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THE EAST AFRICAN ROWER AND LIGHTING COMPANY LIMITED

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MAIROSI 27th February, 1936

AFRICAN POWER AND LIGHTING COMPANY

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

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 paragnaphs empears 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 Inlied is a tached hereto which shows that the cantal expenditure in respect of the Calmobi Franch as at the end of 1934 was 1699 111. The grade returning capital was 10.19% out of which an affiowance must be made for deprecipation, obsolescence, and general reservos, 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.

Inder the Ordinance as it now stands the legal position of the Under the Ordinance as it now stands the legal postsion of the Municipality with regard to compulsory acquisition commot passibly be prejudiced by the grant of the Company, application because even if the present lacence were not extended, the Municipality would either have to take pure before expiration (which right it will Maye in any event) or else ambmit to Sation 19 8, as amended in respect of any inesh licence which right then becarally as as manded. In the true the Company will do everything in its power to contain a further, amendment of Section 19(a), which is generally admitted to be completely illogical, but the question of amendment of the Ordinance is amended, the position of extension because once that whose is dicense.

The Council's memorandum does not disclose what steps they have taken to secretain to what extent, it any, the consumers, would be not be to be a consumers, would be not be to be a consumers. fit if the Undertaking were acquired and operated either in pant or in whole by the Council.

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

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

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A statement clearing up the position of the difficulty into Which the Municipes 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; [1]. 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.

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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 licance 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 memorial in respect or any speech licence which right then be granted.

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representations in accordance with Scotton 69 Sub-section 2) of

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

This ground for objection again specify have little bearing on the parameter. Were the amount sat spide from year to year for depreciation and shown in the Government Annual Rathing too large them. It is quite obvious that after examination of these accounts then it is quite obvious that after examination of these accounts its Excellency the Governor in Council would make representations to this first that the Company. If on the other hand the amount set authors are amount set and series the small the Annual accounts would indicate a largor return on eagital 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 Production of maximum rates under the Section of the electric Production of the council and the council of the council production of the counc

the intercogning of council were in fact not estisfies that the profit one of Secribal () have been objected be would prequisite that the taken epor opide action with selection 45(8).

Registing to paragraph () under ones weed the write-off on Stores in 1989 yes quite a normal procedure best on the riperial postulon of the representation of the repre

The Tigure of Shs. 92,540 quoted in paragraph 4 is mislacting as the major portion of this program as transfer from the accumulated so-rectating fund account an respect of the writing down of the eparal and sold may be depreciated in any way the depreciation set aside by that partiquiar year.

In view of the fact that a certain amount of promiting has been give to this Company's policy in regard to depreciation reserves we felt it depicable to obtain the opinion of leasing Slaughter & Mann well known firm of lawyers with very considerable deperions in the power Widerlaing work, and this column is attached to this manner

THAT THE HAX MUM DESCRIPTS PARABLE BY THE COMPANY SHOULD BE LIMITED.

White Brain this reason for objection appears to be quite irreleason as if the Council is dispatisfied 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 BULLT-UP AREAS IS UNGATISFACT ORY; UNSIGHTLY AND DANGEROUS AND SHOULD BE REPLACED BY UNDERGROUND CABLES IN BUILT-UP AREAS:

The system of overhead melms at present existing in the lairobt area of sumly is in accordance with the electric Supply Liber Ordin ance and the method of construction must doubly with the Electric Power Regulations, 1925.

The overhead line is forced of us, by the heed to give electric supply cheaply.

If the system of distribution is considered unsatisfactory by the funicipal Council them 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.

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The Loss Governor in Council Marca is contained.

If indeed overnor in Council were in fact not satisfied that the provisions by Section 15 have been observed he would presumably have taken appropriate action this between 45(8).

Referring to paragraph; number this weed, the write-off on Stores in 1979 Weed, with a normal procedure based on the financial postion of the follow at that time and the kurrent value of stocks, the value of which the been depreciated considerably due to a general control to passet.

The Truns of Sha. 92,540 quoted in paragraph 4 is misleading as the major portion of this item was a transfer from the account in respect of the writing down of the sparklands of ant and does not represent in any way the depreciation last aside to that particular year.

In view of the fact that a certain amount of prominence has been given this Company's policy in regard to depreciation reserves we felt it deprinable to obtain the apinion of Messas Slaughter & May; a well-known firm of lawyers with very considerable department to power indeprivating work, and this column is attached to this memorandum.

THAT THE MAXIMUM DIVIDENTS PAYABLE BY THE COMPANY SHOULD BE LIMITED TO THE RESERVOIC FEW ANNUAL.

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The overhead line is forced of us, by the heed to give electric supply cheaply.

If the system of distribution is considered unsatisfactory by the Aunicipal Council them 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 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.

THAT THE PRACTICE OF THE COMPANY IN UNDERTAKING CONTRACT WORKS AT ACLOSS IS UNFAIR AND INEQUITABLE BOTH TO CONSUMERS AND SLECTHIGAL 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 desing this Company will be prepared to provide evidence to prove the incorrectness of the accusation.

9. THAT THE CHARGES FOR METER RENTS ARE EXCESSIVE.

one again this ground for objection would appear to have no bearing whatsoever on this Company's present application and is in affect a crivicism of his excellency the Governor in Council who after full enquiry authorised the rates at present in force as recently as Barch lst, 1934.

THAT THE APPLICATION OF THE COMPANY FOR AN ERRE IN THE NATIVE PRISERY'S TO COMPLETE WHAT IS KNOWN AS THE MARGUAYTENA SCHEME IS A SEPTEMBER AND SHOULD BE DEALT WITH QUITE INDEPENDENTLY FROM THE APPLICATION OF THE COMPANY FOR A RENEWAL OF THEIR EXISTING LITCHICES.

The reasons why these we matters remnet be considered independently are very bully set out in apprials 1 to the Memorandum on the Question of the Tuture Supplied Thetiricity to mairobi and District Which is In the hands of ill Committee.

D. THAT THE POSITION WHICH THE COMPANY ALLEGS IN THE TRANSPORMEDUM IS "TRAUGHT WITH GRAVE-DANGER" IS DUE TO THWISALISHED ON THE COMPANY TO AROPE MEASURES TO PROVENT SUCH A POSITION LATERING."

The failure of the dompany to adopt measures to prevent such a position is entirely due to its desire to avoid proceeding with the piecemeal development which must should be fully prejudice both lighting and power consumers. This should be fully underseased by appendig the report of the Applicage to the Crown Agents for this wills doted the 15th March, 1935, which accompanies the Company's Memorandum to the Municipal Council.

"White still gradum supporting the Council's objection states Inches contained in the Wetz Report (which is referred to in the said Memorandum) have not been adopted by Paritament". This statement is incorrect as will be seen by reference to the last paraphaph 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 Shell, the Cheirman of the Electricity Commission, acted as Technical diserto the Committee, and the Committee were assisted by the Electricity Commissioners Fr.C.H. Merz, Er.J.M.Kennedy, Mr.S.L. Pennedy Er. Samuel Insul, and other eninent engineers, The Indiang of the Committee are substantially embedded in the Act of 1926; and these findings and the principal features of the Act are dealt

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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 injoindinary electricity legislation. In this connection we would refer to paragraph 6 of Mr. Tighfield's report - Appendix Villy which accompanied the Memorandum from the Company which is in the mandator the Committee.

SCHEDUL FOR CAPITAL EXPENDITURE as at 31st DEC.MB.R, 1934

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CAPITAL

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

PROFIT as per Statement attached 250,882

on Capital

per Schedule

499,111

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COPY OF LETTER RECEIVED FROM MESSRS. SLAUGHTER & MAY

18 AUSTIN FRIARS, LONDON, S.C. 2, dated 10th TABRUARY

1936, Reference NAM/CHS

Dear Sir

We write to confirm the minion which we have expressed with regard to the provinges for depreciation under Saction 45(3) of the lieutric 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 there of 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 Setion when the Directors have set aside and entered in the account a company in each year an allowance for depreciation, which they consider adequate. The Section in our opinion imposes an opligation 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 Paithfully

(sgd) SLAUGHTUR & MAY

COPY OF LETTER RACESVAD FROM MASSRS. SLAUGHTER & MAY

18 AUSTIN FRIARS, LONDON, S.C. 2, dated 10th FLBRUARY

1936, Reference WAM/CHS

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In our opinion the company has complied with its abligation under the Section when the Directors have set asile and enterint the accounts do the Company in each year an allowance of depreciation, which they consider adequate. The Section opinion imigans and opinion to set aside such amount as is adequate and usual, but does not contain a direction to calculate and usual, but does not contain a direction to calculate and usual, but does not contain a direction to calculate and usual, but does not contain a direction to calculate and usual, but does not contain a direction to calculate the company or by any other specific method.

Yours faithfully.

(sgd) SLAUGHTUR & MAY