BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Noranda Aluminum, Inc., et al.,	)	
	)	
Complainants,	)	
v.	)	
	)	Case No. EC-2014-0224
Union Electric Company,	)	
d/b/a Ameren Missouri,	)	
	)	
Respondent.	)	

CONTINENTAL CEMENT COMPANY, L.L.C.'s
POST HEARING BRIEF

Intervener Continental Cement Company, L.L.C. (Continental) submitted the testimony of one its officers, Mr. J. Scott Conroy, Vice President, Engineering & Projects. His responsibilities include project engineering and project management for all major capital projects for the Company, and energy management for all Continental operations. He supplied a detailed description of Continental's business and the contribution it makes to its neighboring community.

The Company

Continental manufactures and sells Portland cement. It is in charge of a large operation near Hannibal, Missouri and there continues a long history of productive industry. Cement has been manufactured at the Hannibal plant since 1903. The cement produced at the Hannibal plant site has been consistently recognized for its high quality and was selected for many notable construction projects, including the Empire State Building, the Panama Canal, Busch Stadium, the Edward Jones Dome, and the Scottrade Center. [1]

Three generations of cement plants have manufactured cement at the Hannibal site. The

[1] Conroy Rebuttal, Exhibit 500 at 2.

existing plant was upgraded beginning in 2006, with a total investment of approximately $200 Million, and went into operation in 2008. The Hannibal plant is a fully modernized, state-of-the-art cement manufacturing facility. The vertical roller mill, the pyro-processing line, clinker cooler, roll press and separator are all of the most modern design found in the cement industry. There is an on–site underground limestone mine, an improvement which went into operation in 2014, and a surface shale quarry. These two components constitute 92% of cement raw materials. All raw materials are crushed and conveyed to a single rock storage building, where the segregated raw materials are stockpiled for blending. [2]

The plant improvements made during the plant upgrade also included infrastructure support modifications. Those modifications entailed incorporating alternative fuels for the new plant, converting existing raw material storage silos into clinker storage, increasing cement storage and load-out capabilities at the plant as well as at the St. Louis, Missouri distribution terminal. Continental's distribution network includes shipments from the production facility and distribution terminals in St. Louis, Missouri and Bettendorf, Iowa.[3]

Continental currently employs 228 at the plant. Payroll and other benefits at that level of employment exceed $24 Million per year. Continental pays approximately $1,016,000 in county or other local property taxes annually. It purchases supplies and services locally in the amount of approximately $46 Million a year. Continental's charitable contributions and advertising costs are approximately $150,000 - $200,000 per year.[4]

All of the plant equipment requires electrical energy to operate. Plant equipment ranges in size from fractional horsepower motors, up to 3000 horsepower motors. Continental is heavily dependent upon the reliability and quality of energy distributed to these facilities.

[2] *Id.* at 2-3.
[3] *Id.* at 3.
[4] *Id.* at 3.

Continental is an Ameren customer. Energy costs are approximately 12.8% of Continental's operating costs. [5]

Average monthly electrical energy consumption throughout the year is approximately 9 million kilowatt-hours and increases to approximately 11 million kilowatt-hours during the shipping season. On an annual basis Continental purchases more than $6 Million of electrical energy from Ameren.[6]

What can be gathered from Mr. Conroy's account of his company is that is has recently invested heavily in a longstanding and important business that offers employment to over 200 people with annual payroll in excess of $24 Million. Ralls County, the county in which the plant is located, the City of Hannibal and New London to name a few of the municipalities in the vicinity surrounding the plant, rely on Continental for over $1 Million in tax revenue. Continental is a heavy economic anchor for Northeast Missouri. Area merchants derive $46 Million in sales each year from Continental's operations.

The Issue

This brief will not endeavor to dissect the justification Noranda Aluminum, Inc. (Noranda) asserts for a reduction in the rates it pays for Ameren power. Rather, for Continental the sharper focus should be on the looming consequence of shifting approximately $48,000,000 annually – about one half billion dollars over the 10-year term proposed by Noranda in its complaint – to Ameren's other customers.

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[5] *Id*. at 3.
[6] *Id*. at 4.

Stripped of their eloquence, the issues in this case can rightly be distilled to just one: Should the Commission adopt a test of just and reasonable rates that departs from traditional cost of service analysis?[7] Continental contends the answer is "no."

In paragraph 5 of its complaint, Noranda cites Section 393.130.1. There are other sections of the statute that well deserve emphasis and attention in this case:

> 2. No gas corporation, electrical corporation, water corporation or sewer corporation shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, water, sewer or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.
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> 3. No gas corporation, electrical corporation, water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 393.140 is also instructive:

> The commission shall:
> (1) . . . ;
>
> (5) Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, **unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law**, the commission shall determine and

[7] This is not to suggest, however, that the Commission discard in any rate design an economic development initiative or temporary discount to aid promotions, or refuse to approve stipulations between parties for the reason that they set rates or may set rates in ways inconsistent with cost of service principles.

> prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

Continental contends that a reduced rate for Noranda, based upon the facts and circumstances alleged in the complaint, offends the statutes cited above. Such relief would constitute a "special" rate or charge that was less than what would be charged for like customers, irrespective of the lines drawn between the customer classes at this time. Furthermore, and assuming the Commission would opt to make Ameren revenue neutral as part of its report and order, Continental, and customers similarly situated, would be subjected to undue prejudice and disadvantage by increased rates for service. The Commission's overarching mission is the policing and elimination of unjustly discriminatory and unduly preferential rates charged by utilities. If the Commission agrees with Noranda in this case, it will decree into existence what it was created and designed to abolish.

The Future of Regulation

When Noranda's complaint is fully unpacked, the baggage will include a woeful container. Once opened, the consequences will be dire and detrimental.

Ameren submitted the testimony of former Commissioner Terry Jarrett, a veteran of many rate relief cases in the Commission. In his rebuttal testimony, he described the result of straying from traditional cost of service analysis in favor an “affordability” analysis:

> Achieving affordability through rate design, whether for Noranda or other customers means compromising cost causation to redistribute wealth. If a regulator focuses on affordability, that regulator is picking winners and losers—one class subsidizing another class—and that is not a regulator’s job. The regulator’s job is to make sure the rates are fair according to the cost of service for each class. While a regulator may feel compassion for those who are affected by rates that are not affordable, unfortunately that is beyond the scope and authority of the regulatory process. Instead, it is a political (social or economic development) problem that is the responsibility of the legislative branch of government.[8]

He added at page 9 of his testimony that in the event the Commission departed from cost-of-service ratemaking he “would expect that every struggling business in Missouri would have an incentive to file a complaint for rate relief just like Noranda has done.”[9] Continental does not disagree but adds that ***every business*** in Missouri, “struggling” or otherwise, would have an incentive to file a like complaint.

If the Commission should choose to entertain complaints like Noranda’s in the future, it is easy to visualize that Continental’s Section 386.390 complaint would not be much different provided it elected to explore such an option as a means to reduce it electric energy costs. Like Noranda, Continental is heavily dependent on electrical energy. The rates it pays for energy, especially any increased rates resulting from granting Noranda the relief it requests in this case, may negatively affect Continental’s ability to sustain a viable business; to maintain employment at a level where 228 families are not adversely affected; to purchase goods and services for its operations from local merchants at historic high levels; and to contribute to area charities as it customarily does. Such possibilities exacerbate during cycles of slow to nonexistent economic

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[8] Jarett Rebuttal, Exhibit 103, at 6.
[9] *Id.* at 9.

growth. Based on these factors, Continental, like Noranda, could complain that the rate for energy it pays Ameren has therefore become "unreasonable" and must be reduced while a "modest" increase for Ameren's other customers approved. Otherwise, the welfare of the State of Missouri, particularly the region in the Northeast quadrant, and the public interest in general will suffer.

At page 10 of his rebuttal, Mr. Jarrett observes that the Commission lacks essential tools to do the work which comes from granting special rate treatment to one customer:

> In this case, the Commission is being asked to evaluate the financial position of a customer, not a utility. The same tools that the Commission has to evaluate a utility cannot be used to evaluate a customer. The Commission can't go out and regularly monitor and audit a customer's financial condition. The Commission can't compel a private business that it does not regulate to turn over all its books and records for inspection, or require the customer to submit regular surveillance reports. The Commission has no experience in evaluating a customer's financial position. To my knowledge, the Commission staff has no one who is an expert on how aluminum smelters operate or how they are financed or managed. Commission staff were hired and trained to evaluate utilities, not other kinds of businesses.
>
> Moreover, even if the Commission or its staff had the ability to evaluate the financial condition of individual customers, the inquiry would not end there. The Commission (or staff) would also have to determine the cause of any financial problems that an individual customer faced. The Commission would not want to make other customers bail out a private business for financial problems that were caused by the misfeasance or malfeasance of the business. Again, the Commission and its staff are not equipped to perform such evaluations.[10]

That Noranda is outside of the Commission's jurisdiction means that its economic decisions are responsive primarily to market impulses and are uninfluenced by how a rate regulator, like the Commission, may respond. The Commission wields no enforcement power over Noranda. If the Commission were to grant Noranda its requested relief, there are no means of enforcing against Noranda the equitable conditions that might attend that relief such as a commitment to

[10] *Id.* at 10-11.

maintain a certain level of employment at the plant or placing a moratorium on borrowing or on dividend declaration. Noranda's lower electric rate would thus become part and parcel of a Noranda across-the-board "expense reduction program" and Noranda's business, its borrowing and its dividend, would proceed or be paid "as usual."

Conclusion

On the basis of the above and foregoing, Continental Cement Company L.L.C. contends that the Commission should deny and dismiss Noranda's complaint.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 8th day of July, 2014, to:

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