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**MOMBASA ELECTRIC LIGHT.**

Submits memo resp Mombasa Lighting and Power Coy  
and the Electric Requirements of Mombasa.

See on Rf 9153/20 Encl.  
all  
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MEMORANDUM by Government Electrical Engineer East Africa  
 Protectorate on the Mombasa Electric Lighting and Power  
 Company and on the Electric Power Requirements of Mombasa.

In order to view this matter in a correct perspective it is advisable to first consider the present position of Mombasa's power requirements and also that which will or should result in the course of the next few years.

Mombasa is and from its position and natural facilities will probably remain the principal port of entry for a vast timberland.

Both Government and the public regard the future of the port to be assured.

It would simply be wasting time and is needless to go into detail to show that this, the latest port of importance on the East Coast to be brought into line with modern requirements cannot do without a supply of electrical energy for a <sup>three</sup> fold purposes, which in common sense must be on up to date lines, which embrace <sup>of</sup> proved economy and utility.

At the present time a number of industries are operating <sup>which use</sup> power obtained generally from internal combustion engines.

The Railway and Public Works Department workshops, together with various wharf crane equipment are also using power.

Further power requirements now apparent or maturing are those of the Magadi Soda Company who for a considerable time past would have made use of a large amount of power, (if available) at their works at Kilindini, and immediately work is commenced on the new Docking project a supply of power will be required. Concurrent with this progress there must occur a large increase in the demand for the numerous purposes essential to the modern life of a tropical community.

community.

Before criticizing the conduct of the Memorandum of the Company it is important to note that no electrical supply concern can be said to have been successful while it confined itself to electric lighting only.

Among the ancients many or all started in that branch, which offers only a few hours of the 24 in which to earn revenue while the greatly major part of the expenses continue for the whole day.

In figures the load factor of these concerns, i.e. the beneficial employment of the capital outlay amounts to about 5 to 7 per cent only.

There is only one way by which such a position can be improved that is by extending the time of beneficial employment by securing another kind of load, such as supplies for power during the hours of daylight.

It will be appreciated that to secure this extra business it might be necessary to entail some loss, for a time. Taking a certain output as being necessary to meet the cost of working the plant for an extended period the loss would be a diminishing quantity until this certain output was attained.

It is appropriate to remark here that in the case of the Mombasa Company if the Directorate had been guided by the capable engineers whom they at one time employed, the Company would long since have past this stage, and it is highly probable that no other form of power than electrical energy would have been used on the Island.

In point of fact the Company were told in my presence in 1915, by Mr. J.H. Rider on behalf of his clients, the Magadi Soda Company that he was prepared to receive a tender for the supply to their works at Kilindini of 150 H.P. for 10 or 12 hours

per

per day. At the same time Mr. Rider informed them that while he would require substantial penalties for failure, his clients required power - not penalty money - and that on this account the Mombasa Company with its present type of plant had little hope of securing a contract for supplying power to the Magadi Company.

The Company commenced operations in Mombasa by using the plant cast out by Zanzibar. So it can well be understood that the provision of new plant in 1914 was not a matter of choice.

While this new plant was not <sup>of</sup> a type suitable for the exacting duties of a generating station for public supply, it was thought that the selection had been forced on them by shortage of funds. The fact of its installation and that with it the Company instituted a 24 hours i.e. continuous service of electrical energy was interpreted by Government as indicating that the Company realised and would meet the requirements of the port, and, notwithstanding the plant installed (which it was discovered later was not selected by their own engineers), these requirements would have been met if the Company had followed the policy outlined for them by their own technical staff.

Government's enlightenment on this matter may be said to date from the investigation made into the Company's affairs on their application for permission to increase their charges for supply.

About the same time a failure of supply occurred which seriously alarmed the military authorities because it compromised their arrangements for the defence of Makupa Bridge and they requested the Company to put Europeans in charge of their generating works. The Company stated that they could not afford to do this.

Government

Government took up the whole matter with the result that the Company were authorized to increase their charges for the period of the war, and the military authorities, in addition to payment in full for all the current they used, granted the Company a subsidy of R.1,000 per month, which was continued for a lengthy period. With every consideration possible the military adopted the suggestion of Government that as it was difficult or impossible to obtain men they should provide them, which was done. Three men of the East African Pioneer Corps were supplied; two for the Generating Station, and one to carry out a new and safer line for supply to Makupa Bridge. The Military further agreed that their control of these would be exercised only through the Government Electrical Engineer, in order to remove the Company's fear that unqualified officers would interfere with their operations. As a fact these men were left entirely to the Company's direction. The amount of these men's pay was deducted from the subsidy of R. 1,000 and the balance paid to the Company in cash.

The facts revealed to Government on the investigation referred to above and other matter now following may be accepted as the reasons on which the Attorney General advised Government that the expansion of the Company's agreements should be refused as they had not observed and performed the conditions of their contract as they ought to have been. It may be observed that the Attorney General after hearing the Director of Public Works and the Government Electrical Engineer retained the files of the Public Works Department for further consideration before giving his opinion.

The Tenders submitted to the Company for plant included those of world-renowned makers which differed from the price of that selected by £70. At the time of the Board's consideration

consideration other Directors favoured the purchase of the better known apparatus but gave way to the predilections of the Managing Director, Mr. Powys Cobb. It was found later that before the Board inspected these Tenders Mr. Cobb in another capacity had accepted the Agency for Garrett's engines and as the Company's Managing Director had accepted the Tender of the Garrett Engine Company etc. On this becoming known together with the fact that Mr. Cobb, the Managing Director has issued to himself the Company's unissued shares below par - which is an illegal act - at least one Director wrote to the Company repudiating responsibility and tendering his resignation.

At the time of the Company's application to be allowed to increase their charges - not under any provision of their agreement - but because of increased cost due to war - Mr. Cobb was absent in England. The Government Electrical Engineer was afforded every facility and met the Company's Board which was stated to be informal, probably because a quorum was impossible in Mr. Cobb's absence. They were exceedingly grateful for the recommendation which was to be made to Government with reference to the increased charges to the public and stated that they would accept any decision of Government as to the price which should be charged for street lighting. This Board was informed that the payment of dividends made possible by any increase of price would be deprecated by Government until they had made some provision for depreciation and reserve, and also had expunged from their balance sheet the false credit items of the value of their scrap-heap and of the "value for their agreement". The Company have done none of these things but have unduly inflated the cost of production to balance the extra revenue. As one of the ways in which this has been done it may be mentioned that they have more office accommodation and

staff than that with which the writer has conducted Municipal undertakings of 10 times the size. Seventy five per cent of the cost of this is debited to the cost of electricity and seventy five per cent to Mr. Cobb's private enterprises, while the use made is about 90 per cent for Mr. Cobb's private affairs and 10 per cent for the Mombasa Electric Lighting purposes.

This is responsible for Section 138 (1) (b).

A licence will state that officers, works, etc. may be so used if true allocations of expenses are made, and if this condition is broken the permission is cancelled, until again authorised after a fresh application in this respect.

It was found during this enquiry that many economies could be effected by the Company and it was intended that the increase of price should be for the period of the Governor's pleasure and that this should be used as a lever to force the Company to effect such economies. However the permission was given to increase the charges for the period of the war, so that this lever did not exist during that time.

After the assistance given to the Company by the military authorities, the latter <sup>were</sup> very angry on finding that the Company had totally ignored the necessity for improving the transmission to Makupa Bridge, and had used the copper and the man provided on the Company's other work. But for the intervention of the Government Electrical Engineer and his report that, at the time of this discovery, the necessity no longer existed, it is certain that the responsible officer of the Company would have been court-martialled.

Without being required by Government the Company had instituted an extended service in point of time by giving a supply for 24 hours per day. This is contemplated by clause 7 of the agreement. The Company sold apparatus to the public for use during the extended service. Within two years, however, <sup>owing</sup>

owing chiefly to the complete failure of their accumulator battery - which batteries the Company state in their memorandum in support of the use of continuous current are good things for the public to possess - this extended service was withdrawn, without explanation or compensation.

It was brought to the notice of Government that the Company had demanded a cash deposit from the Administrator General as security for payment of the account for supply to be rendered. The matter was submitted to the Attorney General who advised Government that the Company's action was a breach of their agreement. The Company were accordingly notified and requested to desist. Nothing further being heard it was thought that the Company had complied. This, however, was not the case as just about the time of the question of the extension of the agreement being submitted to the Attorney General, it was learned - in Committee of the Legislative Council & that the Company had ignored the opinion of Government and had continued to demand these deposits from everybody including the Judges. On enquiry, the Company's Secretary admitted that the above was correct.

By clause 14 of their agreement the Company are required to give a supply, free from any charge for connection i.e. for mains or service wires, to anyone situated within 60 feet from a roadway. Recognising that this was a condition which might be onerous on the Company and is in excess of the requirements of British practice and of the Electric Power Ordinance, Government has never made any objection to any charge for connection so long as it was reasonable. Then, however, they presented a Bill for the connection to a Government bungalow which was at the rate of £444 per ton for copper wire

wire, which at that time could be bought in the bazaar for Rs. 12. per lb. Government protested and endeavoured to get them to modify their charge. As they declined to do so and argued the point Government repudiated the charge and referred them to their agreement.

The Company's remarks on the subject of the supply for power offered to an individual if taken between 6 p.m. and 6 a.m. are mere subterfuge. They made the offer to the individual in question (an Indian) by letter, who produced it to the writer.

In connection with the charges made by the Company during periods of inadequate supply these were distinctly excessive and therefore breaches of their contract. The electrolytic meter used by the Company does not integrate the voltage of the supply by actual measurement of that voltage as a component of the watts i.e. it does not measure the voltage at all but only measures the amperes of the current or quantity, and assuming that the voltage is kept within Board of Trade regulations, 4 per cent + or -, is calibrated in Board of Trade Units. As amperes on a circuit are directly proportional to volts it will be obvious that if a bungalow normally uses 5 amperes, which by 200 volts equals 1,000 watts, and by reason of reduced pressure only uses 2.5 amperes, the multiplying constant assumed by the meter is wrong, as instead of the watts consumed being 500 as indicated by the meter, they are only 250. The Company corrected the accounts of the Conservancy on the matter being dealt with and it is believed also the accounts of a few who have knowledge of the steps taken by the Town Clerk, but the charges made to the public generally were not rectified.

At

At an annual meeting of shareholders Mr. Cobb made a considered statement of which typed copies were handed to and published by the press of Mombasa and Nairobi, to the effect that for the defective supply which the Company were giving the Mombasa public had to thank, (or blame) Government as the Public Works Department had turned down his application to the priority Committee for a Boiler or other apparatus. This was gross, and clumsy misrepresentation, as the first knowledge the Director of Public Works or Government had of the matter was when Mr. Cobb forwarded the refusal of the Priority Committee with a four line note saying in effect in paragraph 1 enclosed herewith etc. and in paragraph 2. This is forwarded for your information only, so please return etc.

Adding to the above the fact noted early in this memorandum as to the Company's neglect to cater for the supply to the Magadi Company the foregoing presents briefly the facts on which the Attorney General gave the opinion which he did and which could not have been otherwise.

It should be noted that the action was not taken so much on specific default as on general default and incompetence which nothing could deal with but the Electric Power Ordinance. If it was possible to doubt the soundness of Government's action, that doubt is completely removed by a mere perusal of the Company's memorandum.

The statement that it would cost the Company £40,000 or £50,000 to institute a standard 3 phase supply equal to the capacity of their present plant is a misstatement for which there is no reason - but incompetence. This will be readily seen from the fact that they have two belt-driven C.C. dynamos of about 80 Kilowatts each equals 160 Kilowatts.

High class 3 phase machines to replace these could be obtained at £10 per Kilowatt, or £1,600, as per recent quotations. As the Company's various circuits each originate in the generating station present lighting and a small single phase motor supplies could be given without touching their overhead wiring. Alterations to switchboard would cost about £150.

The whole lot, freight etc. and installation of apparatus to carry their present load on alternating Current, 3 phase supply would not exceed £2,000.

If they were installing 3 phase motors (anything from 1 H.P. upwards) the overhead wires would require to be re-arranged and supplemented in number. It must be noted by the that 3 phase arrangement for motors, the overhead lines for equal H.P. only require 1/6th of the copper required by the Company's present 2 wire method and about 1/4th of that necessary for the 3 wire method suggested by someone who has advised Mr. Cobb in the preparation of his memorandum.

Keeping this copper in mind and the unavoidable excessive loss in transmission, which is of extra importance when generating from fuel, and also remembering that the present plant capacity could not supply the Magadi Company by day and the lighting load by night, if the supply to Magadi Company's 3 phase equipment were undertaken on the present system Mr. Cobb would require to instal at the Magadi works a motor-generator and switch gear which would cost about twice that of the equipment required at his generating station to convert his present system to standard 3 phase.

The suggestion that C.C. motors are preferable for industrial purposes, is in flat contradiction of fact. Nothing more robust and fool-proof than the 3 phase induction motor could

could be designed for industrial purposes. As for variable speed motors we have only this week received quotations for standard motors of this type from the leading British and American makers, and have ordered such for the Government press Nairobi. All the modern installations of note whether British, American, Swedish, German, Swiss, Tasmanian, Canadian, Australian, South African or Indian, are 3 phase 50 periods, i.e. on the British Standard which we have adopted. The writer installed many thousands of kilowatts of C.C. plant on the South African mines, which he later substituted by this undoubted standard equipment. Generally, on the Company's memorandum it might be imagined that British Engineering Standards Associations Standards had been selected because they were unique or difficult to obtain. The folly of such a suggestion is immense.

The plain short fact is that these Standards are the best and the most usual of what is best of their respective kinds.

Only one other point remains to be dealt with and that is time for conversion. Special reference is made in the Company's memorandum to the shorter time allowed in Mombasa's case than in Nairobi's.

The justification for that can be made quite clear in a few words. The system in Nairobi is standard and the plant installed can all be altered for standard pressure (except lamps). Consequently with the size of their area, and with the fact that the sub-areas containing motor equipment would require considerable energetic attention while other areas would not greatly suffer from a year's delay, a longer period could be permitted. In the case of Mombasa, power supplies had not been started and it would be the height

of folly to instal plant except on standard.

When it was suggested that the period for conversion to standards should be extended to 7 years etc. the folly of permitting in Mombasa was apparent, and the writer had in mind more particularly the case of Nairobi where the advisability of allowing the extension might be a matter of opinion - no such matter of opinion can possibly be alleged in Mombasa, where the opportunity is unique, and will never recur, of being able to adopt a standard from the commencement.

As the Nairobi Company has dropped out of the running and the Magadi Company require a supply now on the standard system, the amendment of the Ordinance cannot be recommended. A similar supply will be required by the Harbour, and the Railway and Public Works Department workshops in the very near future.

Finally, the generating works necessary for the future requirements of the Island could not be erected in the old quarry site now occupied by the Company, to which, by the way, they have to transport their fuel from Kilindini and transmit the power back again.

On the foregoing it seems to me that the only course possible is to confirm the decision of the Protectorate Government. It might also be suggested to the Company that as they are obviously unsuited for the highly technical business of power supply they had better allow Government or a Licensee to buy them out on a valuation either under their agreement or under the Electric Power Ordinance (the latter is the more generous). If Government bought they would buy on behalf of a Licensee - several candidates would put the money up at once.

I have assured the Magadi Company that a standard system supply will be available in the near future. For these

people

and for the Harbour Works and other obviously urgent requirements it is impossible that Mombasa can proceed any longer without a Licensee. If, therefore, the Company prove obstinate and wish to indulge in argument nothing remains to be done but to apply the Electric Power Ordinance and issue a Licensee.

In any case the application of the Ordinance should be made immediately.

On the night before leaving London it appeared to be quiet settled that the group comprising Bird and Company and Vickers-Westinghouse were going to put up the money and plant for power development. On the subject of their acquiring Swift and Rutherfords power project, and title, I informed them that the Ordinance would be applied in the near future or almost at once and that Swift and Rutherford had complied with all the requirements of the measure and as no objection had been lodged with Government to the grant, the Licensee could be regarded as assured and would issue in due course.

(Sgd) James McBlair.

2nd February, 1920.

42 BANGS STREET

Westford

343

March 3, 1924

Dear Mr. Parkinson,

In reply to your note  
of March 1<sup>st</sup> I will attend  
at the Colonial Office on Friday  
afternoon at 3 o'clock with  
pleasure.

Sincerely yours,

W. McCrea Jones

Downing Street,

1st March, 1930.

Dear Mr. Ross,

Will it be convenient for you to come round to the Colonial Office on Friday next (5th of March) at 3 o'clock to discuss certain matters connected with the Mombasa Electric Light and Power Company?

We are also asking Sir Edward Northey.

The meeting which will be quite informal, will be in Mr. Bottomley's room.

Yours sincerely,

McGregor Ross, Esq.

Downing Street,

1st March, 1920.

Dear Sir Edward,

Will it be convenient for you to come round to the Colonial Office on Friday next (5th of March) at 3 o'clock to discuss certain matters connected with the Mombasa Electric Light and Power Company?

We are also asking Mr. McGregor Ross.

The meeting which will be quite informal, will be in Mr. Bottomley's room.

Yours sincerely,

For General Sir Edward Northey, K.C.M.G., C.B.

MEMORANDUM by  
THE MOMBASA ELECTRIC LIGHTING COMPANY  
on its position

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London, Jan, 1920.

MEMORANDUM  
by  
THE MOMBASA ELECTRIC LIGHTING COMPANY  
on its position.

LONDON, JAN. 1920

1. THE object of this Memorandum is to deal only with the action of the Government of the East African Protectorate in refusing the extension of time provided for by the Company's Agreement of 8th August 1910 and the effect of the proposed new Ordinance upon its undertaking.

2. In so doing it might seem in dealing with H. H's. Secretary of State to the Colonies unnecessary but in view of the facts related later it is nevertheless inevitable that reference should be made to general Colonial conditions and extremely important that these should be borne in mind.

The future of the East African Protectorate is uncertain. The prospects for the moment are good but there will be in all probability a period of reaction and any ill directed steps of policy may delay or prevent development or render reaction serious. The effect in England of the restrictive and unfair clauses of the Electricity Act of 1882 was, it will be remembered described by High Authority to have been that "in the South Sea Islands the electric light was more used than it was in London".

Mombasa depends upon the progress of the Colony for its development. At present it is a straggling township of considerably less than 40,000 inhabitants of whom a little over 400 are whites.

Such places as the foregoing require attraction not deterrents to the investment of capital. Respect

by Government for its undertakings and encouragement of enterprise are more important than mere uniformity.

### History of the Company

The Company which is a small pioneer concern with a capital of Rs. 140,000 operates under an agreement dated the 8th August 1910 between the Government and Mr. A. G. W. Anderson, which agreement was afterwards transferred to the Company. A full copy is given in Appendix marked 'A'.

The agreement requires the Company to do certain things and fixes the maximum prices to be charged, which maximum prices were increased by agreement with the Government on October 1st 1915. It is very clearly laid down, see Clauses 7, 8, 14 & 16, that the Company is only required to supply in the residential portion of Mombasa and from the hours of 6 P.M. until daylight.

It will be seen that clause 23 of the Agreement clearly provides that if the Company fulfils all the conditions of the agreement to the reasonable satisfaction of the Government then the agreement shall be extended for a further period of 45 years.

On the strength of this agreement and of the good faith of the Government the Company expended a considerable sum of money on buildings, machinery, including the erection in 1914 after the war had begun of two new Garrett engines and a complete outfit with the same for the supply of direct current, and a network of mains throughout Mombasa, and faithfully performed all its obligations for the probationary period of seven years, during which period the Shareholders received no dividends and the Directors received no remuneration.

10. On December 15th 1916 the Company gave the required notice asking for an extension. No definite reply was received. Several reminders were sent and finally on August 8th 1917, the day after the probationary period of the Company's agreement expired, a letter was received from the Director of Public Works saying "I greatly regret that circumstances have prevented my dealing definitely with your enquiry of last December as to terms upon which the issue of a fresh license or agreement might be taken" and that in view of the delay he would recommend the Government to allow the Company seven or eight months to consider any reply they might finally make. No further communication was received until the end of November when a letter dated 29th November 1917 was received from the Director of Public Works saying the Government had no objection to the Company continuing in operation for a further period of 18 months under its old agreement and suggesting that the Company should apply for a new license on the lines specified in the Second Reading of the Electric Power Bill then before the Council. This the Company declined to do on the ground that the Bill was not law and might be amended.

1. On January 7th, 1918 the Company again wrote to the Government restating its case. This was replied to in a letter dated 16th April 1918 from the Public Works Department in which the Government for the first time indicated that it might refuse to extend the Company's agreement and for the first time in the existence of the Company suggested that the Company had not carried out its part of the agreement. A copy of this letter marked "B" and of the reply of the Company dated 28th April 1918 marked "C" is appended.

No answer was received to the letter but on June 13th the Director of Public Works wrote the Company a letter, marked "D" and appended, in which the Government for the first time definitely refused an extension of the Company's agreement "on the grounds that your Company has not provided to the reasonable satisfaction of the Governor such electricity as ought to have been provided and supplied under the contract of August 8th 1910, and further that your Company has not duly performed and observed all the other provisions of the contract as far as the same ought to have been performed and observed by the contractor". Not the slightest indication was given, or has ever been given, to the Company of the manner in which it has failed to perform its obligations or in what respect it has not provided a sufficient supply of electricity.

13. By letter dated the 30th November 1918 the Company was for a second time authorised to continue to supply electrical current under the terms of the original agreement. The Company had meanwhile by letter of 5th September 1918 expressed its willingness to apply for a license under the Electric Power Bill (not the present proposed Ordinance) on certain conditions which were not fulfilled. This letter of 5th September was subsequently withdrawn when the Company discovered that the Bill which it was considering was not the measure which the Government had in hand. Section 49 of the present Ordinance had been added among others. By letter of the 13th August 1919, marked "E" and appended, the Company intimated that its present uncertain position was intolerable and that unless it could secure a definite agreement on the lines laid down in that letter, by the 15th September 1919, it would cease to operate.

14. An emergency Ordinance was thereupon rushed through for the Maintenance of Public Supply of Electrical Energy and by letter dated the 25th August 1919 the Company withdrew the intimation of their intention to cease operations and demanded a public inquiry - which was categorically refused. This Ordinance is of, it is to be hoped, a temporary nature, but it may be remarked in passing that assuming it was necessary to pass some such measure the rights of private property should have been safeguarded to the utmost. The contrary is the case.

15. Attention is called to the first allegation in the letter of 16th April 1918 which comes to this. "The authorization by the Government of the alteration of the rates you were entitled to charge during a time at which the Governor considered you must either raise your rates or cease to operate was a breach of your agreement". (Copies of the five letters of September and October 1915 referring to the raising of the Company's rates of charge are appended and marked "P".) That is to say - the Government actually allege in writing that they can solemnly authorize a breach - departure is the softer word which is used when the Government is describing its own part in the transaction - of a condition in an agreement with them and then take advantage of it to cancel the contract. This is an amazing proposition.

16. The second allegation in this letter is that at least some one person complained once that he could not obtain a supply of power except by night. It is not stated who he was, whether he was within the residential portions of the township of Bombasa, whether the gravamen of his complaint was investigated, nor even

that the solitary applicant did complain, since it is only the understanding of the Public Works Department which is put forward. But this is not all, there is a certain humourousness in the case of this putative applicant for power by day, in that the Company under clause 16 is not obliged to supply current except from 8. p.m. until daylight.

17. Letter 15th June 1918 "D" drops the allegations of letter 16th April 1918 "B" altogether and takes refuge in the safer grounds of a large indefiniteness stating merely that electricity under the Agreement has not been provided to the reasonable satisfaction of the Governor and that the Company has not performed and observed all the other provisions of the contract.

Now it will be noted:-

(1) under Clause 8 the Governor had the right to testify his dissatisfaction not by loose allegations but by written notice pointing out deficiencies and calling on the contractor to make good. That was fair enough procedure. Not only did the Governor not take advantage of it but Sir Henry Conway Belfield in the Legislative Assembly complimented the Company on the conduct of its undertaking. Under Clause 10 the Governor has also the right to buy the Company out and take over the supply of electricity or dispose of it. Under Clause 17 the Governor had a further remedy if there was a demand for a more extended supply than the Company was willing to give. Neither of these remedies was ever put in force by the Government of East Africa or was it ever threatened that they should be. If breaches were being committed the remedy was there and it was the duty of the Government to use it. There were in fact no such breaches. The allegation was in fact an afterthought.

19. (1) The words "reasonable satisfaction" have a clear and definite meaning and it is safe to say on the cases on the point of what is "reasonable" that a party to an action who had remedies to his hand at the time for breaches and never even alleged any such breaches during the continuance of the probationary term - not even when application is made for the grant of the extension for 43 years under the clause (23) which introduces the phrase "reasonable satisfaction" - but on the contrary requested the Company to continue working for a year beyond the probationary period under the Agreement which it is alleged had been broken, would not be listened to if he asserted that he had reasonable grounds for dissatisfaction.

## II.

### THE ORDINANCE

20. During the passage of the present Ordinance through the Legislative Council in 1919 its official promoter after speaking of the Contract of the Mombasa Company as "having expired" referred to the Ordinance as being only "on a par with the Board of Trade Regulations". This may have been an approximately correct description of the Bill as it was considered by the Special Committee in 1917 and 1918 but was and is not true of the present Ordinance; and it was statements of this nature repeated during the passage of the measure which induced the lay members of the Council to view it in the required light while radical departures from the original Bill such as S. 8 (d) which is vital to this Company were rushed through at the last moment so that bodies such as the Mombasa Electric Light & Power Co. had no opportunity of expressing their views.

21. Under these circumstances it would appear that further time might well be allowed those interested in the permanent advantage of the East African Protectorate to consider the Ordinance and enlighten the Colony as to its effect while the progress of time will show whether this or some simpler measure is required - unless a case can be made out for urgency; and that it lies on those who wish to make East Africa a field for experiments to show that there is urgent need for it to be made in this locality at this time.

22. The Government has represented that the Company has had every opportunity of raising objection to the measure. In a letter dated 24th January 1919 the Acting Chief Secretary to the Government wrote to the Company's Solicitor "If your clients have any objection to such provision, I would point out that they have had every opportunity of raising any objection before the Special Committee which considered and reported on the Electric Power Bill". "Such provision" to which he referred is the clause compelling this Company to scrap its plant and adopt the Government Standards. The Special Committee sat in 1917 and early 1918, and the Bill it considered did not contain the provision referred to, which has been introduced since. The Company has never had any opportunity whatever of objecting to the provision which has been introduced since. The Government has introduced numerous and far reaching amendments, making the most radical alterations in the Bill. Some of these appear to have been designed specially to apply to the Mombasa Company. The Company had no notice that they were to be proposed and discussed, and even after they have been passed has had the greatest difficulty in obtaining copies. The Company wrote four times asking for a copy of the

important amendments introduced on the day the Bill was finally passed by the Legislative Council, and finally had to complain to his Excellency the Governor before one was obtained.

We enumerate below a few of the objections to the Ordinance. The list is not intended to be exhaustive:-

24. (A) Objection to the Ordinance as it stands is that it imposes upon a sparsely-settled budding community a complicated network of restrictions and obligations. It entails upon a Company like the Mombasa Electric Light & Power Co. - a small pioneer dividendless Company - a system of elaborate advertisements, notices and returns which would entail a large clerical staff and provide a series of pitfalls and penalties which are not in the present state of development of Mombasa really required. This means that a Company to cope with this would have to obtain more capital but this very monumental pile of clauses is the great deterrent to investors who foresee that their money will be expended not in making the business go and the consumer satisfied but in conflicts with officials. And, this be it said is one of the most serious things of all which can happen to an industrial undertaking - to find itself under the control of a body who largely from want of business experience are hostile and unsympathetic to private business enterprises of whose necessities and difficulties they are ignorant. This Company after its recent experiences with the Public Works Department cannot look with any equanimity on an Ordinance in which reference to the Governor-in-Council is made continuously throughout 153 clauses of elaborate provisions not warranted by the state of development which the Colony has attained.

85. (B) Section 49. This section makes three phase alternating current at certain pressures the compulsory standard system for all licensees.

86. No such provision is to be found in the British Electricity Acts - nor has search yielded a Colonial parallel so far. If the standard laid down in this Ordinance were applied to England scarcely an English Electric Lighting concern but would have to change its plant. To gain what? In England uniformity - in regard to the desirability and attainment of which we will see later what the Board of Trade Committee says. In Africa what - uniformity? - why there is a distance of 500 miles between Mombasa and the nearest Generating Station - and for the sake of uniformity it is to be treated as if it were an area like London - teeming with electric systems. And to obtain this object a Company which installed new machinery only 5 years ago is to make alterations to meet a demand which may never arise and adopt a system which may not be the best in vogue when occasion does arise since Electricians of note hold that the direct supply system is at any rate ideally the better. And all this though if Mombasa were in England its direct current supply would be thankfully received.

We are advised that to replace our present plant with an Alternating Current plant of exactly the same size would necessitate a capital expenditure of between £40,000 and £50,000. No single person would be any better for this expenditure. The new plant need be no more efficient or reliable to comply with the Ordinance. When the Company switched over from the old plant to the new no consumer would perceive the slightest difference in his light. This unprofitable expenditure and waste of machinery is to be enforced at a time when not only this country but the whole world is starving for machinery and

engineering supplies, and when machinery costs from two to two-and-a-half times pre-war prices.

What is the mysterious advantage possessed by the British East Africa proposed Standard System over the Mombasa system for the conditions existing in Mombasa, or likely to exist for a long time to come it possesses no advantage whatever and some disadvantage. The Government system is Alternating Current and the Mombasa system Direct Current. For lighting and for ordinary power purposes Direct Current is preferable. Alternating Current is more dangerous than Direct Current even at low pressures. In England very many Companies generate Alternating Current, or receive an Alternating Current Bulk Supply, and convert to Direct Current before distributing it for lighting and power. The British Government Departments use Direct Current on a very large scale. All the Royal Dockyards are equipped with Direct Current distribution, as are Dockyards in general. In the case of Glasgow, where the Port Authority could only obtain a public supply on the Alternating system they installed their own plant to supply the Continuous Current required by their special machines and cranes.

Railways and tramways are, with very few exceptions, operated by Direct Current, which is in most cases generated and transmitted as Alternating Current and changed to Direct Current by a very costly sub-station equipment solely for the sake of the superiority of the Direct Current motor.

We do not pretend that Alternating Current has no advantages as it is common knowledge among engineers that for generation and transmission in large quantities it holds the field and its disadvantages, which are in the use of it, are felt by the consumer in that he is

restricted to certain fixed motor speeds and is debarred the use of economical variable speed motors which for many purposes are essential.

31. In Mombasa no long distance transmission seems likely to be required for years to come, and as the Power Station is not more than about two miles from any part of the Company's area of supply there is no prospect of there being any demand for current beyond the economical limits of Direct Current supply in the near future. It would be sheer waste of money for the Company to incur immediate heavy capital expenditure to provide for needs which may not exist for many years to come.

32. The Company admits that legislation which will ultimately secure uniformity of system and pressure is ideal. The Electric Power Supply Committee appointed by the British Board of Trade, which reported in 1909 recommended the establishment of some uniform standards throughout the United Kingdom, but it also recommended that regard must be had to "existing varying conditions" and said "uniformity in some districts can only be achieved gradually".

33. Are there any special conditions in British East Africa which make it inadvisable to have regard to "existing varying conditions" and to attempt to secure uniformity gradually? The reason given by the Board of Trade Committee for the establishment of uniformity, viz., the necessity for the linking up of different undertakings, shows conclusively that there are not. They say (Section 13) speaking of London, "Owing to the chaos of different systems, and the absence of any attempt to standardise pressures and frequencies, co-operation between neighbouring authorities is difficult and expensive".

54. London in the early days was parcelled out in small areas to pioneers who tested out various systems and were sometimes in competition in the same area. The fact remains that any changes in system made have been from Alternating to Direct Current supply, and not from Direct Current to Alternating.

55. The conditions in Mombasa are entirely different. It is, as mentioned above, 325 miles from the nearest neighbouring generating station and no public system is projected, or is even within the range of practical business, with which it could be linked up. The Company's Direct Current system is pre-eminently suitable for pioneer work and in a small or medium sized installation energy for lighting and power can be supplied at points not too far from the generating station. Its plant is in close proximity to the residential and business quarter and to the few small existing industries which might be induced to use electric power. There is absolutely no reason why the Company should not be allowed to use its existing plant, and to make extensions on the Direct system. When the demand for current at the more distant points (e.g. Kilindini), which are now being supplied quite satisfactorily from the Direct Current plant, has increased sufficiently to justify the expenditure the natural and economical change will be from a two wire Direct to a three wire Direct Current system. This system will be the most suitable for supply to the Harbour works which were projected before the war, and which it is hoped will now be proceeded with. If a wider area grows up in the future it can be supplied by Alternating Current with usual rotary or motor-generator connecting link between the two.

36. We say without fear of contradiction that the Direct Current system with the facility it offers for ensuring a continuous supply by the use of storage batteries is the best system for a small plant, and we further appeal to the published records of electricity supply undertakings as evidence that to-day the largest concerns supply either Direct Current or on a mixed system of Direct and Alternating Current.

37. In some towns where only Alternating Current is available large consumers have been obliged to put down their own sub-station equipment in order to change the Alternating supply into the Direct Current necessary for operating their works.

If the change of system called for by the Ordinance were really necessary for the public good is it equitable that the loss should be borne by the Company? The Board of Trade Committee which advised the gradual adoption of a uniform system for the United Kingdom took it for granted that it would be done at the public expense. It even put in a special recommendation that the existing Companies should be paid the value of their undertakings in cash. It went further. In section (74) of its report it says "The benefit of industrial activity in the years immediately following the war will be of immense importance to the nation, and anything that contributes to it will be of general advantage. We therefore recommend that the Government should go a long way in giving financial assistance, so that installations which are shown to be urgently required, and which are undertaken during a time when the cost of manufacture and erection is admittedly abnormal, should not be unduly burdened by charges for interest and amortisation. We refrain from suggestions as to what form this assistance should take."

but we would emphasise the vital importance of the matter. The Government of East Africa is influenced by no such sentiments. It requires the Company to bear the loss of scrapping its existing plant, and it offers no financial assistance in buying a new plant which would cost about  $2\frac{1}{2}$  times pre-war prices. But it goes one step further. The change of system and pressure would render all the consumers' lamps, fans and other apparatus useless, and the Company is required to replace all these at its own expense. It is true that the Ordinance says "unless it is otherwise agreed between the Licensee and Consumer" but it is childish to suppose that the consumer will bear such expense when he knows that the law requires the Company to do so.

(C) Clause 3 applies the new Ordinance to existing Companies under the name of Prior Licensees. Of this section, sub-section 3 (d) (e) (f) would operate so that if the Company found the expense of making the changes under sec. 49 in their plant prohibitive, as might easily be the case, and did not apply for a new license under the Act its works for transmitting distributing and supplying electrical energy would be valued without any compensation for depreciation as therein mentioned. Is this a punishment for having supplied Mombasa with electricity for nine years without profit? Surely provisions for operating Concessionaires being bought out at a fair price is the least that public policy would suggest in these cases. Further, why should a Company which has given hostages to fortune and is already operating be treated and be burdened with pages of new formalities, some of them burdensome, all entailing clerical and other expense.

40. (D) It would take too long to, in this Memorandum, do more than broadly specify the nature of objections but it may be said that the sections directed to

(a) The insuring the safety of owners, their servants and third parties are desirable but their objects are already in full attained by the existing Acts in India which can be applied.

(b) The making of maps and records of works, &c. &c.

The sections of this Act make what may be a useful practice of Electrical Companies in big cities into a burdensome and unnecessary expense for a Company of that nature operating in a town like Mombasa. Such a Company does what it can for its own sake but they are not matters for which penalties on default should be inflicted.

(c) Section 50. By this section all works are to conform to the British Engineering Standard Committee's standards. This in a distant Colony would entail delays and expenses which would prove intolerable. The section is complicated and depends further on certain regulations which may be made by the Governor-in-Council - but there is a clear penalty of Rs. 1,500 per day for any transgression with a power to the Governor to revoke the license as well. This is reinforced by section 109 which forbids the use of any mode material or apparatus which does not comply with the above standard and provides a penalty of Rs. 150 per day for any licensee or consumer making default under the section. The standard above referred to is a good standard but it is a counsel of perfection and hardship to apply it in this way to a Colony. It is needless to say that this goes far beyond any English Act or Model Order.

42. (E) Section 45 purports to deal as is usual with the payment of interest and dividends out of capital but sub-section 4 appears to relate to the payment of dividends at any time. At the present time when sound Industrial and other Companies of long standing operating under Parliamentary Governments can be bought to pay 10% and are issuing debentures at the equivalent of 8%, it would be unlikely that any investor would contemplate embarking his money in a new Colony for a reward which he could reap under very different conditions at home. Still less would he be likely to do so in the case of an Electric Light & Power Company which has not yet made a profit for its shareholders. The limit of dividend should it is thought be raised to 15% before dividends are controlled by the rates charged to consumers. It is imperative in any case to raise new capital for the Company but this will probably be extremely difficult since public utility companies are not in favour with investors even under usual conditions.

(F) Section 157 provides that no agreement entered into by a Licensee relating to the supply of electrical energy shall be valid unless drawn up in terms approved by the Governor-in-Council.

There is no such provision in the English Acts. Indeed section 11. of the Act of 1882 gives special power to contract and this has always been the English policy.

(G) It may be mentioned that there appears to be no protection afforded to a Prior Licensee in the continued use of his existing overhead or other lines.

(H) Section 75 provides for the appointment of Electrical Inspectors, and several sections (76 to 90) deal with their duties. Inspection is of course desirable but

where, as in this Colony, there are but few electrical installations care is requisite lest Inspectors become a burden both to the community and to the operating Companies.

(I) Section 13B. There may be necessary and proper provision in a well settled country. In a new country where you want to get Companies to operate, and they must practise economy, a Section like this requires re-drafting so that when a servant of the Company is employed for a short time on other work his time, and expenses while he is so employed shall be deducted from the salary paid by the Company.

The Company has been through a long period of war during which it was very difficult to obtain spare parts, replacements, or engineers, and its reserve engine was used for military purposes. It has had no opportunity to overhaul its plant. It is now faced with an Ordinance which not only requires it to change its whole system but originally required it to accomplish this within one year, while where the pressures alone had to be changed, as in the case of the Nairobi Company, a period of two years was given - an allowance of time to work so inverted, that where only two electric supply Companies of any size are operating in a country, the conclusions to be drawn as to the intention of the clause do not inspire confidence in the future. It has owing to the neglect to grant the extension of its term under the Agreement of 8th August 1910 been kept in such a state of uncertainty that it has been unable to carry on its business methodically and progressively for more than two years. Its only prospect of success lies in such a modicum of security of tenure and due consideration by the Government of the Protectorate as

would enable it to develop its business and extend its operations without interference. Otherwise it would not be justified in asking for and certainly will not obtain the funds necessary for such development. No Company can adopt a progressive policy or lay out money when leave to exist is doled out to it unwillingly by annual instalments. If the Government of the Protectorate wish to assume control of the supply and distribution of electricity in Mombasa and make trial of their own system, it is open to that Government to purchase the undertaking of the Company under Clause 10 of the Agreement of 8th August 1910. If not, it would be at least fair to allow the Company to conduct its business on its own lines, and utilize its own system recently installed at considerable expense so long as it can supply the needs of Mombasa as and when they arise.

In conclusion the Company therefore asks His Majesty's Colonial Secretary in regard to the questions dealt with in Part I. of this Memorandum -

- A. To grant the continuance of the Company's term for 45 years provided for by the Agreement of the 8th August 1910 on the ground that, no breaches of the Agreement having been shown in reply to the Company's repeated applications for its renewal, there are no reasonable grounds for dissatisfaction on the part of the Government of the East Africa Protectorate.
- B. That regard being had to the fact that the Company has been operating for nine years without ever being in a position to pay a dividend, the Company's rates of charge may be raised and generally that such of the requests put forward in the letter

of the Company to the Chief Secretary to the Administration of the Protectorate of the 11th August 1919 ("E") appended hereto as on further examination may be found reasonably necessary for the efficient and economic management of the Company's business may be granted.

- C. . . Alternatively, to direct that a Public Inquiry into the conduct by the Company of its undertaking and the allegations of breaches of its Agreement and whether the same form reasonable grounds for refusing to continue the Company's term for 43 years as provided by the Agreement of 8th August 1910 - the Board of Inquiry being nominated by His Majesty's Colonial Office.

And further -

In regard to the proposed new Electrical Ordinance - it is suggested that a Committee consisting of persons interested in electrical enterprises in the East African Protectorate and a qualified Electrical Engineer of standing and experience in private and public undertakings of this nature should be appointed to consider with you what, if any, legislation or organisation is required to provide for the future of electrical undertakings in the East African Protectorate.



AGREEMENT made the 8th day of August one thousand nine hundred and ten BETWEEN Colonel Sir Edouard Perey Grenville Girouard Knight Commander of the Most Distinguished Order of St. Michael and St. George, Member of the Distinguished Service Order, Royal Engineer, His Majesty's governor of the East Africa Protectorate and his successors in office (hereinafter referred to as the Governor) of the one part and Alfred Gerald Wright Anderson (hereinafter referred to as the Contractor) of the other part WHEREBY it is agreed as follows-

In this agreement the following words and expressions shall have the following meaning respectively.

- (a) "The Protectorate" means the East Africa Protectorate.
- (b) "The Government" means the Government for the time being of the Protectorate.
- (c) "The Township" means the township for the time being of Mombasa in the Protectorate.
- (d) "The Undertaking" means all building, works, dynamos, engines, machinery, plants, wires, cables, fixtures and other property of any description in the Township and District of Mombasa which shall for the time being be used by the Contractor for any of the purposes of this Agreement.
- (e) "Month" means calendar month.

The Contractor shall subject to the provisions of this agreement supply and provide electricity for lighting and power purposes in the Township and District of Mombasa.

Nothing in this agreement shall be deemed to create any monopoly in the Contractor to supply electricity for lighting and power purposes or to run electric light circuits in the Township and District of Mombasa.

The rights hereby conferred on the Contractor shall be exercised subject to the provisions of the Electricity Act

of one thousand eight hundred and eighty seven (Indian Act number thirteen of one thousand eight hundred and eighty seven) as applied to the Protectorate and modified by the Electricity Act Application Ordinance one thousand nine hundred and three and to any rules for the time being published thereunder and nothing herein contained shall exempt the Contractor from any future legislations or regulations applicable to electrical undertakings in the Protectorate.

The Governor shall grant unto the Contractor a lease of one and a half acres in or about the disused quarry in the Township of Mombasa for a term of seven years at a nominal rent for the erection of generating stations, machinery and plant, offices and sub-stations and stores required for the performance of the obligations of the Contractor under this Agreement.

If the terms of this agreement shall be extended as hereinafter provided the Governor shall on the expiration of the term of such lease renew the same for a further period of forty three years subject to such covenants and conditions as may be reasonably required by the Governor and subject to the rent then ruling for Crown Land.

If the Contractor shall fail to provide within twelve months of the date hereof a sufficient and satisfactory supply of electricity for lighting and power purposes for the reasonable requirements of the residential portions of the said Township of Mombasa the Governor may by giving notice in writing to the Contractor determine this Agreement and any lease granted under the same or purchase the undertaking under the option hereinafter reserved.

If the Contractor shall at any time after twelve months from the date hereof fail to provide and maintain a sufficient and satisfactory supply of electricity for

lighting and power purposes for the reasonable requirements of the residential portions of the said Township of Mombasa the Governor may serve upon the Contractor a notice pointing out the deficiencies and calling upon him to make them good. If the Contractor shall not within nine months of the date of such notice have complied with the requirements and conditions of such notice the Governor may by giving notice in writing to the Contractor determine this agreement and any lease granted under the same or purchase the undertaking under the option hereinafter reserved for the purposes of this and the preceding clause the Governor shall be the sole judge as to whether the Contractor shall have provided or maintained a sufficient and satisfactory supply of electricity energy as aforesaid.

On the determination of this agreement under clauses seven or eight or in the event of the term of this Agreement not being extended on the expiration of the term of seven years the Contractor shall within a reasonable time at his own expense remove all the mains, pipes, wires, poles, circuits and buildings or other fixtures and shall make good to the satisfaction of the Governor all damages caused to any public or private property.

The Government shall have an option during the continuance of this agreement of taking over from the Contractor the undertaking at the prescribed price such option to be exercisable by six calendar months previous notice in writing given by the Governor to the Contractor. For the purposes of this clause the expression "the prescribed price" shall mean such price as shall be fixed by a valuer to be agreed upon between the Governor and the Contractor or in default of such agreement to be appointed by His Majesty's Principal Secretary of State for the Colonies for the time being. In fixing the prescribed

price the value of the undertaking shall be deemed and taken to be the then value of all buildings, works, materials, plant and other property of the Contractor suitable and necessary for the purposes of this Agreement and so used by him at the date of the notice aforesaid within the Township or District of Mombasa and for this purpose the value of such buildings, works, materials, plant and other property shall be deemed to be their fair market value at the time of the purchase due regard being had to the nature and then condition of such buildings works materials plant and other property and to the state of repair thereof and to the circumstance that they are in such a position as to be ready for immediate working and to the suitability of the same for the purpose of the supply of electricity under this Agreement and in addition to such market value such sum as the said valuer may consider fair and reasonable by way of allowance for compulsory purchase and goodwill and any profits which may or might have been or be made from the undertaking but without any allowance for in respect of any land comprised in any lease under this agreement. PROVIDED that the buildings fixtures and fixed machinery or any such land shall be valued in accordance with the preceding provisions of this clause Provided that no additional sum shall be payable by the Government by way of allowance for compulsory purchase and goodwill and profits which may or might have been made from the undertaking in the event of the option hereby reserved being exercised by reason of the Contractor failing to provide a sufficient and satisfactory supply of electricity for lighting and power purposes pursuant to clauses seven and eight hereof.

During the continuance and subject to the provisions

of this Agreement, the Contractor may in such positions and manner as shall have been previously approved by the Governor (such approval not to be unreasonably refused) and free of charge place erect and maintain through under in or upon any public roads or Crown Lands and any other Lands in respect of which the Governor has power to grant such an easement any mains pipes wires poles and other fixtures required for the transmission of electricity under this agreement but only upon the terms that the Contractor shall make good to the satisfaction of the Governor all damage caused to any public or private property by any operations under this clause. No main and no line of "Telferage" and no other apparatus for the purpose of transmitting electricity under this Agreement shall without the consent in writing of the Governor be at any time used for the purpose of establishing or working any Railway or Tramway.

The said Contractor shall unless specially exempted by the Governor erect all poles for the purpose of carrying wires of such a height as to carry his wires clear and above all telegraph and telephone wires.

If and so often as during the continuance of this Agreement it shall in the opinion of the Governor be necessary or expedient for the purposes of any public improvement or any work or operation of public utility that any mains wires poles cables or other fixtures shall be removed to another site the said Contractor shall forthwith upon being required so to do by notice in writing by the Governor remove the same so and in such manner as to cause the least possible interference with the supply of electricity hereunder and immediately replace and re-instate the same on such sites and in such manner as shall have been previously approved by the Governor. The

Government shall pay to the Contractor the cost actually incurred by him in carrying out the provisions of this clause.

The Contractor at all times after the day on which the supply of electricity under this Agreement shall have commenced shall upon being required to do so by the owner or occupier of any premises situate in the residential portion of the Township of Mombasa supply such amount of electricity as such consumer may from time to time require for lighting and power purposes on such premises at a price which shall in the case of electricity be supplied for lighting purposes not exceed eight annas per English Board of Trade unit of such electricity and shall in the case of electricity supplied for the power purposes not exceed three annas (cents thirty seven) per like unit of such electricity PROVIDED ALWAYS that service lines shall be laid by and at the expense of the Contractor to any building within sixty feet of any public thoroughfare but that the Contractor may require any person or persons requiring to be supplied at a building more than sixty feet from a public thoroughfare to pay the cost of laying the service line beyond such sixty feet.

The Contractor shall not in making any Agreements for the supply of electricity pursuant to clause fourteen show any undue preference to any Company or person but the Contractor may make such charges for the supply of electricity to any Consumer within the Township of Mombasa as may be agreed upon between the Contractor and such consumer and shall not exceed the price chargeable under clause fourteen hereof.

The Contractor shall during the continuance of this Agreement if requested so to do provide and supply electricity for lighting and power purposes from six post

meridian to daylight and shall provide to all consumers for lighting purposes electric meters at a charge not exceeding one rupee per meter per month.

17. If during the continuance of this Agreement the Governor shall be satisfied that there is in the Township and District of Mombasa a demand for a greater or more extensive supply of electricity for lighting or power purposes than the Contractor is required to supply under this Agreement or is in fact supplying the Governor may by notice in writing to be served upon the Contractor require the Contractor to increase and extend his undertaking to meet such demand. If the Contractor shall notify the Governor that he is unable or unwilling to increase and extend his undertaking to meet such demand or if within nine months of the date of the notice requiring such extension the Contractor shall not have extended his undertaking to the satisfaction of the Governor so as to meet all reasonable demands for electricity for lighting and power purposes in the Township and District of Mombasa the Governor may by notice in writing require the Contractor to dispose of his undertaking to the Government or to such person or persons Corporation or Company as the Governor shall direct AND it is hereby agreed that the Contractor shall on the service of such notice dispose of his undertaking to the Government or to such person or persons Corporation or Company as aforesaid at such sum as shall be equal to the prescribed price as defined in clause ten of this Agreement and in addition to such prescribed price such sum as the said valuer may consider fair and reasonable by way of allowance for compulsory purchase and goodwill and any profits which may or might have been or be made from the undertaking but without any allowance for or in respect of any land

comprised in any lease under this Agreement PROVIDED that the buildings fixtures and fixed machinery on any such land shall be valued in accordance with the provisions of clause ten hereof.

18. The Governor may from time to time delegate to any other person or persons any of the powers and discretions vested in him under or by virtue of this Agreement.

19. The Contractor shall not transfer or otherwise dispose of this Agreement or any interest therein or any powers conferred thereby without the previous consent in writing of the Governor such consent not to be unreasonably withheld.

20. The Contractor will not do or suffer to be done in carrying out the terms conditions agreements obligations of this agreement any act or thing which shall or may be or become nuisance damage annoyance inconvenience or danger to health to the occupiers of any of the adjoining houses or the neighbourhood.

21. The Contractor shall at all times during the continuance of this Agreement provide and maintain an office in the Township of Mombasa for the transaction of the business of the undertaking.

22. Any notice hereunder may be given to the Contractor by having the same addressed to him at his office for the time being in the Township or at his last known place of business in the Protectorate and any such notice shall be deemed to have been given when so left.

23. This Agreement shall subject to the Provisions thereof continue for a term of seven years from the date hereof PROVIDED however that if during the said term the Contractor shall to the reasonable satisfaction of the Governor provide in accordance with the Agreement such electricity as ought to be provided and supplied

hereunder and shall duly perform and observe all the other provisions of this contract as far as the same ought to be performed and observed by the Contractor then (subject to the provisions hereinafter contained) the said term of seven years shall be extended for a further period of forty three years PROVIDED that if the Governor or the Contractor shall consider that the maximum prices chargeable for electricity supplied under this Agreement ought to be altered or reduced he may by giving notice in writing to the Contractor or Governor as the case may be at least twelve months before the expiration of the said term of seven years require such maximum charges to be altered or reduced in such manner and to such extent as may be agreed upon between the Governor and the Contractor or in default may be fixed by arbitration in accordance with the provisions of the Imperial Act of Parliament known as the Arbitration Act one thousand eight hundred and eight, with such modifications as may be necessary for the purpose of substituting the High Court of the Protectorate for the English High Court of Justice and during the said extended term of forty three years the prices so altered or reduced shall be substituted for the maximum prices fixed by this Agreement and shall be the maximum prices which may be charged by the Contractor for electricity supplied hereunder.

AS WITNESS the hands of the parties hereto.

Witness to the signature of)  
the Governor of the E.A.P. )

(Sd). E. P. GIRAUD.

(Sd.) A. N. O'Brien, Captain.

Witness to the signature of)  
the Contractor )

(Sd). A. G. W. ANDERSON.

(Sd.) W. MacLellan Wilson,  
Journalist.

Nairobi, 25th July 1910.



Public Works Department,  
Head Office  
NAIROBI.

In reply please quote N. 2/93  
and date April 16th 1918.

Sir,

EXTENSION OF AGREEMENT

Ref. letter No. Nil of January 7, 1918.

With further reference to my acknowledgment of January 17th, 1918, of your above letter, I have the honour to inform you that Government cannot admit any obligation to extend your agreement for a further term of fortythree years on the grounds of complete performance of its duties and obligations by your Company during the period of seven years from August 8th, 1910. It will suffice to regard you as the departure from the terms of sale to the public prescribed in the original agreement. Although this departure was authorised by Government as a measure enabling you to remain in operation at a time when you would otherwise have presumably been unable to continue, this does not in any way remove the step from the category of non-observance by you of the terms of the original agreement. Moreover I believe the statement numbered (3) on page 2 of your letter not to be strictly accurate, as I understand that at least one applicant for power in the Island has been informed by your Company that it is not possible to make the required supply to him otherwise than during the night hours.

2. The only terms that I am at present able to offer to you are therefore those contained in my letter No. 16/93 of November 29th, 1917, and until such time as I hear from you further as to your acceptance or rejection of the offer (sic) then advanced, I continue to regard your Company as operating upon the terms detailed in the second paragraph of that letter for a period of twelve months, ending November 29th, 1918.

I have the honour to be,

Sir,

Your obedient servant,

(Signed) M. Blain.

for Director of Public Works  
(Draft by D.P.W.)

THE MANAGING DIRECTOR,  
MOMBASA ELECTRIC LIGHT & POWER CO. LTD.  
MOMBASA.

April 26th, 1918.

Director of Public Works, Nairobi.

Sir,

Extension of Agreement

We have the honour to acknowledge receipt of your letter No. 2/93 of 16th April 1918, received on the 20th idem.

(1) On the 15th Decr. 1916 we gave the prescribed notice of our desire to renew our agreement with the Government dated 8th August 1910, as required by the terms of the said agreement. On various excuses the Government has postponed dealing with this matter for over 16 months, and now for the first time has advanced the plea that we have not carried out our part of the Agreement. We desire to put on record that on no date prior to April 20th, 1918 have we received any notice that we were not fulfilling the terms of the agreement.

(2) In our letter of 3rd Sept. 1915 we expressly referred to the Agreement of August 8th 1910 and asked that the agreed prices for current should be altered. In agreeing to this alteration the Government gave no notice that it was conditional on any other terms of the agreement being altered. Therefore the Government cannot now maintain that the Company waived its right to a renewal of the agreement.

(3) With regard to your statement that you "understand" that an applicant has been refused current for power we would point out that if we have failed to supply a demand for electricity which comes within the terms of our agreement, it was your duty to give us notice requiring us to grant the supply. Even now you do not mention the name of the applicant, nor the date of his application, and we should be fully entitled to ignore such a vague charge, on the ground that it is obviously advanced for the sole purpose of further delaying a settlement of the question at issue. However, we will state that on no occasion have we ever failed to supply electricity which the terms of our agreement required us to supply.

(4) We beg to notify you that we have not applied for a temporary extension of our agreement, and that we decline to regard ourselves as operating on the terms mentioned in the second paragraph of your letter No. 16/93 of November 29th 1917.

(5) We also beg to notify you that if within 14 days of the date hereof the Government does not signify its willingness to carry out clause 25 of our agreement of 8th August 1910 we shall take such steps as we are advised to enforce performance of the agreement.

We have the honour to be

THE MOMBASA ELECTRIC LIGHT &amp; POWER CO., LIMITED.

A. K. C.

Public Works Department,

Head Office,

Nairobi.

In reply, please quote No. 4/93

and date 13th June 1918

Sir,

With further reference to my No. 2/93 of April 16th, 1918, and No. 3/93 of May 17th, 1918, I am directed to inform you that Government refuses to consent to your request as made for an extension of your Agreement for a further term of 43 years. This is on the grounds that your Company has not provided to the reasonable satisfaction of the Governor such electricity as ought to have been provided and supplied under the Contract of August 8th 1910, and further, that your Company has not duly performed and observed all the other provisions of the contract as far as the same ought to have been performed and observed by the contractor.

2. Under these circumstances, I have to repeat that Government at present regard your Company as operating under a formal extension of your original agreement for a period terminating on November 29th, 1918, which period may be extended on terms to be approved by the Governor in Council, on your formal application. If, however, you desire to obtain powers now for an extended term of operation, I would invite your attention to the schedule enclosed in my letter No. 16/93 of November 29th, 1917, and would state that your application for a licence, if made in accordance with the conditions therein specified, will be considered by Government.

3. In order, therefore, to regularize your action for the period from August 8th, 1917, until November 29th 1918, I hereby intimate to you that Government concurs in your continued activity in the supply of electrical energy in Mombasa for the said period, upon the terms prescribed in the original Agreement, with this single amendment, that the right to supply at a maximum charge of Rs. 0.75 a unit is confirmed without specified terms of duration, but dependent solely on the Governor's pleasure, for a part or the whole of the said period of extension.

I have the honour to be,

Sir,

Your obedient servant,

(Signed) W. McGregor Ross.

Director of Public Works.

THE MANAGING DIRECTOR,  
MOMBASA ELECTRIC LIGHT & POWER CO.,  
MOMBASA.

11th August 1919

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The Hon. the Chief Secretary,  
to the Administration,  
East African Protectorate,  
MOMBASA.

We have the honour to refer to the applications which we have made on various dates, commencing 15th December 1916, for a renewal of our Concession, which applications were for the first time definitely refused on the 13th June 1918, after a delay of eighteen months.

1. The Company having no security of tenure, and being therefore unable to make arrangements for continuing the undertaking, will discontinue the supply of Electricity after September 15th 1919, unless it be granted a new Concession, on terms satisfactory to the Company.

2. The Company is not now willing to enter into an agreement on the terms named in its previous applications, an agreement to which the Company will assent must embody the following conditions -

(a) The right to charge maximum rates of Rs. 1/- per unit for lighting, and cents. 35 per unit for power, such maximum rates to be reduced on a sliding scale according to dividends paid. The Company is of the opinion that these are the lowest rates at which a supply can be efficiently maintained while the demand for current is at its present low figure and in view of the world-increase in the cost of materials and labour.

(b) Notwithstanding any future legislation or rules or regulations the Company shall be allowed to install additional plant on its present system of B. C. generation and supply equal to three times its existing capacity, and should it be required by any legislation or Government action to adopt any other system which would prevent the use of all or any part of existing or such increased plant within twenty years of its installation the Company to be compensated by the Government for the amount of the loss incurred thereby.

(c) The Company to be at liberty to restrict the supply of electricity (with as little inconvenience to the public as it can conveniently arrange) for a total period of three months during the six months following the granting of the new Concession. This is necessary because owing to Government action the Company has been unable to install additional plant, and must therefore reduce its output temporarily to enable it to overhaul its boilers and machinery.

(d) The Company to have the right to refuse to attach new consumers or grant increased supplies of electricity beyond the capacity of the existing plant, for three years from the date of the new Concession. This is necessary to enable the Company to protect the interests of existing consumers, which would be prejudicially affected if the Company were compelled to accept more load than its

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plant would efficiently carry. It will probably take three years to raise new capital and obtain and install new plant in view of the present exchange and of labour difficulties at home.

(e) The Company to be relieved from certain unreasonable restrictions in the Electric Power Ordinance if and when it becomes law. These could not be specified without further consideration, but as an example, we give Section 138 (1) (b), which would prevent the Company sharing employees with other Companies. The right to do this enables the Company to effect economies in working and to secure more efficient services than it could otherwise afford.

(f) The Company or its nominees to be granted an industrial site adjacent to its Power Station. This is to enable this Company to make arrangements with another Company to establish a factory which would take electricity for power during the daytime. It is impossible economically to work an electricity generating plant without an assured and substantial day load, which is at present unobtainable in Mombasa. The Company will be in a position to supply electricity for power during daylight hours as soon as it has overhauled its plants.

3. The Company requests a definite reply at the earliest possible date, and would be greatly obliged if it could reach this office not later than the 21st instant. Failing a complete agreement by September 15th, 1919, the Company will discontinue the supply of electricity from that date.

4. The Company is willing to sell its undertaking to the Government or any other purchaser, on terms to be mutually agreed.

We have the honour to be

Sir,

Your obedient servants,

THE MOMBASA ELECTRIC LIGHT & POWER CO. LTD.

(Signed) A. K. Constantine.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 11/11/2001 BY 60322

September 3rd, 1915.

The Hon. the Chief Secretary,  
to the Administration  
Secretariat,  
NAIROBI.

MR. ELECTRIC LIGHT, MOMBASA.

I have the honour to inform you that I am instructed by the Board of Directors to place the following facts before you for your consideration -

1. This Company supplied Electric Light and Power under a Concession dated August 8th 1910 which establishes a maximum rate of 50 cents per Board of Trade Unit for lighting and 19 cents per Board of Trade Unit for power.
2. The Company has now been supplying electricity for over six years. The net result of its business during the whole of this period had been a loss; the Company has never paid a dividend nor has it earned sufficient to make adequate provision for depreciation nor has any Director ever received any remuneration for his services.
3. In 1914 the Company installed an entirely new plant which it was advised was of the most economical and efficient description and this plant has now been running for over twelve months.
4. Owing to the smallness of its income, the Company is not able to employ a sufficient staff to carry on the supply of electricity in an efficient manner nor to incur the expense necessary to maintain the plant in a first-class condition. The Company has already had a number of serious interruptions of supply which might have been avoided and the Company does not wish to disguise the fact that under the present system of working, it is constantly running the risk of a complete breakdown which could not be repaired for a long period.
5. The Company is now absolutely at the end of its resources and owing to the fact that it has never paid a dividend, it is quite impossible to obtain any new capital.
6. The Company is every month spending the whole of its income in maintaining the supply of electricity. If it were to increase its expenses by employing a larger and more efficient staff, it would within a very short time be unable to pay its monthly bills for wages and fuel and would immediately have its supplies stopped and would have to close down.
7. Being unable, for the reasons stated, to obtain more capital, the Company is absolutely unable to lay down any more mains to supply the increasing demand for

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electric light supply, thereby being unable to  
(a) fulfil its obligations under its Concession and  
(b) increase its income by obtaining new consumers.

8. Our present Chief Engineer was formerly with the St. James' & Pall Mall Electric Light Company. This Company was able to purchase coal delivered into its bunkers at twelve shillings per ton. The cost of coal to the Mombasa Electric Light Company is fiftythree shillings per ton delivered. The St. James' Company have many individual consumers each of whom consumes considerably more current for lighting purposes than the whole of Mombasa and Kilindini. The Mombasa Company has to distribute over an area certainly much more than ten times as great as that of the St. James' Company which considerably increases the cost. Yet the St. James' Company's maximum rates, as fixed by law, were eight pence for lighting and three pence for power which are the same as the rates for Mombasa. Similar comparisons could be made with most of the Electric Supply Undertakings in England.
9. The Officer Commanding Troops, Mombasa, now demands that the Company should have continuous European supervision at its Power Station to prevent further stoppages of light, which stoppages would be prejudicial to the defence of Mombasa. For the reasons stated the Company is absolutely unable to incur the increased expenditure.
10. The Company therefore submits to the Government the absolute necessity of increasing the rates which it is allowed to charge to its consumers.
11. The minimum rates which will enable the Company to continue the supply and to obtain a reasonable return on the capital expenditure, are twelve annas for lighting and for other domestic purposes, and five annas for power for industrial purposes.
12. The Company submits that this is an urgent matter as circumstances may at any moment compel the complete closing-down of the Power Station.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) T. W. Ham.

Secretary.

RECORD OFFICE

C O P Y

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The Secretariat,  
N A I R O B I,  
EAST AFRICA PROTECTORATE

September 15th, 1915.

Sir,

I have the honour to acknowledge receipt  
of your letter of the 8th. inst., on the subject  
of Mombasa Electric Light.

2. A further communication will be addressed  
to you in due course.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) W. J. Monson.

for CHIEF SECRETARY to the GOVT.

The Secretary,  
THE MOMBASA ELECTRIC LIGHT  
AND POWER CO., LIMITED.  
P. O. Box No. 104.

MOMBASA.

September 23rd, 1915.

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3 B/S  
1 Aud. Rep.

The Hon. the Chief Secretary,  
to the Administration  
Secretariat,  
NALROBI.

Sir,

Your Dm. No. SK159/50 of 20/9/1915

I have the honour to acknowledge receipt of your letter as above and am instructed by my Board of Directors to express herein their appreciation of the Government's attitude in this matter and to ask you kindly to convey this expression to His Excellency the Governor.

I am instructed to send herewith copies of the Balance Sheets of the Company for 1913-1914 and the first six months of 1915.

With reference to the subject matter of your letter, I am further instructed to state that it appears to my Directors that, owing no doubt to the wording of my letter No. CP/4 of September 3rd, 1915, the object of the application made therein has not been clearly understood.

1. Our request for His Excellency's authority to vary the terms of Clause No. 14 of our Agreement of August 8th, 1910 and so enable us to charge higher maximum rates for the supply of electricity is based mainly on our view that the rates fixed in the said agreement were not, in normal times, sufficient to enable the Company to carry out its obligation to maintain an efficient public supply of electricity.
2. To fulfil this obligation, the Company must have the means to provide sufficient staff, to maintain its plant in a perfect state of efficiency and to make adequate provision against depreciation.
3. Even in normal times, the Company's income has at no time been sufficient to enable this to be done. The difficulty has been much increased by the increased cost of production due to the War.
4. The items shown to the credit of Depreciation Account in 1913 and 1914 have not been paid out of revenue and have been made possible only by placing a valuation on the Concession, Lease and Goodwill of the Company. I am now informed that it is doubtful whether this form of account would be accepted by the Board of Trade. In that case, the really unfavourable financial position of the Company would be more clearly shown in the Balance Sheet.
5. The Company submits that, having fulfilled its duties to the best of its abilities for over six years

without having paid any dividend to its shareholders or any remuneration to its Directors, it is now justified in asking His Excellency for permission to charge rates which will cover its working costs and show some prospect of profit.

6. Paragraph 9 of our previous letter was intended to imply that lack of funds might at any time compel the Company to close down through inability to purchase coal or to pay wages. The seriousness of this possibility is brought forcibly to our notice by the report of our Auditors which we are enclosing for your perusal.
7. The necessity for this application was apparent to us before we were aware of any special requirements by the Military Authorities. The latter will require an approximate expenditure of Rs. 1,000/00 per month entirely additional to the estimates on which we base our application to increase the rate per unit. Therefore the subsidy of Rs. 1,000/00 per month in no way removes the danger of our having to close down through lack of funds.
8. All our books and documents are available for your inspection.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) F. W. Ham.

Secretary.

CF/4

21st October 1915.

The Hon. the Chief Secretary,  
to the Administration  
Secretariat,  
NAIROBI.

SIR,

I have the honour to inform you that I am instructed by my Board of Directors to refer you to my letters dated 3rd & 23rd September and to place the following facts before you -

1. The Company had very great difficulty in finding the necessary funds to meet their wages and coal account for last month, and in order to do so they had to obtain temporary accommodation from their Bankers.
2. The necessity of increasing the rates charged for lighting and power asked for in the above mentioned letters is therefore so urgent that unless the extra revenue is forthcoming immediately the Company may have to close down at any moment owing to its inability to meet such necessary expenditure as Wages and the cost of coal.
3. I am instructed therefore to ask you kindly to let me know when the Company may expect a further communication from you in connection with this matter.

I have the honour to be,

Sir,

Your obedient servant,

(Signed) T. W. Ham,

Secretary.

POST OFFICE LONDON

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S/2159/40

The Secretariat,  
NAIROBI,  
EAST AFRICA PROTECTORATE.

October 25, 1915.

Sir,

I have the honour to acknowledge receipt of your letters of the 23rd of September and the 21st instant, and to inform you that His Excellency has granted permission to your Company to charge at the rate of 75 cents for current for lighting and 25 cents for power for the duration of the War.

E. I may mention that your letter of the 23rd of September was only received in this Office on the 26th instant.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) W. J. Monson.

for CHIEF SECRETARY to the GOVERNMENT.

The Secretary,  
Mombasa Electric Light & Power Co. Ltd.,  
MOMBASA.