

1923

517

6192

REC 21 NOV 23

MAGADI SODA COY LTD

DATE
EOTH NOVEMBER 1923

CIRCULATION:—

SUBJECT

RAILWAY RATES & ROYALTY ON SODA

Submits draft of proposed cable to Govr. Agrees new Lease should be drawn up but states desires when certain clauses come up for discussion in five years time.

Mr. *Bush*

Mr. ...

Mr. ...

Asst. U.S. of S.

S. H. Reed

Perm. U.S. of S.

Part. U.S. of S.

Secretary of State.

Previous Paper

MINUTES

Low
55799

I attach Mr. Seal's record of Monday's discussion & the minutes which I read on *5/20/23* the next day.

This letter was left with me when Mr. Chester Deatley, Col. Reynolds, & Mr. Maclean called this morning. Mr. Seal was with me & we could not carry the discussion much further & the only points of note were that

(a) When Mr. C-B. said that certain matters were agreed on Tuesday, Col. Reynolds at once said that nothing was agreed then.

Subsequent Paper

Low
55799

Mr. Seal's copy of paper to also.

that the fact that he
was American (with
no British residence)
did not imply the right
of American control. I
said that that had
not worked as it that
we were content with the
British character clause.
The abolition lease.
The trustees would
not that of $\frac{1}{16}$ of a penny
per ft. & $\frac{1}{16}$ of a penny
per ft. had any relation
to the another it meant
it was to profit. Col:
Seymour said that the
Rodway could give 25(9)
So as to show whether
profit or loss they chose.

The annexed draft Col:
which Mr. Seal has written
out after settling the
terms of it with me is
I hold the self explanatory,
but I have marked some

that the fact that he
was American (with
my father's name)
did not supply the rest
of American credit. I
said that that had
not worked as I thought
but was content with the
British character - clause 8.
The whole case

The minimum period
is that of 1/16th of a penny
may be 1/10th of a penny being
refused any relation
to another it meant
1/10th of a penny.
I should raise that the
roadway could Enit 25(4)
So to show whether
profit or loss they choose.

The annexed draft led:
which Mr. Seal has written
out after settling the
terms of it with me is
I think self-explanatory,
but I have enclosed some

X. If there is a bluff, it must
be for the local people to
say whether it is or is not called.

Y. This is the only way of
bringing together the Combs's
letter & its enclosure. We could
have the hope expressed in the
letter unnoticed. In 3(A) I
propose to turn it down.

Z. ~~the~~ The 3% royalty is a
fundamental condition of
the original concession, and
although Mr. Charles Beady was
so doubtful right in saying this morning that
Kopadi will never be the
Bonanza that was originally
expected I think the Colony
may reasonably claim so much.

Z. The minimum of 9/16th to d. is
also an original condition, and,
even if it drops out as a
minimum it is a reasonable
figure to take as the minimum
price for the zinc prospect.

... that the Govt should
... for ...
... 50,000, 100,000 or 200,000
... the ...
... the amount standing to the credit
... at the end of the year under
... would be about £146,000

The original estimate is ... that
... the ... but that £500,000
... of the reconstruction.
... down

... of the ... the
... will ...
... of 1911, and it
... the Gov & the
... from Uganda. But I
... to the
... with
... the reference to the
... Gov has already got
... necessary

The ... is I think
... has been
... as
... however

21
G. C. S. 22 XI. 23

X B
22
H. J. R.
24/21/23

I suggest that the Govt. should
 proceed for. Assuming the amount
 stipulated to be 50,000, 100,000, 150,000, 200,000
 & 250,000 tons in the successive years, I make
 out that the amount standing to the credit
 of the Govt. at the end of the 5 years under
 my plan would be about £146,000.

The objection to the plan is of course that
 it requires the assets on which the
 debenture holders are secured; but what
 do they stand to get if the reconstruction
 'breaks down'?

£500,000 debt

In para 5 of the draft, the
 effect of the unsecured loan will appear
 to be made by the end of 1907, and it
 is not at all certain when the Gov. & the
 G. M. will return from Uganda. But I
 could not obtain agreement to the
 matter being laid over in Kenya until
 the officers arrive & the reference to the
 last draft which the Gov. has already got
 is therefore necessary.

The wording in para 6 is I think
 required. As soon as money has been
 pledged we shall have little or no
 bargaining power.

W. C. 22. 21. 23.

H.B.
 22/11
 K.S.R.
 24/11/23

NOTES FOR INTRODUCING THE DISCUSSION
 THE MAGADI SODA COMPANY.

Since the discussion last July and the
 Governor's consideration of the question on his
 return to Kenya, it has been possible to make
 substantial progress towards an agreement on the
 points raised in Captain Walter Samuel's letter
 of the 25th of July. It is clear that the
 Governor and the General Manager of the Uganda
 Railway are no less anxious than we in the Colonial
 Office and the representatives of the Company to
 come to an agreement, and that being so, there should
 be no difficulty in doing so.

1. The new rates of freight and royalty are
 agreed to, namely:-

50,000 tons or less	10/- a ton.	
Over " " and less than 100,000	17/- "	+
" 150,000	18/6 "	+

In order to avoid the Government
 receiving a smaller sum for say 51,000 tons than
 for 50,000 tons, the Governor proposes that where
 the amount carried is over 50,000 tons, the total
 payment should be not less than 18/- a ton, with a
 similar condition where the traffic exceeds 150,000
 tons. This arrangement will, no doubt, be
 accepted. *Can this be accepted?*

2. As regards the period for which the new
 reduced rates should be in force, the original
 proposal that the period should be two years has
 been objected to by the Company on the ground that
 it

45,000
 127,500

it is too short. On the other hand, it is not possible for the Government to leave the period indefinite, and the proposal which it is wished to discuss on this head is that the new rates should be in force for a period of three years from the date of the completion of the new agreement and that then the rates laid down in the draft lease of 1922 should revive (the arrangements for periodical revision being the same as if that lease had come into and had continued in operation) subject to its being clearly understood that any representations which the Company may then wish to make as to the conditions on which they are working will receive every possible consideration.

On this point, however, it is desirable that the position of the Colonial Office should be made clear from the outset. All business is competitive, and any competition which the Magadi Soda Company has to meet is a reasonable factor in any representations they may make, but it would not be possible for the Secretary of State to form his opinion as to the treatment which the Company requires on the basis that it is engaged or wishes to engage in cut-throat competition with any other firm concerned in the soda business.

3. As regards the evidence to be produced by the Company in support of its claim, the Secretary of State will be willing to accept the Accountant's certificate ^{suggested} in Captain Samuel's letter of the 10th October as evidence that the present value of the soda should be taken as equivalent to £3. 15. 0 a ton, f.o.b. Kilindini.

As regards the future, the Governor con-

-siders

as per report
 on 1st
 of the 10th
 of the 10th
 of the 10th
 of the 10th
 of the 10th

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As regards the future, the Governor con-
-siders

Handwritten notes:
 In respect of...
 ...
 ... that the Govt...
 ...
 ...
 ...

-siders it important that the selling price should again be taken into consideration in settling any future revision of rates. It hardly seems possible to decide in advance precisely what evidence of selling price will be required. ~~The~~ Company recognises that the present reduction is a temporary expedient to meet their necessities, they will, no doubt, be prepared to keep, and produce when required, a statement of all their principal contracts, ^{with} particulars of freight expenditure incurred in connection with them, which will make it possible when the time comes to form some opinion how far an adjustment of the rates previously contemplated is still necessary.

*do not
to
to
about
the
Government.
AS*

4. The condition desired by the General Manager of the Railway that the Magadi Company must rank simply as one of the customers of the Railway Administration, and that that Administration must be left to work the system as a whole and not be required to give preference to the Magadi Company, was objected, ^{to} by Captain Samuel on the ground that it was inconsistent with the existing agreements. There is no desire to press the point, ~~that~~ ^{and} existing agreements are being ^{naturally} ~~gradually~~ altered to meet the Company, and the point was put to the Governor in order to ascertain how much importance the General Manager attached to his condition from the point of view of the general working of the transport of the ^{Colony} ~~Company~~.

It is necessary to state quite frankly that he would rather lose the Magadi traffic than

submit

submit to the condition of priority being added to the temporary reduction of rates.

5. If we can clear these outstanding points out of the way, it only remains to decide on the general form of the new agreement, and for this purpose it seems essential that that form should be chosen which can be got through most quickly, especially as the Governor has desired that the draft should be submitted to him before it is executed. It was for this reason that it was proposed in the Colonial Office letter of the 1st of October that the lease agreed upon at the end of 1922 should be formally completed and a simple modifying instrument added to it; but, ~~and~~ if the Company see objection to this course, it would be equally satisfactory if a new lease were prepared based as closely as possible on the 1922 draft but embodying the necessary modifications in the lease itself.

I attach Mr. Seel's record of Monday's discussion and the minute which I sent on to you the next day.

This letter was left with us when Mr. Chester Beatty, Col. Symonds and Mr. Micklem called this morning. Mr. Seel was with me. We could not carry the discussion much further and the only points of note were that

(a) When Mr. C.- B. said that certain matters were agreed on Monday, Col. Symonds at once said nothing was agreed then

(b) Mr. C.- B. was at pains to show that the fact that he was American (with long British residence) did not imply the risk of American control. I said that that had not robbed us and that we were content with the "British character" clause 8 of the abortive lease.

(c) Mr. Micklem pointed out that ⁴ the of a penny ~~freight-profit-had-any-relation~~ ¹⁶ freight and ¹ ~~th~~ of a penny profit had any relation to one another it meant ¹⁶ 12¹/₂ profit. Colonel Symonds said that the Railway could twist 25(C) so as to show whatever profit or loss they chose.

The annexed draft telegram which Mr Seel has written out after settling the terms of it with me is I hope self explanatory, but I have marked some passages

- X. If there is a bluff, it must be for the local people to say whether it is to be called.
- Y. This is the only way of bringing together the Company's letter and its enclosure. We can't leave the hope expressed in the letter unnoticed. In 3(A) I propose to turn it down.
- Z. The 3/- royalty is a fundamental condition of

the original concession, and although Mr. Chester Beatty was no doubt right in urging this morning that Magadi will never be the bonanza that was originally expected I think the Colony may reasonably claim so much.

2 The minimum of 9/16ths d. is also an original
2 condition and, even if it drops out as a minimum it is a reasonable figure to take as the datum point for the quid pro quo which I suggest that the Government should press for. Assuming the annual output to be 50,000, 100,000, 150,000, 200,000 and 200,000 tons in the successive years, I make out that the amount standing to the credit of the Government at the end of the 5 years under my plan would be about £145,000.

The objection to the plan is of course that it reduces the assets on which the debenture holders are secured; but what do they stand to get if the reconstruction breaks down?

£500,000
debentures issued

As to paragraph 5 of the draft telegram, the copies of the unexecuted lease will arrive in Nairobi by the end of November, and it is not at all certain when the Governor and the General Manager will return from Uganda. But I could not obtain agreement to the matter being held over in Kenya until the copies arrive and the reference to the last draft which the Governor has already got is therefore necessary.

The warning in paragraph 6 is I think required. As soon as the money has been pledged we shall have little or no bargaining power.

W.C.B. 21/22. 11. 1923.

H.G.B. 22/11

H.J.R. 22/11/23

See H. R. 125

Mr. Seal's record of the meeting is as close a report ^{as} ~~to~~ ^{of} a somewhat discursive discussion freely interlarded with interruptions can possibly be.

Captain Samuel was chiefly concerned to emphasise the amount of money which the Company had already ~~lost~~ ⁱⁿ for this venture. This does not appeal to me, as what we are considering is how the business can be put on its feet and ~~to ^{find} ^{out} how~~ to make good the loss of the past which had apparently been due as much to bad method as ^{to} misfortune.

Mr. Chester Beatty, of course, had his eye to making as good terms for the future as possible, and ^{to} ~~to~~ ignore altogether the material fact, which it is our duty to remember, that Kenya has handed over to this concern a valuable mineral ^{asset} asset (its only mineral), and that unless the country gets something substantial out of it the transaction cannot be defended. It is useless to compare the Company's product with such a commodity as maize, the result of the productive effort of the general population, and, although it was not possible to ^{make} ~~meet~~ the point fully ^{at the meeting}, there is all the difference in the world between special rates for farmers' produce, the yield from which is almost entirely spent in the country and ^{for} the produce of a Company of this kind, which will in a large measure be lost to the country entirely. When Colonel Symonds called here a week or two ago, he entertained good hopes of the Company making an all-round

all-round profit of £1 per ton, which, on the basis of \$3.15s. a ton f.o.b. Kilindini, is very handsome. Apart from depreciation, the whole of this will be available to pay London expenses and interest on capital. Mr. Chester Beatty replied, to this point, ~~that~~ that there would be heavy payments in respect of Income Tax ~~to be made~~ on the ^{profits} Province. That is absolutely nothing to Kenya, which will reap no benefit from the tax.

Mr. Tait seemed anxious to put the debenture holders in a better position, now that they are in danger of losing their money, than they were in when they lent it. We should I consider have nothing to do with any proposal for a reduction of the royalty, and it should be brought back into operation, coupled with a railway rate, which will at all events represent some profit to the railway, as soon as we can.

The representative of the Underwriters took no part in the discussion, and I am not surprised, as Colonel Symonds had told me that they were prepared to underwrite the issue on the basis of our letter of the 1st of October.

We must await their written proposals, which will come in tomorrow, and we must put the case to the Governor fully. The chief difficulty which I felt in the discussion was that we did not know

how

It is the general point that the profit would go to Kenya

how far the General Manager would welcome a return to the terms of the contract, in view of the necessity which is apparently involved for keeping separate accounts. You will notice that ~~Clause~~ ^{Clause} Section 25 (G), contemplates an entirely different basis for calculating the cost of working from that laid down in Clause 29, in connection with the determination of profits for the purpose of the Company receiving half the nett profits. The latter is simply a matter of a proportion which can be easily taken out of the general accounts of the railway. I consider that if there is any opportunity of getting back to the contract terms of freight or any other terms which ^{determine} the profit to be ^{determined} made, some similar rule-of-thumb means of determining profits should be substituted for 25 G.

Generally, I think that we should make it clear to the Governor that he is not being pressed to agree to anything more favourable to the Company than the restoration of the contract terms at the end of the period of five years of reduced freights. But, if anything more favourable is decided upon in order to get a settlement and to avoid the possibility of a break-down (which, undesirable in itself, would be specially awkward ^{because} until we have acquired the present Company's Railway we could not find a fresh lessee for the property), ~~to give further~~

~~concessions~~

J

^{Return}
non-assessable. I suggest that they should be coupled with a condition that, while the payments to be made by the Company are less than (say) 3s. royalty plus freight of 9/16d. per ton mile, the deficiency, ^{to be} ~~should~~ accumulate at 4% compound interest, ~~and~~ should go to reduce the amount payable by the Government under Clauses 30-31 of the 1922 lease for the expropriation of the railway; and, further, that while the payments to be made by the Company are less than the amounts I have mentioned, there should be no question of half nett profits on the branch railway being paid to the Company.

W.C.S.

20.11.23

The above minute, with which I entirely agree, sh^d go on to Dr J. Stevenson with the 8th: tel. to the Gov^{ts} when ready.

at once.

H. J. S.

20/11/23

Returns
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20.11.23

The above minute, with which I entirely agree, sh^d. go on to Sir J. Stevenson with the st^g: tel: to the Gov^{ts} when ready.

at once.

H. J. B.

20/11/23

Minutes of a Meeting held at the Colonial Office at 8.0 p.m. on Monday, November 19th, 1923, discuss the affairs of the Basadi Soda Company.

Draft

Mr Seel. 19.11.23
Mr B. Marlow

Present:

Sir James Stevenson (in the Chair)

Sir H. Read

Mr. Bottomley

Mr. Brooke

Mr Seel

} Colonial Office

Mr. Olivier. (Genl. Secy, Ammaney

& Olivier, Solicitors to the C.A.)

Major G. D. Rhodes. (Chief Engineer, Construction, Uganda Dept.)

Captain Horton. W. H. Samuel.

Mr. A. Chester Beatty

Mr. G. Symonds

Mr. G. Perry (for the Solicitors

to the Gov^{ts}).

Mr. H. Micklem. (of Messrs. Cullis & Co.)

Mr. A. W. Tait. (Official Receiver)

over

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