

123 FERC ¶ 61,279
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Borex Livermore Falls LP	Docket Nos. ER01-2569-006
Borex Stratton Energy LP	ER98-4652-006
Borex Ft. Fairfield LP	ER02-1175-005
Borex Ashland LP	ER01-2568-005

ORDER DENYING REHEARING

(Issued June 19, 2008)

1. On January 17, 2008, the Commission issued an order accepting the updated market power analysis filed by Borex Industries Inc. (Borex)¹ on behalf of four of its affiliates (collectively, Borex Entities).² On February 19, 2008, the Maine Public Utilities Commission (Maine Commission) filed a request for rehearing of the January 17 Order. In this order, we deny rehearing and grant Borex's motion to strike a portion of the Maine Commission's request for rehearing.

Background

2. On June 29, 2007, Borex filed an updated market power analysis pursuant to the Commission's orders granting the Borex Entities authority to sell electric energy and capacity at market-based rates.³ Borex claimed that the Borex Entities operate in two

¹ *Borex Livermore Falls, Inc.*, 122 FERC ¶ 61,033 (2008) (January 17 Order).

² Borex's four affiliates are Borex Livermore Falls LP, Borex Stratton Energy LP (both located in southern Maine) and Borex Ft. Fairfield LP and Borex Ashland LP (both located in northern Maine).

³ *Borex Livermore Falls LP*, Docket No. ER01-2569-005 (Aug. 22, 2001), *Borex Stratton Energy LP*, Docket No. ER98-4652-005 (Dec. 1, 1998), *Borex Ft. Fairfield LP*, Docket No. ER02-1175-004 (Apr. 1, 2002), *Borex Ashland LP*, Docket No. ER01-2568-003 (Aug. 22, 2001) (unpublished letter orders).

different control areas;⁴ the Boralex Stratton and Boralex Livermore Falls plants are located in Southern Maine within the New England Power Pool and the New England Independent System Operator (ISO-NE) market, while the Boralex Ft. Fairfield and Boralex Ashland plants are located within the Northern Maine Independent System Administrator (Northern Maine ISA) area, which is an integrated part of the Northeast Power Coordinating Council's Maritimes Control Area.⁵ Boralex noted that it owns a third generating unit in Northern Maine, the Sherman plant, which is currently retired.

3. Boralex asserted that the Boralex Entities pass the Commission's wholesale market share screen and the pivotal supplier screen; it provided the screen calculations for the plants in Northern Maine using the Maritimes Control Area as the relevant geographic market. In addition, Boralex performed a sensitivity analysis considering Northern Maine on a stand-alone basis, although it asserted that Northern Maine should not be the relevant geographic market according to the criteria adopted by the Commission.⁶ Boralex stated that all of the capacity and energy of the Ft. Fairfield and Ashland plants are sold to a third party (Integrays Energy Services, Inc. (WPS/Integrays)) on a long-term basis and thus this committed capacity was not included in the market power screen calculations. Only the uncommitted capacity from the shuttered Sherman plant, which was included as a conservative assumption, was represented in the screens. Boralex stated that, given the small amount of uncommitted capacity controlled by Boralex, its Northern Maine affiliates passed both market power screens using either the Maritimes Control Area or the smaller Northern Maine area as the geographic market.

⁴ In Order No. 697, the Commission adopted the use of the term "balancing authority area" instead of "control area." *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252, at P 250 (2007), *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g and clarification*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268 (2008). Because this proceeding was initiated before the effective date of Order No. 697, in order to avoid any confusion, we will continue to use "control area" in this order.

⁵ The Maritimes Control Area includes Northern Maine, New Brunswick, Nova Scotia, and Prince Edward Island. The New Brunswick System Operator performs certain transmission operation functions within the Maritimes Control Area. Transmission facilities in Northern Maine are administered by the Northern Maine ISA, a Commission-approved independent system administrator.

⁶ Boralex June 29, 2007 Filing (citing *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, at P 74 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004)).

4. Boralex also stated that the Boralex Entities did not possess market power in transmission, could not engage in anticompetitive practices through transactions with their affiliates, and could not otherwise erect barriers to entry. Thus, Boralex asserted that the Boralex Entities continued to satisfy the Commission's requirements for market-based rate authority.

5. The Maine Commission protested the filing. The Maine Commission argued that, given unique structural issues in Northern Maine, the relevant geographic market should be Northern Maine rather than the Maritimes Control Area. According to the Maine Commission, the fact that Northern Maine is small and has only two suppliers, is geographically and electrically isolated, and has no direct connection to a liquid market should be taken into account when determining the relevant market. The Maine Commission also believed significant the distinctions between the operations of the Maritimes Control Area and the Northern Maine ISA, and capacity in New Brunswick that will be unavailable for 18 months while a nuclear plant is refurbished, thus reducing uncommitted capacity for the region. The Maine Commission argued that these circumstances gave Boralex market power, and asserted that the Boralex Entities should not retain market-based rate authority in Northern Maine.

6. The Maine Commission also argued for two departures from the Commission's usual analysis. First, it noted that in Order No. 697 the Commission held that it may disallow deductions of long-term sales based on extraordinary circumstances.⁷ The Maine Commission contended that the unique structural issues in Northern Maine and incidents it related from recent state proceedings resulted in "extraordinary circumstances." Thus, it argued that capacity from the two plants in Northern Maine that is committed under long-term contracts with WPS/Integritys until February 2009 should be included in the indicative screens. Second, the Maine Commission argued that Boralex's generation in ISO-NE should be included and transmission import capability adjusted accordingly, as it interpreted Order No. 697 as directing sellers to include in their total uncommitted capacity amounts from their remote generation (generation located in an adjoining control area).⁸ The Maine Commission argued that when using Northern Maine as the relevant geographic market and when including capacity as advocated by the Maine Commission, Boralex does not pass the indicative screens.

⁷ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 38, n.18.

⁸ Maine Commission July 20, 2007 Protest at 21 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 38).

January 17 Order

7. The Commission concluded in the January 17 Order that the Boralex Entities satisfy the standards for market-based rate authority. The Commission explained that it defines the default relevant geographic market to be the control area where the seller is physically located and the markets directly interconnected to the control area market. The Commission also noted that it allows sellers and intervenors to present evidence on a case-by-case basis to show that some other geographic market should be considered as the relevant market in a particular case. The Commission found that in the instant case the Maritimes Control Area is the default relevant geographic market.

8. In this regard, the Commission determined that the Maine Commission failed to provide sufficient evidence that an alternative geographic market, i.e., Northern Maine, should be considered as the relevant market. The Commission stated that the Maine Commission failed to meet the requirements set forth in Order No. 697 for defining an alternative geographic market because it presented no data showing the existence of binding transmission constraints. The Commission noted that the Maine Commission conceded that there were no transmission constraints between Northern Maine and the remainder of the Maritimes Control Area. The Commission noted that, rather than attempting to make the required demonstration, the Maine Commission instead argued that it need not make such a demonstration and claimed that the existence of a constraint does not answer the question of whether there are competitive supply options outside of Northern Maine.

9. The Commission found that the Maine Commission failed to provide sufficient evidence that some other geographic market should be considered the relevant market and, therefore, the Commission need not consider the Maine Commission's arguments for some other geographic market. Nonetheless, in the interest of providing additional guidance, the Commission addressed the Maine Commission's additional arguments but found them to be unpersuasive.

10. Thus, the Commission did not find "unique structural issues" that warranted Northern Maine being considered as a separate geographic market. The Commission noted, however, that even if Northern Maine were defined as the relevant geographic market, Boralex would nevertheless pass the indicative screens: it would not be a pivotal supplier, and its market share would be only 11.6 percent which is below the Commission's threshold of 20 percent for indication of possible market power.

11. The Commission addressed the Maine Commission's claims regarding events that occurred in retail rate proceedings by concluding that the circumstances did not show Boralex to possess market power in the Maritimes Control Area. The Commission explained that the fact that only one seller chose to bid in a request for proposals did not mean that other suppliers could not have bid as well and would not do so in the future.

12. The Commission also was not persuaded by the Maine Commission's argument that the capacity from Boralex Entities' long-term contracts with WPS/Integrysts should be included in the screen analyses as uncommitted capacity. The Maine Commission had asserted that that capacity, committed under long-term contracts until February 2009, should be included because the long-term commitment would expire in a relatively short period of time. The Commission explained that historical data have proven to be more objective, readily available, and less subject to manipulation than future projections and that it had determined not to consider future changes to capacity in the screens. The Commission continued:

Although the Maine Commission correctly notes that the policies set forth in Order No. 697 allow the Commission to include generation currently under long-term contract in extraordinary circumstances, even if we were to adopt the Maine Commission's proposal in this regard, Boralex's analysis including the output of all five plants as uncommitted capacity demonstrates that it still passes both screens in the Maritimes Control Area relevant geographic market.[⁹]

13. The Commission concluded by determining that Boralex passed both generation market power screens for its plants in Northern Maine.¹⁰ The Commission found that Boralex's market share of uncommitted capacity was 0.6 percent for all seasons, and that it was not a pivotal supplier. Thus, the Commission found that the Boralex Entities satisfied its generation market power standard for the grant of market-based rate authority. The Commission also concluded that the Boralex Entities satisfied the Commission's transmission market power standard for the grant of market-based rate authority, that they could not erect barriers to entry, and that they satisfied the Commission's concerns with regard to affiliate abuse.

Request For Rehearing

14. The Maine Commission argues on rehearing that the Commission erred by applying Order No. 697 to a situation "where the consequences of such application creates the conditions for unjust and unreasonable rates."¹¹ The Maine Commission requests that the Commission reconsider its "strict application" of the April 14 Order and

⁹ *Id.* P 44.

¹⁰ The Commission also concluded that Boralex's plants in ISO-NE passed both market power screens. The market shares ranged from 0.2 to 0.3 percent, depending on the season, and it was not a pivotal supplier.

¹¹ Maine Commission February 19, 2008 Rehearing Request at 3.

Order No. 697 in this case and find that Boralex's retention of its market-based rate authority in Northern Maine is not appropriate at this time.¹² Specifically, the Maine Commission objects to the requirement that any proposal to use a geographic market other than the default geographic market must include a demonstration regarding whether there are frequently binding transmission constraints preventing competing supply from reaching customers in the proposed alternative geographic market.¹³ According to the Maine Commission, that standard addresses the most common factual circumstances, but is not appropriate in this case because in Northern Maine there are reasons other than transmission constraints that prevent competing supply from reaching customers. Among those reasons, the Maine Commission submits, is that the Maritimes Control Area is not a competitive market, as there is little competition across or even within the Maritime Canadian Provinces.

15. The Maine Commission asserts that, even if there were a competitive market in the Maritimes Control Area, additional information in the record should have led the Commission to conclude that Northern Maine should be the relevant geographic market, namely that: (1) different market rules govern the Maritimes Control Area; (2) there is not sufficient liquidity of supply in the Maritimes Control Area; and (3) New Brunswick Power gives preference to provincial native loads.¹⁴

16. On rehearing, the Maine Commission repeats its arguments that Northern Maine is small and electrically isolated and asserts that the Commission failed to address those arguments in the January 17 Order. It also attaches to its rehearing request a filing submitted to the Maine Commission by Constellation Energy Group (Constellation),¹⁵ explaining that the evidence presented in its prior pleadings is further supported by Constellation's remarks. According to the Maine Commission, Constellation's comments describe the lack of competition and the isolated load in Northern Maine from the perspective of a potential supplier.

17. Characterizing the situation in Northern Maine as a "clear market failure," the Maine Commission urges the Commission not to grant Boralex continued market-based rate authority "without an in-depth examination by the Commission of whether such

¹² *Id.* at 5.

¹³ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 268.

¹⁴ Maine Commission February 19, 2008 Rehearing Request at 6.

¹⁵ *Id.* at Attachment A. The Maine Commission explains that Constellation's filing (dated November 30, 2007) was submitted in response to the Maine Commission's October 30, 2007 Request for Comment in MPUC Docket 2006-513.

authority could result in rates that are not just and reasonable.”¹⁶ The Maine Commission also notes that intervenors are permitted to rebut the presumption that a seller passing both screens does not possess market power by presenting evidence based on historical wholesale sales data or by challenging the assumption that competing suppliers inside a control area have access to the market (taking into account “both the actual historical transmission usage at the time of the study as well as the amount of available transmission capacity at that time”).¹⁷

18. In addition, the Maine Commission again raises its contention that Boralex fails the market share screen when it is not allowed to deduct its generation that is committed under long-term contracts. Noting that Boralex’s output from its Northern Maine plants is under contract at fixed prices until the contracts expire in February 2009, the Maine Commission contends that the conditions that will exist at the time Boralex will be in a position to offer that output for sale can only be accurately represented by treating that capacity as uncommitted, and thus attributing it to Boralex in assessing whether it has market power. Recognizing that the Commission’s policy of deducting such capacity rests on the fact that historical data is more objective and less subject to manipulation, the Maine Commission contends that the Commission’s concern is not relevant to the certain termination of the contracts at issue here. It states that the Commission has given itself the option of considering committed capacity in the indicative screens if it finds that “extraordinary circumstances”¹⁸ exist, and asserts that such evidence exists in this case.

19. Finally, the Maine Commission contends that the Commission has failed to look beyond the technical requirements of the April 14 Order or Order No. 697 to determine the proper course of action, believing that Boralex’s authority to continue to charge market-based rates “results in rates that cannot be determined to be just and reasonable, since they are neither regulated cost-based rates nor are they the result of a competitive market.”¹⁹

Responsive Pleadings

20. On February 28, 2008, Boralex filed a motion to strike portions of the Maine Commission’s rehearing request, specifically the comments filed at the Maine Commission by Constellation. Boralex states that the Commission generally looks with

¹⁶ *Id.* at 9.

¹⁷ *Id.* (quoting April 14 Order, 107 FERC ¶ 61,018 at P 37).

¹⁸ *Id.* at 10 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 38 & n.18).

¹⁹ *Id.*

disfavor on parties raising arguments on rehearing that should have been raised earlier in the proceeding and typically rejects evidence offered for the first time on rehearing.²⁰ Boralex notes that Constellation's comments were filed at the Maine Commission on November 30, 2007 and states that the Maine Commission had ample opportunity to bring them to the Commission's attention prior to issuance of the January 17 Order. Boralex argues that, because the Maine Commission filed the comments as part of its rehearing request, Boralex is not entitled to submit an answer under the Commission rules.

21. In the alternative, Boralex requests that the Commission accept its answer to the Maine Commission's claims regarding Constellation's comments. According to Boralex, the Maine Commission offers the Constellation comments as proof of its claims that Northern Maine is isolated and should be analyzed as a separate geographic market, but states that the Maine Commission provides no evidence of frequently binding transmission constraints. Boralex also notes that Constellation does not claim that it is prevented from selling power in Northern Maine, but simply states "serving load in [N]orthern Maine is a very different task from serving load within the NEPOOL Control Area."²¹ Further, Boralex states that Constellation's observation about no direct interconnection between Northern Maine and ISO-NE "says nothing whether there is a separate market in Northern Maine or the state of competition in that alleged market."²²

22. On March 10, 2008, the Maine Commission filed an answer opposing Boralex's motion to strike. The Maine Commission argues that Boralex's motion to strike should be denied but requests that the Commission allow Boralex's answer, to the extent that it addresses the probative value of the Constellation comments. Regarding the motion to strike, the Maine Commission states that it makes no new allegations or arguments in submitting Constellation's comments and contends that the document merely confirms what the Maine Commission contends is already clear in the record, i.e., that competition has not developed in Northern Maine. The Maine Commission contends that consideration of the comments, and Boralex's answer thereto, does not extend the litigation and will not hamper the efficient resolution of the case. It also notes that in

²⁰ Boralex February 28, 2008 Motion to Strike at 2 (citing *Californians for Renewable Energy, Inc. v. Calpine Energy Services, L.P.*, 107 FERC ¶ 61,238, at P 7 (2004); *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,548 (1994); *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,178, at P 11 (2008); *Energry Nuclear Operations, Inc., v. Consolidated Edison Co. of N.Y.*, 112 FERC ¶ 61,117, at P 39 (2005)).

²¹ *Id.* at 3 (quoting Constellation comments at 2).

²² *Id.* at 4.

Ocean State Power II, the Commission did examine the allegations made for the first time on rehearing, although stating that its general practice is not to consider such evidence.²³

Discussion

Procedural Matters

23. We will grant Boralex's motion to strike. As we have stated in other orders, we are reluctant to chase a "moving target" by considering new evidence presented for the first time at the rehearing stage of Commission proceedings.²⁴ The Commission has the discretion to reject evidence that was available but not proffered for consideration at the time of the final order.²⁵ Even if this evidence were allowed, however, it would not change our ruling on the merits, as it presents no new facts and does not undermine our conclusions in the prior order. Accordingly, we will grant Boralex's motion to strike the comments filed by Constellation at the Maine Commission. Because we are granting the motion to strike, we will deny Boralex's alternative request to accept its answer.

Relevant Geographic Market

24. The Commission's default relevant geographic market for both indicative screens is first, the control area where the seller is physically located, and second, the markets directly interconnected to the seller's control area.²⁶ However, the Commission allows sellers and intervenors to present evidence on a case-by-case basis to show that some other geographic market should be the relevant market in a particular case. We affirm our decision in the January 17 Order that the Maritimes Control Area is the relevant geographic market in this proceeding and that the Maine Commission failed to provide sufficient evidence that Northern Maine should be considered the alternative geographic market because the Maine Commission presented no data showing the existence of binding transmission constraints.

²³ Maine Commission March 10, 2008 Answer at 4 (citing *Ocean State Power II*, 69 FERC at 61,548).

²⁴ See, e.g., *Philadelphia Electric Co.*, 58 FERC ¶ 61,060, at 61,133 & n.4 (1992) (finding no grounds for rehearing in isolated scraps of testimony submitted in retail rate proceeding); *Southern California Edison Co.*, 102 FERC ¶ 61,236, at P 17 (2003).

²⁵ See *Arkansas Power & Light Co.*, 52 FERC ¶ 61,029, at 61,156 (1990); *American Electric Power Service Corporation*, 106 FERC ¶ 61,020, at P 91 (2004).

²⁶ January 17 Order, 122 FERC ¶ 61,033 at P 32.

25. In particular, we disagree with the Maine Commission's assertion that the Commission applied its precedent of requiring the demonstration of binding transmission constraints too rigidly in the January 17 Order. The Commission stated in the April 14 Order that applicants and intervenors may provide evidence that because of internal transmission constraints (e.g., load pockets) the relevant market (or markets) is smaller than the control area;²⁷ this position was reaffirmed in Order No. 697, as the Maine Commission recognizes.²⁸ The Commission has explained that when assessing an alternative geographic market pursuant to the horizontal market power analysis, the Commission looks for assurance that no frequently recurring physical impediments to trade exist within the alternative geographic market that would prevent competing supply in the alternative geographic market from reaching wholesale customers.²⁹ As the Commission stated in Order No. 697³⁰ and reiterated in the January 17 Order, the requirement to address transmission constraints is a "necessary condition" that must be satisfied by those advocating adoption of an alternative geographic market.³¹ Thus, the Commission appropriately relied on its long-standing policy in the January 17 Order. In any event, the Commission nevertheless considered whether Boralex would pass the indicative screens when defining Northern Maine as the relevant geographic market and found that Boralex would still meet the Commission's standards for market-based rates with regard to generation market power.³²

26. Regarding the Maine Commission's contention that the Maritimes Control Area is not a market, and thus cannot be used as the default geographic market, we note that the Commission's market power analysis defines control areas as relevant geographic markets,³³ and the January 17 Order made the specific finding that the Maritimes Control Area is the control area for the Northern Maine area.

²⁷ See April 14 Order, 107 FERC ¶ 61,018 at P 75.

²⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 239.

²⁹ *Id.* P 268.

³⁰ *Id.*

³¹ January 17 Order, 122 FERC ¶ 61,033 at P 33-35.

³² *Id.* P 41.

³³ See April 14 Order, 107 FERC ¶ 61,018 at P 74. In Order No. 697, the Commission continued the practice of using a seller's control, or balancing authority area (*see supra* n.4), as the default relevant geographic market, finding that this approach allows the Commission and intervenors to rely on data that are accurate and generally
(continued...)

27. To the extent that the Maine Commission is arguing that the Maritimes Control Area must be found to be a competitive market before a seller in that market is granted market-based rate authority, as the Commission explained in Order No. 697, the Commission has a long-established approach when a seller applies for market-based rate authority of analyzing seller-specific market power.³⁴ More recently, in Order No. 697-A, the Commission affirmed that in permitting market-based rates in its regulation of electric markets the Commission's approach in the electric area has been primarily to rely on an analysis of individual seller market power.³⁵ Accordingly, granting market-based rate authority based on a finding that an individual seller and its affiliates lack or have mitigated market power, without analyzing whether a particular market is competitive, is adequate to ensure that market-based rates remain just and reasonable and is fully consistent with Commission precedent.

28. With regard to the Maine Commission's claim that the Commission failed to consider its arguments that other evidence should lead to the conclusion that Northern Maine is the relevant geographic market, we disagree. As we explained in the January 17 Order, "[b]ecause the Maine Commission has failed to provide sufficient evidence that some other geographic market should be considered as the relevant market we need not consider these arguments."³⁶ However, in the interest of providing additional guidance, the Commission considered the Maine Commission's other evidence and found it unpersuasive.

29. Specifically, the Commission found that the claim that Northern Maine is geographically and electrically isolated is undermined by the fact that the Maine Commission also asserted that Boralex's remote generation located in ISO-NE should be regarded as able to compete in Northern Maine and should thus be included in the screen analyses of the Northern Maine market. Additionally, the Commission found that the Maine Commission had not provided historical sales data to support its claims (1) that buyers in Northern Maine are limited to purchasing only from sellers also located in

publicly available. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 233. This approach avoids the problem of determining whether a particular relevant geographic market can be considered a "market," a term which has no universally agreed-upon definition.

³⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 955.

³⁵ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 425.

³⁶ January 17 Order, 122 FERC ¶ 61,033 at P 41 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 268).

Northern Maine or (2) that supply within the Maritimes Control Area but outside of Northern Maine is priced too high to compete with supply inside Northern Maine.

30. The Commission also addressed the Maine Commission's concern about the absence of a spot market in the Maritimes Control Area by stating:

Although the Commission has considered the existence of a spot market under certain circumstances as relevant in determining whether trading within an ISO/RTO is sufficient to justify use of that ISO/RTO as the default geographic market, the Commission has never used the *absence* of a spot market in a *non-ISO/RTO market* (which circumstance is common) to justify adoption of a smaller geographic market than the default control area market.^{37]}

31. We also found unpersuasive the Maine Commission's arguments that Northern Maine and New Brunswick control and operate their systems separately and have separate market rules. We stated that the New Brunswick System Operator is the Balancing Authority regardless and has the responsibilities assigned to Balancing Authorities in the NERC Reliability Standards, which include integrating resource plans ahead of time, maintaining load-interchange-generation balance, and supporting interconnection frequency.

32. The Commission found the Maine Commission's concerns about a deficiency of generation capacity unpersuasive given that data in its protest indicated the availability of 189 MW of uncommitted generation capacity in Northern Maine.

33. The Maine Commission is incorrect in its assertion that we failed to address its arguments that Northern Maine is electrically isolated from ISO-NE. In the January 17 Order, we found that there are no binding transmission constraints between Northern Maine and the remainder of the Maritimes Control Area and that the Maine Commission presented no evidence indicating that there is an insufficient amount of transmission capability between the areas.³⁸ The Maine Commission, however, contends that the Commission's finding that ISO-NE is a second-tier market to Northern Maine supports its argument that ISO-NE is electrically isolated from Northern Maine. The Maine Commission's argument is misplaced. A market's status as a second-tier market

³⁷ January 17 Order, 122 FERC ¶ 61,033 at P 38 (emphasis in original).

³⁸ January 17 Order, 122 FERC ¶ 61,033 at P 37. We also explained that the indicative screens take into account whether there are sufficient supplies and transmission capacity available in determining whether a seller has market power.

to another market does not mean that either market is electrically isolated, merely that they are not directly interconnected with each other.

34. In sum, the Maine Commission does not raise on rehearing any arguments that persuade us that Northern Maine should be considered as the relevant geographic market for the Boralex Entities located in that area, and we deny rehearing of the January 17 Order in this regard.

Committed Capacity

35. The Maine Commission continues to assert that we should include the capacity from the Boralex Entities' long-term contracts with WPS/Integrus in the screen analysis as uncommitted capacity. We rejected that argument in the January 17 Order, explaining that "historical data have been proven to be more objective, readily available, and less subject to manipulation than future projections; thus, future changes to capacity would not be considered in the screens."³⁹ Nevertheless, as we also explained in the January 17 Order, even if we were to adopt the Maine Commission's position that "extraordinary circumstances" exist in Northern Maine that warrant inclusion of this capacity as uncommitted (and we do not), Boralex still passes both screens in the Maritimes Control Area relevant geographic market when the output of all five of its plants is included as uncommitted capacity. Thus, even giving the Maine Commission the benefit of this argument, Boralex would still satisfy the Commission's generation market power standard for the grant of market-based rate authority. Accordingly, we will deny rehearing.

The Commission orders:

- (A) The Maine Commission's request for rehearing is hereby denied.
- (B) Boralex's motion to strike is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁹ January 17 Order, 122 FERC ¶ 61,033 at P 43 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 299 (describing the Commission's existing practice with respect to historical data)).