

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Borex Livemore Falls, Inc.)	Docket Nos.	ER01-2569-005
Borex Stratton Energy LP)		ER98-4652-005
Borex Ft. Fairfield LP)		ER02-1175-004
Borex Ashland LP)		ER01-2568-003

**ANSWER OF THE MAINE PUBLIC UTILITIES COMMISSION
IN OPPOSITION TO MOTION TO STRIKE**

Pursuant to Section 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.213 (2007), the Maine Public Utilities Commission (“MPUC”) respectfully submits this Answer to the “Motion of Borex to Strike Portions of the Request for Rehearing of the Maine Public Utilities Commission” (“Motion to Strike”) filed on February 28, 2008, in the above-captioned proceeding.

I. BACKGROUND

On June 29, 2007, Borex Industries Inc. (“Borex”) submitted its June 29 Filing in compliance with the triennial rate review requirement imposed by the Commission’s orders in the above-captioned dockets, which granted authorizations to sell power at market-based rates to four Borex subsidiaries that own interests in biomass-fueled qualifying small power production facilities with generation capacities in excess of 20 MW (the “Borex Large QFs”).¹

The MPUC timely filed a notice of intervention and protest on July 20, 2007. On August 6, 2007, Borex filed a motion for leave to answer and answer to the MPUC’s

¹ See June 29 Filing at 1.

protest. On August 7, 2007, Integrys Energy Services, Inc. (“WPS/Integrys”) filed a motion to intervene out-of-time and answer.

The Commission held a technical conference on August 29, 2007, and invited all parties and interested persons to attend.² Following the technical conference, the MPUC filed supplemental comments. Northern Maine Independent System Administrator subsequently filed a motion to intervene out-of-time and reply comments. Boralex also filed reply comments. The MPUC filed a further response.

On January 17, 2008, the Commission issued its “Order Accepting Updated Market Power Analysis”³ in which it accepted the updated market power analysis filed by Boralex, finding that Boralex satisfied the Commission’s standards for market-based rate authority. On February 19, 2008, the MPUC filed a Request for Rehearing and appended to it as Attachment A, a filing made by Constellation Energy Commodities Group, Inc. (“Constellation”) in an MPUC docket in which the MPUC sought stakeholder comments to address the absence of retail competition in Northern Maine.⁴ On February 28, 2008, Boralex filed its Motion to Strike.

² Notice of the technical conference was published in the *Federal Register*. 72 Fed. Reg. 45,807 (Aug. 15, 2007); 72 Fed. Reg. 49,278 (Aug. 28, 2007).

³ *Boralex Livermore Falls, LP, et al.*, 122 FERC ¶ 61,033 (2008) (“January 17 Order”).

⁴ In its July 20, 2007 protest in this docket, the MPUC discussed the MPUC proceeding, Docket No. 2006-513, and reiterated its own finding in Docket No. 2006-513 that “. . . the northern Maine market, as currently constructed, is too small and isolated to support a competitive market.” Notice of Intervention and Comments of the Maine Public Utilities Commission, Docket Nos. ER01-2569-005, *et al.*, (filed July 20, 2007) (citing MPUC Docket No. 2006-513 (December 18, 2006) at 1-2).

II. ANSWER

Borex's Motion to Strike should be denied. The MPUC does not object to consideration of Borex's answer to the Constellation letter, to the extent that the answer addresses the probative value of the Constellation letter (and does not, instead, try to answer the substance of the MPUC rehearing). Consideration of Attachment A and Borex's answer to Attachment A will not require the Commission "to chase a moving target," as claimed by Borex. *See, e.g., Ocean State Power II*, 69 FERC ¶ 61,146, at p. 61,548 (1994) ("*Ocean State II*").

The MPUC does not make new allegations or arguments in submitting the Constellation letter. Rather, the document simply confirms what the record already makes clear—that competition failed to develop in Northern Maine. The record is already replete with information that supports this conclusion, including the fact that there was only one bidder in the retail standard offer solicitation⁵ and the fact that Northern Maine could not look to New Brunswick for a competitive source of power.

However, while the letter should not be necessary, given the information in the record, it does underscore the problem with the Commission's decision, which relies on screens and formulas to reach a conclusion that market-based rates are appropriate for one of the two major players in the Northern Maine area, in spite of compelling evidence *that a competitive market has never developed in this small, isolated sub-region*. It was

⁵ The MPUC notes that in dicta the Commission's January 17 Order suggested that the fact that only "one seller chose to bid in the request for proposals, if true, does not mean that other suppliers could not have bid as well and will not do so in response to future competitive opportunities." January 17 Order P 42. While this statement does not appear to form the basis for the Commission's decision, the Constellation letter does provide some basis upon which to evaluate the likelihood that additional suppliers will participate in the Northern Maine market.

the MPUC's intent in submitting the Constellation letter to urge the Commission to confront these problems. Consideration of the letter (and Boralex's answer to the letter) does not extend the litigation and thus will not harm the efficient resolution of this case.⁶ In the end, the MPUC hopes that consideration of the Constellation letter will lead to an efficient as well as just and reasonable resolution to the case, especially if it helps the Commission confront "head-on" the problems in the Northern Maine market.

III. CONCLUSION

WHEREFORE, the Maine Public Utilities Commission requests that the Commission deny Boralex's Motion to Strike and allow Boralex's answer to the extent it relates to the Constellation letter.

Dated: March 10, 2008

Respectfully submitted,

/s/ Lisa S. Gast

Lisa S. Gast

Duncan, Weinberg, Genzer
& Pembroke, P.C.

1615 M Street, N.W., Suite 800

Washington, D.C. 20036

Tel.: (202) 467-6370

Fax: (202) 467-6379

Lisa Fink

State of Maine

Public Utilities Commission

242 State Street

18 State House Station

Augusta, ME 04333-0018

Counsel for the Maine Public
Utilities Commission

⁶ The MPUC notes that in *Ocean State II*, the Commission, while stating that the Commission "generally will not consider new evidence on rehearing," did examine the various allegations that were made for the first time on rehearing. *Ocean State II*, 69 FERC at p. 61,548.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 10th day of March, 2008.

/s/ Daisy Matthews
Daisy Matthews
DUNCAN, WEINBERG, GENZER
& PEMBROKE, P.C.
1615 M Street, N.W.
Suite 800
Washington, DC 20036
(202) 467-6370