized that the E.E.A. Protectorate covers a very large area, with great diversities of elevation, climate, temperature and humidity, and apparatus which might work well at Nairobi might be unsuitable for use at Mombasa and vice versa.

Further I am not satisfied that it is either necessary or desirable that the Governor should approve all Specifications, Plans and Drawings. Approval may be taken to mean the incurring of responsibility, but I do not think it is intended that the Governor should accept any responsibility for the engineering design or construction of a scheme. This must remain with the Undertaker.

In my opinion the Governor should only be concerned in seeing that an Undertaking is carried out with due regard to the safety of the public, with proper precautions against accidents, and generally that the details are such as to give a reasonable guarantee of a reliable supply. The Governor would have to depend upon the advice of his technical officers, and delays and friction would inevitably arise between the Undertakers and the Government Department in question if all matters had to be approved before work could be executed.

There is no doubt that, in principle, it may be desirable that the Governor should have some hold on the Undertaker in the details of the plant, in order to

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satisfactory to the public. On the other hand, by placing too many restrictions on the Undertaker, it may become very difficult to raise the necessary capital, or to encourage any person, or body of persons, to become Undertakers.

Section 51. This Section gives the Governor authority to grant powers to any Licensee to erect electric lines across roads, railways, canals, etc., subject to the consent of the owner, but if consent be refused, the Governor may dispense with such consent. This is a very proper Section.

Section 52. This Section gives the Governor power to authorise a Licensee to erect and maintain telephone or signalling lines, and, so far as I know, is at present only incorporated in the Indian Telegraph Act. It is a useful Section to include in the Ordinance.

Section 53. This Section gives the Licensee authority to exercise all, or any, of the powers conferred on him by the Ordinance and the Licence, but I do not quite appreciate the reason for it, as it seems to contradict Section 49 (b).

Section 54. Sub-section (2). I think that Section 51. Sub-section (2) should be incorporated with this Section, if consent is refused.

Sections 56 and 57. Section 56 requires notice to be given of proposed overhead works, and Section 57 requires a similar notice for underground works. I suggest that there is no necessity to differentiate between overhead and underground works, and that one Section could be drafted to cover both cases.

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The Under Secretary of State.

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PUBLIC RECORD OFFICE, LONDON

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conditions which may affect the prices to be charged for power, and I do not think there is any objection to them.

Section 92. This Section provides for the use of 3 meters (if any consumer so desires) for ascertaining the value of the supply, and sets out the procedure if either or any of the meters should be inoperative. This Section is common in Agreements in this Country, and is in no way compulsory. I notice that in this case it is only "if a consumer so desires" that three meters must be used, but I am of the opinion that the Section should only apply when the consumer's demand exceeds a maximum of, say, 250 K.W., because if every small consumer of, say, 10 K.W. or so, demanded the use of 3 meters, it would place a very serious obligation on the Undertakers.

I suggest that Sub-section (2) of this Section does not quite cover the case. The objects of providing three meters are to obtain a true average of the consumption, and if one meter is out of order, that the mean of the readings of the remaining two should be taken as showing the true value for the time being. Sub-section (2), however, provides that if one meter is out of order, the mean of the readings of the meters shall not be taken to be the value of the supply. This is only correct if it refers to the mean of the readings of the three meters, one of which is admittedly inaccurate. I think the Sub-section should be redrafted somewhat on the following lines:-

"If the reading of each of the three meters is within 5% of the mean of the readings of the three meters, each meter shall be considered correct for the purposes of accounts. If, however, the reading of any meter at any time shows a difference from the mean of the readings of the three meters of more than 5%, then the mean of the readings of the three meters shall be taken for the time being.

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but the correctness of each of the meters shall, as soon as possible, be determined, and each meter having an error of more than 3% shall be readjusted. In case of dispute, the matter may be referred by either party to an Electrical Inspector, as provided by Section 98.

If at any time two meters only be in service, because of the third meter being under test or repair, the mean of the readings of the two remaining meters shall be accepted by both parties, provided that such mean is within 3% of the readings of both meters. If the mean of the readings is not within 3%, the same procedure shall be adopted with regard to the re-determination of the accuracy of the meters, and the readjustment of the meters, as set forth above.

Section 94. I do not quite follow the object of this Section, which would prevent either the licensee or the consumer from making any alteration or re-adjustment in any meter unless 48 hours' notice in writing had been given of the intention so to do. An inaccurate meter should be removed by the licensee as soon as it is found to be inaccurate, and Sub-section (2) of Section 92 provides for the use of the remaining two meters, if any meter is taken away for readjustment or becomes inoperative. If a licensee desires to remove a meter which is his property, he should be entitled to do so at once, provided he fixes a new meter in its place.

Section 101. This Section deals with the arrangements to be made by the licensee for the purpose of testing meters, and appears to be quite satisfactory.

Section 109. This Section appears to be an extension of Section 50, and my remarks on that Section apply equally in this case.

Sections 117 and 11E. These Sections give the Governor very drastic powers in the event of the licensee making default in his supply. It is quite

...been gained with

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such drastic powers, but it is obvious that such powers should only be exercised with very great discretion.

Section 131. This Section defines the procedure to be adopted in making application for a Licence to construct a Generating Station. Unless something very special is likely to be proposed in the class or type of generating plant, I hardly see the necessity for sub-section (3) (a).

I do not think it either desirable or necessary to compel the applicant for a Licence to deposit, with his application, "copies of the.....Specifications, Plans and Drawings issued or used or proposed to be issued or used by, or on behalf of the applicant relating to the proposed works", as called for in sub-section (5) (d).

Many of the Specifications and Plans would not be ordinarily prepared until a later date, and, in fact, some of the Specifications and Plans could not be completed until some of the plant contracts were actually let, and particulars had been received from the actual Contractors. I suggest that sub-section (5) (d) should be deleted, as sub-section (2) (e) really covers all the information that could reasonably be required at the application stage.

(See also my remarks on section 50).

Section 137. This Section deals with Agreements entered into by a Licensee and requires them to be approved by the Governor. I consider this Section is open to objection as drafted, unless the classes of Agreement are specified. A Licensee may have to enter into an Agreement or a Contract with a Manufacturer of plant for the purposes of his Licence, but I suggest that it is not intended

that every Agreement or Contract should be required to

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be approved by the Governor. If the Section only refers to Agreements between a Licensee and a consumer for the purposes of giving or taking a supply, then I think words should be inserted in the Section to make that point quite clear.

Section 143. This Section prohibits a Licensee from engaging in any other business of an electrical nature within his area of supply. I do not appreciate the necessity for this Section, and question whether it is desirable in such a Country as East Africa. It would apparently prohibit a Firm or Company which manufactures electrical plant in the Country from becoming a Licensee in the same area. I suggest the Governor has full control over the bona fides of any Licensees, because, before granting a Licence, he would be assured of the status of the person or firm applying for it.

Section 147. This Section empowers the Governor to appoint a Power Board, but it is not clear to me why such a Board is required, as I do not find any reference in the Ordinance to any possible question which would have to be referred to a Power Board for decision. If the Governor wishes to have a Board for the purpose of giving him technical advice, is it necessary that its appointment should have to be made under the terms of this Ordinance?

The Effect of the New Ordinance would have on Prior Licenses.

Section 3, Sub-section (b) of the Ordinance has been specially drafted to cover the cases of persons or Companies who have Licenses or Concessions prior to the enactment of the Ordinance. I give my opinion that all

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such existing Licences or Concessions should come under the terms of the Ordinance. The reasons are twofold.

First, in order to have uniformity of operation in dealing with all Power Licences or Concessions in the Protectorate, and second, to force the Prior Licensees to put their houses in order and to give, and to maintain a sufficient and reliable service.

It is only to be expected that the Mombasa and the Nairobi Companies, which are working under "Prior Licences", will make strenuous objections to Section 3. At the time those Licences were granted there had not been sufficient experience in the Protectorate to guide the Authorities in drafting proper and adequate safeguards. But Mombasa and Nairobi are the two most important towns in British East Africa, and now that the time has come for a renewal of the Licences, the renewals should only be granted under the terms of the new Ordinance.

I strongly advise that there should be no weakening on this point. If these two Companies were granted an extension of their Concessions or were allowed to continue working under their present Concessions, without coming under the terms of the Ordinance, it would form a most damaging precedent.

General.

The new Ordinance may be looked at from two points of view. In the first place it is a most laudable attempt to put electricity supply in the Protectorate upon a proper basis, to see that all persons who wish to

Give

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The Under Secretary of State.

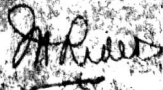
give public supplies, or to use natural sources of power shall only do so in such a manner as will ensure benefits to the public as well as to themselves, and to stop purely speculative schemes which are primarily intended to make money out of the public.

In the course of the day it must not be forgotten that the B.E.A. protects the public interest, which is to encourage private enterprise, and that such enterprises are bound to mean considerable financial risks to the promoters in many cases. Anything which would tend to limit the flow of new capital into the country by placing restrictions on legitimate commercial enterprises is to be deprecated.

The terms of the new Ordinance will therefore have to be applied and used with great discretion, tact and judgment in each case. A cast-iron interpretation of every section would probably do more harm than good in the early days of the country. The Ordinance should be so used that it is a help and guide to the bona fide investor, and a deterrent only to the undesirable Company Promoter and Speculator.

I am, Sir,

Your obedient servant,



R. 12/27/14 hand

4 Feb
January 1914

RAFT.

Rede 107

Sir,

I am so to wish the rest

MINUTE.

Money, 29 Jan
Cash, 29 Jan

Your letter of the 22nd of Jan
I thank you for your
report on the proposed Electric
Power Office 1918 as based
by the Dept of the
East

Charles G. GENNIE