

171 FERC ¶ 61,094  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick, Bernard L. McNamee,  
and James P. Danly.

PJM Interconnection, L.L.C.  
Delmarva Power & Light Company

Docket No. ER20-1188-000

ORDER ACCEPTING FORMULA RATE REVISIONS

(Issued May 5, 2020)

1. On March 6, 2020, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> PJM Interconnection, L.L.C. filed, on behalf of Delmarva Power & Light Company (Delmarva), proposed revisions to Delmarva's transmission formula rate (Formula Rate), contained in the PJM Open Access Transmission Tariff (OATT), Attachment H-3D, to conform Delmarva's Formula Rate to accounting presentation changes concerning the treatment of Material and Supplies (M&S). In this order, we accept Delmarva's proposed Formula Rate revisions, effective May 6, 2020, as discussed below.

**I. Summary of Filing**

2. Delmarva states that it is a Delaware and Virginia corporation that is wholly owned by PEPCO Holdings, LLC, a public utility company and a wholly owned subsidiary of Exelon, a Pennsylvania corporation. Delmarva states that it owns approximately 13,500 miles of transmission and distribution facilities and provides delivered electric power and retail natural gas service to approximately 600,000 customers in Delaware and Maryland. Delmarva states that the Maryland Public Service Commission and the Delaware Public Service Commission regulate its retail electric service while the Commission regulates transmission service over Delmarva's transmission facilities and its wholesale sale of electric energy in interstate commerce. Delmarva states that it does not own any generation facilities.<sup>2</sup>

3. Delmarva proposes to modify the Form No. 1 reference to M&S inventory in its Formula Rate in order to conform the reference to an intended change in accounting

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> Transmittal at 3.

presentation. Delmarva states that it plans to implement this change in accounting presentation for the Form No. 1 for the 2019 reporting year that it will submit to the Commission in early 2020.

4. Since before the inception of its Formula Rate in 2005, Delmarva explains that it has directly assigned its M&S inventory amounts to transmission and to distribution, and has thus reflected all of its transmission related M&S inventory on page 227, line 8, of its Form No. 1 submitted each year.<sup>3</sup> Delmarva states that no customer or interested party has objected, and it has continued to rely on that accounting presentation.

5. Delmarva states that, while it believes that its accounting presentation of M&S amounts is consistent with Commission policy and that Delmarva has conformed to the requirements of its Formula Rate, it has determined that, based on *Duke Energy Progress, LLC*,<sup>4</sup> it is appropriate to revise the population on line 5 of page 227 of Form No. 1, starting with the 2019 reporting period and going forward because it will now reflect only the transmission plant (estimated) assigned to Operations and Maintenance (O&M). ACE states that line 5 of Page 227 will now be utilized to reflect the Company's estimate of total M&S inventory assigned to construction. Delmarva states, however, that its Formula Rate currently does not include the balance inputs from line 5 of page 227 of No. Form No. 1.<sup>5</sup> Delmarva states that the proposed changes to the Formula Rate will include the total amount on line 8 of page 227 of Form No. 1. In the Formula Rate, Delmarva states, it will indicate that only the transmission portion of line 5, as reflected in the Form No. 1 footnote, will be added to line 8 to establish the transmission M&S inventory balance used in the rate calculation.<sup>6</sup>

6. Delmarva advises that the change is substantially identical to changes that the Commission has allowed for other utilities and will have no rate impact.<sup>7</sup> Delmarva explains that the change ensures that the same transmission M&S inventory amounts will

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<sup>3</sup> *Id.* at 4.

<sup>4</sup> 163 FERC ¶ 61,051 (2018) (*DEP*).

<sup>5</sup> Transmittal at 5.

<sup>6</sup> *Id.* at 6-7.

<sup>7</sup> *Id.* (citing *Balt. Gas & Elec. Co.*, Docket No. ER20-789 (Mar. 4, 2020) (delegated order); *Commonwealth Edison Co.*, Docket No. ER20-379 (Jan. 8, 2020) (delegated order); *PJM Interconnection, L.L.C.*, Docket No. ER19-1569-000 (May 7, 2019) (delegated order); *Duke Energy Carolinas LLC*, Docket Nos. ER18-2367-000 and ER18-2368-000 (Oct. 19, 2018) (delegated order)).

be reflected in rates after the change in accounting presentation that would have been reflected in rates prior to the change.<sup>8</sup>

7. Delmarva states that the current instructions noted on line 50 of its Formula Rate specify the use of line 8 of Page 227 of the Form No. 1 as an input to the Company's working capital component of rate base in its Formula Rate. Delmarva explains that, if it implements the change in Form No. 1, but makes no corresponding changes in its Formula Rate, the result would be an under-recovery by Delmarva of the transmission related costs. Delmarva contends that regardless of whether the transmission related M&S inventory balances are estimated for assignment to Construction or assignment to O&M, such balances are recorded in FERC Account 154, Plant Materials and Operating Supplies, which is appropriately considered to be a component of working capital.<sup>9</sup> Delmarva explains that the M&S inventory balances that are estimated to be "Assigned to – Construction" and that now will be included on line 5 of page 227 of Form No. 1, represent funds that the Company has invested in materials still being held in inventory and for which a construction order has not been issued but once the construction work orders are issued and the inventory is used, the corresponding dollar amounts move out of Account 154 and into Account 107, Construction Work in Progress (CWIP).

8. Delmarva states that the Commission and courts have found that utilities are entitled to earn a return on their investment in such M&S inventory balances.<sup>10</sup> Delmarva states that the Commission has specifically permitted utilities to include in rate base transmission-related M&S inventory balance estimated to be assigned to construction in rates.<sup>11</sup>

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<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 5-6 (citing *Midwest Independent Transmission System Operator Inc.*, 141 FERC ¶ 63,014, at PP 1-2, 1469 (2012) (accepting Wholesale Distribution Service Agreements among Ameren Illinois Company and eight customers to establish the rates, terms, and conditions for Ameren's provision of service to customers on its distribution network, and which included in rate base M&S costs), *aff'd in relevant part*, Opinion No. 534, 148 FERC ¶ 61,206 (2014); *So. Cal. Edison Co.*, 53 FERC ¶ 61,408, at 62,413 (1990) (permitting utility to reflect in rate base an adjusted M&S balance of \$8,600,000) (citing *So. Cal. Edison Co.*, 34 FERC ¶ 63,016, at 65,024-25 (1986))).

<sup>11</sup> *Id.* at 6 (citing *Boston Edison Co.*, 59 FERC ¶ 63,028, at 65,245 (1992); *Cleveland Elec. Illuminating Co.*, Opinion No. 242, 32 FERC ¶ 61,381, at 61,860-61, *reh'g granted on other grounds*, 33 FERC ¶ 61,309 (1985) (*Cleveland*); *Union Elec. Co.*, Opinion No. 94, 12 FERC ¶ 61,239, at 61,582 (1980), *aff'd. sub nom. Union Elec. Co. v FERC*, 668 F.2d 389, 396 (8th Cir. 1981) (*Union Electric*); *Mo. Utils. Co.*, 6 FERC

9. Delmarva requests waiver of the 60-day prior notice requirement, and an effective date of March 6, 2020. If the Commission declines to waive the 60-day notice period, Delmarva requests an effective date of May 5, 2020. Delmarva states that it intends to reflect the changes required in the Form No. 1 revisions required by *DEP* that are implemented in the tariff revision proposed in this proceeding in the Formula Rate Annual Update to be posted on PJM's website by May 15, 2020.<sup>12</sup> Delmarva states that the Formula Rate Annual Update will reflect the estimated Annual Transmission Revenue Requirement billed for the calendar year 2020 and the true-up of the prior year's rates, based on actual FERC Form No. 1 data for reporting year 2019.<sup>13</sup>

## **II. Notice of Filing and Responsive Pleadings**

10. Notice of Delmarva's filing was published in the *Federal Register*, 85 Fed. Reg. 14,470 (Mar. 12, 2020), with protests and interventions due on or before March 27, 2020.

11. The Delaware Municipal Electric Corporation, Inc. (DEMEC) filed a timely motion to intervene and protest. On April 8, 2020, Delmarva filed an answer to DEMEC's protest. On April 23, 2020, DEMEC filed an answer in response to Delmarva's answer. On April 28, 2020, Delmarva filed an answer in response to Delmarva's response.

### **A. DEMEC's Protest**

12. DEMEC raises several concerns with the proposed revisions to Delmarva's Formula Rate. First, DEMEC states that Delmarva should be required to refile its prior Form No. 1 submissions and provide refunds for its collection of construction-related M&S from transmission customers in violation of its filed rate. DEMEC states that Delmarva concedes that it, like the utility in *DEP*, has been misreporting its M&S inventory balances in its Form No. 1 submissions, and that Delmarva acknowledges that the appropriate reporting of M&S will have an effect on its rates for transmission service. DEMEC reasons that if the appropriate reporting of M&S will result, as Delmarva claims, in an under-recovery, then the corollary is also true—that the prior misreporting

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¶ 63,041, at P 65,234 (1979), *aff'd*, 10 FERC ¶ 61,297 (1980); *Cent. Ill. Pub. Serv. Co.*, 8 FERC ¶ 63,022, at 65,196 (1979), *aff'd*, 10 FERC ¶ 61,162 (1980)).

<sup>12</sup> Delmarva states that even without waiver of the prior notice requirement, the proposed change to the Formula Rate would become effective prior to the May 15, 2020 Annual Formula Rate and true-up filings. *Id.* at 8.

<sup>13</sup> *Id.* at 2.

of M&S has resulted in an historic over-recovery.<sup>14</sup> DEMEC maintains that working capital components of the DEP and Delmarva rate formulas are functionally equivalent in that both permit inclusion of O&M-related M&S, but not construction-related M&S, and stipulates that Delmarva should not recover construction-related M&S. DEMEC further argues that Delmarva's filing lacks the commitment to offer refunds to Formula Rate customers for its historic over-collection, and instead seeks to shift the burden of compliance with its formula rate to interested parties by claiming that "[n]o customer or interested party has objected" to its improper collection of M&S inventory since the inception of its formula rate in 2005. DEMEC requests that the Commission require Delmarva to revise its prior Form No. 1 submissions as to M&S, calculate refunds owing to any revisions since the inception of the Formula Rate in 2005, and refund such amounts, with interest, to transmission customers.<sup>15</sup>

13. Second, DEMEC states that Delmarva's filing fails to ensure against inappropriate recovery of CWIP. DEMEC argues that Delmarva's proposal to recover construction-related M&S is inappropriate and would amount to unjust and unreasonable ratemaking. DEMEC reasons that Delmarva's proposal to include construction-related M&S costs in its rates, rather than capitalizing and recovering those costs as CWIP, Delmarva is essentially asking for an exception to the Commission's CWIP-related policies, whereby 100%, rather than 50%, of the transmission portion of Construction-related M&S is recovered in rates. DEMEC requests that the Commission reject Delmarva's proposal to include construction-related M&S in its transmission rates as a component of Working Capital.<sup>16</sup>

14. Third, DEMEC states that Delmarva's filing lacks the transparency and certainty required of the Formula Rates on file with the Commission. DEMEC maintains that Delmarva's filing lacks the level of transparency required to ensure that transmission customers are not inappropriately funding unreasonable or imprudent costs that Delmarva categorizes as M&S inventory. DEMEC argues that there is a lack of transparency as to the amounts Delmarva should have recorded as M&S inventory in line 5 of page 227 of its Form No. 1 versus the amounts that should have been designated as either related to O&M or CWIP and a lack of transparency as to the allocation factor or ratio it proposes to apply in seeking to recover construction-related M&S inventory. DEMEC further argues that Delmarva provides no details on its proposed new policy, practice, or methodology of estimating the portion of its M&S inventory, and details regarding its

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<sup>14</sup> Protest at 6.

<sup>15</sup> *Id.* at 8.

<sup>16</sup> *Id.* at 9-10.

proposed functionalization process.<sup>17</sup> Fourth, DEMEC states that Delmarva's proposed formula rate revisions allowing for the recovery of construction-related M&S must be rejected as an impermissible single-issue rate filing. DEMEC states that Delmarva justifies its request for single-issue rate filing treatment by claiming there to be "no rate impact" associated with the proposed change to its formula rate and by citing delegated letter orders in three cases.<sup>18</sup> DEMEC stipulates that contrary to Delmarva's position, the Formula Rate revisions will have a rate impact as it proposes to permit recovery of costs that Delmarva would not be able to recover absent the Formula Rate revision. DEMEC argues that the single issue that is animating Delmarva's rate filing is its attempt to convert an unrecoverable expense under its existing formula into a recoverable expense, and that the Commission should reject Delmarva's filing as a single-issue rate filing.<sup>19</sup>

15. DEMEC further requests that the Commission reject Delmarva's proposed revisions to its Formula Rate to collect construction-related M&S prospectively from transmission customers, and to set all issues raised in its protest for hearing, in the event that Delmarva's proposal is not rejected.<sup>20</sup>

**B. Delmarva's Answer**

16. Delmarva maintains that it is making a modest change to its Form No. 1 reporting and, as a result, is modifying its Formula Rate accordingly so that it will recover the same costs going forward that it would have appropriately recovered absent the reporting change. Delmarva reclarifies that it has changed its Form No. 1 reporting, so that transmission-related M&S inventory amounts that were previously reported on a single line of its Form No. 1 (page 227, line 8) will instead be split into two lines of the Form No. 1 (page 227, lines 5 and 8). Delmarva reiterates that its filing proposes a corresponding change to its Formula Rate to reflect the reporting change in its Form No. 1, so that it captures the transmission-related amounts from both line 5 and 8 of page 227 of the Form No. 1 rather than the amount only on line 8 of page 227. Delmarva reasons that full recovery of these costs is consistent with precedent, and failure to permit the amendment would lead to an under-recovery because it would preclude Delmarva from earning a return on necessary investment in M&S.<sup>21</sup>

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<sup>17</sup> *Id.* at 11-12.

<sup>18</sup> *Id.* at 13.

<sup>19</sup> *Id.* at 12-14.

<sup>20</sup> *Id.* at 14.

<sup>21</sup> Delmarva Answer at 3, *see supra* n.11 (citing cases).

17. Delmarva explains that it purchases supplies that could potentially be used for either construction or maintenance, and the ultimate classification of such supplies is uncertain until the point that an item is earmarked for a specific project or use, and that amounts of M&S on lines 8 and 9 of page 227 of Form No. 1 is M&S not yet earmarked for a specific purpose. Delmarva reasons that reporting the amounts on those lines facilitated the calculation of Delmarva's rates because it broke out the transmission portion of M&S needed to compute transmission rates from the portion of M&S that is functionalized as distribution, and that it has reported M&S in this way since at least 2005, when Delmarva first proposed its Formula Rate, which was ultimately settled with customers, including DEMEC, in 2006.<sup>22</sup> Delmarva advises that it will change its reporting so that an estimate of M&S that will be used for construction (but consisting purely of items not yet earmarked for a specific project) will be reported on line 5 of page 227 of Form No. 1 and, like the other utilities, requests that it be permitted to earn a return on the transmission-related portion.<sup>23</sup>

18. Delmarva contends that DEMEC raises concerns that are beyond the scope of this proceeding, makes meritless and untimely claims regarding overcollections in previous years, and raises concerns about potential future reporting issues that should be addressed in the Annual Update process pursuant to Delmarva's Formula Rate protocols. Delmarva argues that the challenge raised by DEMEC's protest as to whether M&S amounts reported at line 5 of page 227 of the Form No. 1 (which reports the estimated portion of M&S inventory that may be used for construction, but that has not yet been designated for use in a specific project) should be included in utility rate base and thus earn a return, ignores long-standing Commission precedent and argues no basis for treating Delmarva differently from other utilities.<sup>24</sup>

19. Delmarva contends that DEMEC's argument that its accounting was wrong in the past, and that it thus owes refunds for past years due to alleged overcollections, has nothing to do with whether the proposed Formula Rate amendment is just and reasonable. Delmarva maintains that its Formula Rate protocols provide exactly how such challenges can be raised and addressed in an Annual Update, including a process and timeline for pursuing such challenges, and that this proceeding is not an Annual Update challenge proceeding.

20. Delmarva states that DEMEC's concerns about CWIP are beyond the scope of this proceeding because Delmarva does not seek any rate treatment relating to CWIP, and that

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<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.* at 6.

<sup>24</sup> *Id.* at 9 (citing *Cleveland*, 32 FERC ¶ 61,381; *Union Electric*, 12 FERC ¶ 61,239).

to the extent DEMEC is arguing that M&S estimated to be used for construction is the same as CWIP, that argument has been litigated and rejected, and DEMEC has provided no basis for litigating the issue again.<sup>25</sup>

21. Delmarva argues that DEMEC's concerns about whether amounts reported on page 227, line 5, and in the footnotes of Form No. 1 will be appropriate is not an issue for this section 205 proceeding, and should instead be addressed in the context of individual rate updates, as well as the review process available for annual rate updates.

22. Lastly, Delmarva contends that DEMEC's argument that the Application should not be accorded single-issue rate treatment should be rejected because DEMEC does not raise a concern with other components of Delmarva's rate, or raise concerns that other components of Delmarva's rate are affected by the proposed change.

### **C. DEMEC's Answer**

23. DEMEC answers that Delmarva should be required to revise its prior Form No. 1 submissions and to issue all refunds that would be attributable to the tariff revisions to the Formula Rate. In addition, DEMEC restates that Delmarva's accounting of construction M&S lacks transparency.

### **D. Delmarva's Response**

24. Delmarva maintains that its proposal is consistent with precedent. Delmarva contends the DEMEC's answer is a further attempt to convince the Commission to initiate an investigation into past Delmarva charges, and that such an inquiry is beyond the scope of this proceeding.

## **III. Discussion**

### **A. Procedural Matters**

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), DEMEC's timely unopposed motion to intervene serves to make it a party to the proceeding.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.217(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Delmarva's answer because it has provided information that assisted us in our decision-making process. We reject DEMEC's answer and

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<sup>25</sup> *Id.* at 12.



Delmarva's answer in response because they have not provided additional information that assisted us in our decision-making process.

**B. Substantive Matters**

27. We accept Delmarva's proposed revisions to its Formula Rate, to become effective May 6, 2020. We find that Delmarva's proposed revisions to its Formula Rate are just and reasonable and consistent with the guidance in *DEP*. We agree with Delmarva that Commission precedent allows construction-related M&S to be included in rate base prior to being assigned to specific construction projects and transferred to accounts that are capitalized.<sup>26</sup>

28. We disagree with DEMEC's claim that Delmarva's proposed revisions do not qualify for single-issue rate treatment. DEMEC argues that the Commission should reject Delmarva's filing as an impermissible single-issue rate filing and allow customers to examine all cost of service elements, not just the change proposed here. The Commission has held that "an unchanged component of a rate is subject to reevaluation in connection with a proposed rate increase only 'if the unchanged component is integral to the justness and reasonableness of the proposed increase.'"<sup>27</sup> DEMEC fails to identify any specific unchanged components of the Formula Rate that are integral to the justness and reasonableness of Delmarva's proposed change. Accordingly, we find that Delmarva has provided no basis to include other cost of service elements in our review.

29. Here, in accepting Delmarva's proposed formula rate revisions effective May 6, 2020, we find that Delmarva can only apply the formula rate revisions prospectively.<sup>28</sup> Thus, when Delmarva calculates its true-up of estimated 2019 charges to actual 2019 costs in May 2020, it must calculate its actual costs using the formula that was in effect for the applicable time period (i.e., Delmarva's revisions cannot be applied to its 2019

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<sup>26</sup> See *supra* n.11 (citing cases); see also *Union Elec. Co.*, 8 FERC ¶ 63,026, at 65,243 (1979) ("Union Electric argues, and their argument is accepted, that the [M&S] are not earmarked to either maintenance or construction while in that status. They only become earmarked when removed; hence, there is no prohibition against including the full [M&S] inventory amount in the rate base."), *summarily aff'd in relevant part*, *Union Electric*, 12 FERC ¶ 61,239.

<sup>27</sup> *Sw. Pub. Serv. Co.*, 152 FERC ¶ 61,126, at PP 12-13 (2015) (quoting *Entergy Servs., Inc.*, 143 FERC ¶ 61,120, at P 51 (2013)).

<sup>28</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,020, at PP 6-8 (2017).

formula rate true-up).<sup>29</sup> We dismiss DEMEC's request for refunds for alleged past over-recovery by Delmarva as beyond the scope of Delmarva's proposed revisions to the Formula Rate's reference to Form No. 1 inputs in this proceeding, which would have only prospective effect when those formulas are populated with data. In *DEP*, the Commission required DEP to refile Form 1 and make refunds in a proceeding addressing Fayetteville's Formal Challenge to DEP's 2015 annual true-up for a formula rate on file, and not in response to a filing by the utility to revise its formula rate prospectively. If DEMEC or any customer or other interested entity believes that Delmarva has been overcharging in previous Annual Updates, Delmarva's Formula Rate protocols in Attachment H-3E of the PJM Tariff specify how to raise such an issue.

30. We find that DEMEC's other objections are outside the scope of this proceeding. We also dismiss as beyond the scope of this proceeding DEMEC's arguments regarding CWIP. Though M&S reported as earmarked to construction, and other functions, is estimated in the Form No. 1, Delmarva is required to provide detailed workpapers, documentation and calculations in its annual update for the rate year necessary to support formula rate inputs, pursuant to Delmarva's Formula Rate protocols in Attachment H-3E of the PJM Tariff. This means that Delmarva will be required to provide detailed information and workpapers in future filings to show how construction-related M&S is estimated and functionalized to transmission.

31. We deny Delmarva's request for waiver of the 60-day prior notice requirement. We find that Delmarva has not shown good cause for granting waiver of the 60-day prior notice requirement to permit a March 6, 2020 effective date. Although there are circumstances in which the Commission may grant waiver of the 60-day prior notice requirement, none of these circumstances apply in the present case.<sup>30</sup> Thus, Delmarva's tariff records are accepted effective May 6, 2020.<sup>31</sup>

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<sup>29</sup> See, e.g., *Wis. Elec. Power Co.*, 167 FERC ¶ 61,163, at PP 20-22 (2019). Similarly, when Delmarva calculates its true-up of estimated 2020 charges to actual 2020 costs in May 2021, it should only use the revised formula to calculate its true-up for that portion of 2020 that the revised formula rate was in effect (i.e., May 6, 2020 through December 31, 2020).

<sup>30</sup> *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, order on reh'g, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, reh'g denied, 65 FERC ¶ 61,081(1993).

<sup>31</sup> Given that we are denying waiver of the 60-day prior notice requirement, the earliest permissible effective date is May 6, 2020, 61 days after Delmarva's filing.

The Commission orders:

Delmarva's filing is hereby accepted, effective May 6, 2020, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.