

THE EAST AFRICAN POWER AND LIGHTING COMPANY LIMITED

Memorandum on the grounds given by the Nairobi Municipal Council for objection to the Company's application for an electricity licence.

NAIROBI

27th February, 1936.

EAST AFRICAN POWER AND LIGHTING COMPANY LIMITED

MEMORANDUM on the grounds given by the NAIROBI MUNICIPAL COUNCIL for their objection to this Company's application for an EXTENSION OF LICENCES.

-----

1. THAT THE APPLICATION IS PREMATURE:

The reasoning as to why this Company's application is not premature is fully set out in paragraphs 24 to 28 of the Memorandum on the Question of the Future Supply of Electricity to Nairobi and District which is already in the hands of the Committee.

It would appear desirable, however, to deal in a certain amount of detail with some of the points raised under this heading in the Council's objection.

Paragraph 5.

The issue of capital therein referred to was in respect of the Pangani Concession in Tanganyika which is held for a period of 60 years with a possibility of extension to 75 years.

Paragraphs 6, 9, 11 and 12.

The material contained in these paragraphs appears to represent the considered opinion of the Municipal Council upon a highly technical and intricate subject of finance the soundness of which in the opinion of this Company is open to doubt and which is diametrically opposed to that of this Company's advisers and also that of Mr. J. S. Highfield who is an eminent authority on the subject and whose report is in the hands of the Committee.

Paragraph 10.

A statement clearing up the position of the difficulty into which the Municipal Council has fallen is attached hereto which shows that the capital expenditure in respect of the Nairobi Branch as at the end of 1934 was £499,111. The gross return on capital was 10.1% out of which an allowance must be made for depreciation, obsolescence, and general reserves, in addition to interest charges.

2. THAT THE POSITION OF THE COUNCIL AS THE LOCAL AUTHORITY FOR THE MUNICIPALITY OF NAIROBI WILL BE PREJUDICED BY THE COMPANY'S APPLICATION.

Under the Ordinance as it now stands the legal position of the Municipality with regard to compulsory acquisition cannot possibly be prejudiced by the grant of the Company's application because even if the present licence were not extended the Municipality would either have to take over before expiration (which might it will have in any event) or else submit to Section 19(a) as amended in respect of any fresh licence which might then be granted.

It is true the Company will do everything in its power to obtain a further amendment of Section 19(a) which is generally admitted to be completely illogical, but the question of amendment of the Ordinance does not affect the question of extension because once the Ordinance is amended the position of the Municipality is the same whether it licence.

The Council's memorandum does not disclose what steps they have taken to ascertain to what extent, if any, the consumers would benefit if the Undertaking were acquired and operated either in part or in whole by the Council.

3. THAT THE MAXIMUM PRICES AUTHORISED BY THE COMPANY'S DISTRIBUTING LICENCE No. 2 dated the 24th MARCH, 1922 ARE TOO HIGH AND SHOULD BE REDUCED.

This reason for objection appears to be quite irrelevant to the issue. In the first place the maximum prices permitted under the Company's licence are not in fact charged. In the second place the maximum prices are controlled by His Excellency the Governor in Council and if the Municipality are dissatisfied with the present position it would be more appropriate if this Authority made

EAST AFRICAN POWER AND LIGHTING COMPANY LIMITED

MEMORANDUM on the grounds given by the NAIROBI MUNICIPAL COUNCIL for their objection to this Company's application for an EXTENSION OF LICENCES.

-----

1. THAT THE APPLICATION IS PREMATURE:

The reasoning as to why this Company's application is not premature is fully set out in paragraphs 24 to 28 of the Memorandum on the Question of the Future Supply of Electricity to Nairobi and District which is already in the hands of the Committee.

It would appear desirable, however, to deal in a certain amount of detail with some of the points raised under this heading in the Council's objection.

Paragraph 5.

The issue of capital therein referred to was in respect of the Pangani Concession in Tanganyika which is held for a period of 60 years with a possibility of extension to 75 years.

Paragraphs 6, 9, 11 and 12.

The material contained in these paragraphs appears to represent the considered opinion of the Municipal Council upon a highly technical and intricate subject of finance the soundness of which in the opinion of this Company is open to doubt and which is diametrically opposed to that of this Company's advisers and also that of Mr. J. S. Highfield who is an eminent authority on the subject and whose report is in the hands of the Committee.

Paragraph 10.

A statement clearing up the position of the difficulty into which the Municipal Council has fallen is attached hereto which shows that the capital expenditure in respect of the Nairobi Branch as at the end of 1934 was 2499,111. The gross return on capital was 10.19% out of which an allowance must be made for depreciation, obsolescence, and general reserves, in addition to interest charges.

2. THAT THE POSITION OF THE COUNCIL AS THE LOCAL AUTHORITY FOR THE MUNICIPALITY OF NAIROBI WILL BE PREJUDICED BY THE COMPANY'S APPLICATION.

Under the Ordinance as it now stands the legal position of the Municipality with regard to compulsory acquisition cannot possibly be prejudiced by the grant of the Company's application because even if the present licence were not extended the Municipality would either have to take over before expiration (which right it will have in any event), or else submit to Section 19(a) as amended in respect of any fresh licence which might then be granted.

It is true the Company will do everything in its power to obtain a further amendment of Section 19(a) which is generally admitted to be completely illogical but the question of amendment of the Ordinance does not affect the question of extension because once the Ordinance is amended, the position of the Municipality is the same whether it licenses.

The Council's memorandum does not disclose what steps they have taken to ascertain to what extent, if any, the consumers would benefit if the Undertaking were acquired and operated either in part or in whole by the Council.

3. THAT THE MAXIMUM PRICES AUTHORISED BY THE COMPANY'S DISTRIBUTING LICENCE No. 2 dated the 24th MARCH, 1922 ARE TOO HIGH AND SHOULD BE REDUCED.

This reason for objection appears to be quite irrelevant to the issue. In the first place the maximum prices permitted under the Company's licence are not in fact charged. In the second place the maximum prices are controlled by His Excellency the Governor in Council and if the Municipality are dissatisfied with the present position it would be more appropriate if this Authority made

representations in accordance with Section 69 Sub-section (2) of the Electric Power Ordinance.

THAT PROVISION FOR DEPRECIATION HAS NOT BEEN MADE BY THE COMPANY IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 45 OF THE ELECTRIC POWER ORDINANCE.

This ground for objection again appears to have little bearing on the objection. Were the amount set aside from year to year for depreciation and shown in the Government Annual Returns too large than it is quite obvious that after examination of these accounts His Excellency the Governor in Council would make representations to the effect to the Company. If on the other hand the amount set aside were too small the Annual Accounts would indicate a larger return on capital than would be actually the case and give His Excellency the Governor in Council an opportunity to enforce a reduction of maximum rates under the Section of the Electric Power Ordinance referred to above.

If the Governor in Council were in fact not satisfied that the provisions of Section 45 have been observed he would presumably have taken appropriate action under Section 45(6).

Referring to paragraph 4 under this head, the write-off on Stones in 1929 was quite a normal procedure based on the financial position of the Company at that time and the current value of stocks, the value of which had been depreciated considerably due to a general fall in prices.

The figure of Shs. 92,540 quoted in paragraph 4 is misleading as the major portion of this was a transfer from the accumulated depreciation fund account in respect of the writing down of the Parklands plant and does not represent in any way the depreciation set aside in that particular year.

In view of the fact that a certain amount of prominence has been given to this Company's policy in regard to depreciation reserves we felt it desirable to obtain the opinion of Messrs. Slaughter & May, a well known firm of lawyers with very considerable experience in Power Underwriting work, and this opinion is attached to this memorandum.

THAT THE MAXIMUM DIVIDENDS PAYABLE BY THE COMPANY SHOULD BE LIMITED TO TEN PER CENTUM PER ANNUM.

There again this reason for objection appears to be quite irrelevant and as if the Council is dissatisfied with the existing provisions of the Electric Power Ordinance the proper action would be for it to petition Government for an appropriate amendment.

THAT THE SYSTEM OF OVERHEAD LINES IN BUILT-UP AREAS IS UNSATISFACTORY, UNSIGHTLY AND DANGEROUS AND SHOULD BE REPLACED BY UNDERGROUND CABLES IN BUILT-UP AREAS.

The system of overhead mains at present existing in the Nairobi area of supply is in accordance with the Electric Supply Lines Ordinance and the method of construction must comply with the Electric Power Regulations, 1925.

The overhead line is forced on us by the need to give electric supply cheaply.

If the system of distribution is considered unsatisfactory by the Municipal Council then again the proper course would be for this body to make suitable representation to Government and ask for amendment of the Ordinance and/or Regulations.

It/

representations in accordance with Section 69 Sub-section (2) of the Electric Power Ordinance.

THAT PROVISION FOR DEPRECIATION HAS NOT BEEN MADE BY THE COMPANY IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 45 OF THE ELECTRIC POWER ORDINANCE.

This ground for objection again appears to have little bearing on the question. Were the amount set aside from year to year for depreciation and shown in the Government Annual Returns too large than it is quite obvious that after examination of these accounts His Excellency the Governor in Council would make representations to this effect to the Company. If on the other hand the amount set aside were too small the Annual Accounts would indicate a larger return on capital than would be actually the case and give His Excellency the Governor in Council an opportunity to enforce a reduction of maximum rates under the Section of the Electric Power Ordinance referred to above.

If the Governor in Council were in fact not satisfied that the provisions of Section 45 have been observed, he would presumably have taken appropriate action under Section 45(B).

Referring to paragraph 3, under this head, the write-off on Stores in 1924 was quite a normal procedure based on the financial position of the Company at that time and the current value of stocks, the value of which had been depreciated considerably due to a general fall in prices.

The figure of Shs. 92,540 quoted in paragraph 4 is misleading as a major portion of this item was a transfer from the accumulated depreciated fund account in respect of the writing down of the Franklands plant and does not represent in any way the depreciation set aside for that particular year.

In view of the fact that a certain amount of prominence has been given to this Company's policy in regard to depreciation reserves we felt it desirable to obtain the opinion of Messrs. Slaughter & May, a well known firm of lawyers with very considerable experience in Power Underwriting work, and this opinion is attached to this memorandum.

THAT THE MAXIMUM DIVIDENDS PAYABLE BY THE COMPANY SHOULD BE LIMITED TO TEN PER CENTUM PER ANNUM.

Here, again this reason for objection appears to be quite irrelevant as if the Council is dissatisfied with the existing provisions of the Electric Power Ordinance the proper action would be for it to petition Government for an appropriate amendment.

THAT THE SYSTEM OF OVERHEAD LINES IN BUILT-UP AREAS IS UNSATISFACTORY, UNSIGHTLY AND DANGEROUS AND SHOULD BE REPLACED BY UNDERGROUND CABLES IN BUILT-UP AREAS.

The system of overhead mains at present existing in the Nairobi area of supply is in accordance with the Electric Supply Lines Ordinance and the method of construction must comply with the Electric Power Regulations, 1925.

The overhead line is forced on us by the need to give electric supply cheaply.

If the system of distribution is considered unsatisfactory by the Municipal Council then again the proper course would be for this body to make suitable representation to Government and ask for amendment of the Ordinance and/or Regulations.

It/

It must be borne in mind that the change over would be extremely expensive to the Company, to the Council in respect of Street Lighting mains and to the consumer in respect of services and internal wiring.

7. THAT THE PRACTICE OF THE COMPANY IN UNDERTAKING CONTRACT WORKS AT A LOSS IS UNFAIR AND INEQUITABLE BOTH TO CONSUMERS AND ELECTRICAL CONTRACTORS AND SHOULD BE PROHIBITED.

This statement is entirely incorrect and has no bearing whatsoever on the issue at present under consideration. If, however, the Committee so desire this Company will be prepared to provide evidence to prove the incorrectness of the accusation.

8. THAT THE CHARGES FOR METER RENTS ARE EXCESSIVE.

Once again this ground for objection would appear to have no bearing whatsoever on this Company's present application and is in effect a criticism of His Excellency the Governor in Council who after full enquiry authorised the rates at present in force as recently as March 1st, 1934.

9. THAT THE APPLICATION OF THE COMPANY FOR AN AREA IN THE NATIVE RESERVE TO COMPLETE WHAT IS KNOWN AS THE MARAGUA-TANA SCHEME IS A SEPARATE MATTER AND SHOULD BE DEALT WITH QUITE INDEPENDENTLY FROM THE APPLICATION OF THE COMPANY FOR A RENEWAL OF THEIR EXISTING LICENCES.

The reasons why these two matters cannot be considered independently are very fully set out in Appendix 1 to the Memorandum on the Question of the Future Supply of Electricity to Nairobi and District which is in the hands of the Committee.

10. THAT THE POSITION WHICH THE COMPANY ALLEGES IN THEIR MEMORANDUM IS "FRAUGHT WITH GRAVE DANGER" IS DUE TO THE FAILURE OF THE COMPANY TO ADOPT MEASURES TO PREVENT SUCH A POSITION ARISING.

The failure of the Company to adopt measures to prevent such a position is entirely due to its desire to avoid proceeding with the piecemeal development which must inevitably prejudice both lighting and power consumers. This should be fully understood by a perusal of the report of the Engineers to the Crown Agents for the Colonies dated the 16th March, 1935, which accompanied the Company's Memorandum to the Municipal Council.

11. THAT PARAGRAPH E OF THE COMPANY'S MEMORANDUM ON THEIR APPLICATION FOR RENEWAL OF THEIR LICENCES IS NOT SUPPORTED BY FACT.

A Memorandum supporting the Council's objection states "The recommendations contained in the Weir Report (which is referred to in the said Memorandum) have not been adopted by Parliament". This statement is incorrect as will be seen by reference to the last paragraph of page 446 of Will's Electric Lighting" (Fifth edition) which reads as follows:-

"The report of the Committee, now generally known as the Weir Report, was published in January, 1926. Sir John Snell, the Chairman of the Electricity Commission, acted as Technical Adviser to the Committee, and the Committee were assisted by the Electricity Commissioners, Mr. C. H. Merz, Mr. J. M. Kennedy, Mr. S. L. Pearce, Mr. Samuel Insull, and other eminent engineers. The findings of the Committee are substantially embodied in the Act of 1926, and these findings and the principal features of the Act are dealt

It must be borne in mind that the change over would be extremely expensive to the Company, to the Council in respect of Street Lighting mains and to the consumer in respect of services and internal wiring.

7. THAT THE PRACTICE OF THE COMPANY IN UNDERTAKING CONTRACT WORKS AT A LOSS IS UNFAIR AND INEQUITABLE BOTH TO CONSUMERS AND ELECTRICAL CONTRACTORS AND SHOULD BE PROHIBITED.

This statement is entirely incorrect and has no bearing whatsoever on the issue at present under consideration. If, however, the Committee so desire this Company will be prepared to provide evidence to prove the incorrectness of the accusation.

8. THAT THE CHARGES FOR METER RENTS ARE EXCESSIVE.

Once again this ground for objection would appear to have no bearing whatsoever on this Company's present application and is in effect a criticism of His Excellency the Governor in Council who after full enquiry authorised the rates at present in force as recently as March 1st, 1934.

9. THAT THE APPLICATION OF THE COMPANY FOR AN AREA IN THE NATIVE RESERVE TO COMPLETE WHAT IS KNOWN AS THE MARAGUA-YANA SCHEME IS A SEPARATE MATTER AND SHOULD BE DEALT WITH QUITE INDEPENDENTLY FROM THE APPLICATION OF THE COMPANY FOR A RENEWAL OF THEIR EXISTING LICENCES.

The reasons why these two matters cannot be considered independently are very fully set out in Appendix 1 to the Memorandum on the Question of the Future Supply of Electricity to Malindi and District which is in the hands of the Committee.

10. THAT THE POSITION WHICH THE COMPANY ALLEGES IN THEIR MEMORANDUM IS "FRAUGHT WITH GRAVE DANGER" IS DUE TO THE FAILURE OF THE COMPANY TO ADOPT MEASURES TO PREVENT SUCH A POSITION ARISING.

The failure of the Company to adopt measures to prevent such a position is entirely due to its desire to avoid proceeding with the piecemeal development which must inevitably prejudice both lighting and power consumers. This should be fully understood by a perusal of the report of the Engineers to the Crown Agents for 1931, which is dated the 16th March, 1935, which accompanied the Company's Memorandum to the Municipal Council.

11. THAT PARAGRAPH 5 OF THE COMPANY'S MEMORANDUM ON THEIR APPLICATION FOR RENEWAL OF THEIR LICENCES IS NOT SUPPORTED BY FACT.

The Memorandum supporting the Council's objection states "The recommendations contained in the Weir Report (which is referred to in the said Memorandum) have not been adopted by Parliament". This statement is incorrect as will be seen by reference to the last paragraph of page 446 of "Will's Electric Lighting" (Fifth Edition) which reads as follows:-

"The report of the Committee, now generally known as the Weir Report, was published in January, 1926. Sir John Snell, the Chairman of the Electricity Commission, acted as Technical Adviser to the Committee, and the Committee were assisted by the Electricity Commissioners, Mr. C. H. Merz, Mr. J. M. Kennedy, Mr. S. L. Pearce, Mr. Samuel Insull, and other eminent engineers. The findings of the Committee are substantially embodied in the Act of 1926, and these findings and the principal features of the Act are dealt

with in subsequent chapters. The act is set out in full and annotated, pp.491 et seq.

It must be quite obvious to any student of the subject that any recommendations concerning the period during which power undertakers would enjoy undisturbed rights would be incorporated in Provisional Orders and not in ordinary electricity legislation. In this connection we would refer to paragraph 6 of Mr. Highfield's report - Appendix VII which accompanied the Memorandum from the Company which is in the hands of the Committee.



NAIROBI BRANCH

SCHEDULE OF CAPITAL EXPENDITURE as at 31st DECEMBER, 1934

Lands	117,873.05
Buildings	1,066,567.71
Machinery	2,516,882.41
Hydraulic Works	923,118.27
Mains	4,003,648.07
Transformers	618,602.29
Meters	77,348.00
Electric Instruments	8,054.00
Stores - Oil Fuel	2,758.51
General	283,581.51
In Transit	13,966.87
Sundry Debtors on Incomplete Contracts	108,012.60
Sundry Debtors for Electrical Material	182,302.99
Other Debtors	1,094,530.89
Less Amounts owing by Subsidiary Companies, etc.	283,165.19
Motor Vehicles	20,100.00
Apparatus on Hire	45,574.04
Main Fuses	8,000.00
Tools and Implements	10,504.00
Furniture and Fittings	39,897.00
	<u>10,161,903.04</u>

LESS

Sundry Creditors on Operating Accounts	144,144.04
Deduct amounts included for Head Office Creditors, etc.	102,887.05
	<u>41,256.96</u>
Consumers Deposits	138,422.75

179,679.74

Shs. 9,982,223.33

8499,111

* PROFIT as per Statement attached	250,882
CAPITAL per Schedule	499,111
PROFIT PERCENTAGE on Capital	10.19

X NOTE:

This profit represents the balance available for depreciation and obsolescence of fixed assets, and all reserves in addition to interest charges.

THE EAST AFRICAN POWER AND LIGHTING COMPANY, LIMITED  
ELECTRICITY DEPARTMENT

NAIROBI BRANCH

REVENUE ACCOUNT FOR THE YEAR ENDED 31st DECEMBER, 1934

TO Generation of Electrical Energy	99,171.82	By Sales of Electrical Energy per Meter at 20.32 cents per unit	1,425,862.91
" Distribution of Electrical Energy	176,954.30	" Sale of Electrical Energy under Contract	44,777.55
" Public Lamps	10,796.25	" Public Lighting	48,579.33
" Rents, Rates and Taxes	18,193.55	" Rental of Meters and other Apparatus on Consumers' Premises	84,951.28
" Management Expenses	219,636.09	" Maintenance of Public Lamps	13,221.79
" Law Charges	2,514.00		
" Depreciation of Loose Assets	53,733.30		
" Insurance	6,903.07		
" Bad Debts	6,273.90		
" Loss on Sales and Contract Departments	5,582.69		
" BALANCE available for Depreciation and Obsolescence of Fixed Assets, Reserves, Interest Charges, etc.	599,758.57		
	1,017,633.89		
			Shs. 1,617,392.86

COPY OF LETTER RECEIVED FROM MESSRS. SLAUGHTER & MAY

18 AUSTIN FRIARS, LONDON, E.C. 2, dated 10th FEBRUARY

1936, Reference WEA/CHS.

The London Secretary,  
The East African Power & Lighting Co., Ltd.,  
66, Queen Street,  
LONDON, E. C. 4.

Dear Sir,

We write to confirm the opinion which we have expressed with regard to the provisions for depreciation under Section 45(3) of the Electric Power Ordinance of 1920.

This sub-section provides that :-

"When and after the supply of electrical energy from or through any part of a Licensee's works or undertaking is begun there shall appear in the accounts of the undertaking from year to year an allowance for depreciation of such works or such part thereof which shall be of such amount as is usual for works of the same nature and class or as may be stated in the Licence.

In our opinion the Company has complied with its obligations under the Section when the Directors have set aside and entered in the accounts of the Company in each year an allowance for depreciation, which they consider adequate. The Section in our opinion imposes an obligation to set aside such amount as is adequate and usual, but does not contain a direction to calculate depreciation by means of a stated percentage on each asset of the Company or by any other specific method.

Yours faithfully,

(sgd) SLAUGHTER & MAY,

COPY OF LETTER RECEIVED FROM MESSRS. SLAUGHTER & MAY,  
18 AUSTIN FRIARS, LONDON, E.C. 2, dated 10th FEBRUARY,  
1936, Reference WEM/CHS.

The London Secretary,  
The East African Power & Lighting Co., Ltd.,  
66, Queen Street,  
LONDON, E. C. 4.

Dear Sir,

We write to confirm the opinion which we have expressed with regard to the provisions for depreciation under Section 45(3) of the Electric Power Ordinance of 1920.

This sub-section provides that :-

"When and after the supply of electrical energy from or through any part of a Licensee's works or undertaking is begun there shall appear in the accounts of the undertaking from year to year an allowance for depreciation of such works or such part thereof which shall be of such amount as is usual for works of the same nature and class or as may be stated in the Licence.

In our opinion the Company has complied with its obligations under the Section when the Directors have set aside and entered in the accounts of the Company in each year an allowance for depreciation, which they consider adequate. The Section in our opinion imposes an obligation to set aside such amount as is adequate and usual, but does not contain a direction to calculate depreciation by means of a stated percentage on each asset of the Company or by any other specific method.

Yours faithfully,

(sgd) SLAUGHTER & MAY.