

146 FERC ¶ 61,066  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

San Diego Gas & Electric Company

Docket No. ER12-2704-000

ORDER ON ABANDONMENT COST RECOVERY AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 4, 2014)

1. On September 28, 2012, San Diego Gas & Electric Company (SDG&E) filed a request under section 205 of the Federal Power Act (FPA)<sup>1</sup> to recover, in California Independent System Operator Corporation (CAISO) rates, 100 percent of the costs incurred (approximately \$1.1 million) for a cancelled 69 kV transmission line between SDG&E's Sycamore Canyon and Miramar substations and related upgrades (Sycamore Project).<sup>2</sup> For the reasons discussed below, we deny SDG&E's request to recover 100 percent of the costs of the abandoned Sycamore Project, but will grant an equitable sharing of abandoned plant costs between ratepayers and shareholders, consistent with existing Commission policy, should these costs be found to be prudently incurred. Therefore, we set for hearing and settlement judge procedures whether the specific amount of abandonment costs SDG&E seeks to recover were prudently incurred.

**I. Background**

2. The Commission's existing abandoned plant policy was established in Opinion No. 295.<sup>3</sup> That proceeding involved New England Power Company's investment in a

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> SDG&E intends to flow-through the costs of the abandoned Sycamore Project in a future formula rate update filing.

<sup>3</sup> *New England Power Company*, Opinion No. 295, 42 FERC ¶ 61,016, *order on reh'g*, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988).

nuclear unit which was cancelled prior to completion and entry into commercial service. In Opinion No. 295, the Commission found that prudently incurred abandoned plant costs should be equitably allocated between ratepayers and shareholders, and this Opinion also specified how to determine amortization periods. Specifically, the Commission found that companies with investments in cancelled plants were entitled to recovery of 50 percent of their prudently incurred investments, and were also entitled to rate base treatment of the unamortized portion of 50 percent of such investments (i.e., a return on investment).<sup>4</sup> Additionally, Opinion No. 295 retained the prudence standard established in Opinion No. 231<sup>5</sup>, which stated that such prudently incurred costs are costs a reasonable utility management would have incurred, in good faith, and at the relevant point in time.

3. In *Public Service Company of New Mexico*,<sup>6</sup> the Commission extended its abandoned plant policy to include transmission projects, finding among other things that the policy was not limited to generation facilities only or to cancellations that were the result of economics.

## II. SDG&E Filing

4. SDG&E states that in 2002 it included the proposal to construct the Sycamore Project as an upgrade to SDG&E's low voltage transmission system to connect the Sycamore Canyon and Miramar substations via an approximately nine mile, 69 kV line in its annual Grid Assessment Study provided to CAISO.<sup>7</sup> CAISO approved the Sycamore Project on April 4, 2003, as a part of CAISO's annual California Transmission Plan.<sup>8</sup> Although the Sycamore Project was originally scheduled to be in service in 2005, according to SDG&E, the project was repeatedly delayed as a result of several factors,

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<sup>4</sup> 42 FERC at 61,081-82.

<sup>5</sup> *New England Power Co.*, Opinion No. 231, 31 FERC ¶ 61,047, at 61,084, *reh'g denied*, 32 FERC ¶ 61,112 (1985), *aff sub nom. Violet v. FERC*, 800 F.2d 280 (1<sup>st</sup> Cir. 1986).

<sup>6</sup> 75 FERC ¶ 61,266 (1996).

<sup>7</sup> Testimony of Mr. John M. Jontry, Ex. SDG-1 at 2-3. As a Participating Transmission Owner of the CAISO, SDG&E is required to provide an annual Grid Assessment Study to the CAISO that shows, among other things, the new transmission projects that SDG&E is proposing to build. *Id.*

<sup>8</sup> *Id.* at 3.

including: (1) a customer-initiated complaint proceeding;<sup>9</sup> (2) SDG&E's pursuit of other projects that would alleviate the system conditions the Sycamore Project was intended to address;<sup>10</sup> and (3) reductions in forecasted load growth.<sup>11</sup>

5. In 2006, SDG&E issued a work suspension order because of concerns regarding the viability of the Sycamore Project.<sup>12</sup> In 2007, SDG&E determined that certain components of its Sunrise Powerlink Project provided an alternative to the Sycamore Project.<sup>13</sup> According to SDG&E, it officially cancelled the Sycamore Project on June 17, 2012, when the Sunrise Powerlink Project was placed into service.<sup>14</sup>

6. SDG&E contends that its existing Transmission Owner formula rate mechanism<sup>15</sup> provides for the recovery of transmission-related cancelled project costs pursuant to Commission precedent.<sup>16</sup> SDG&E claims that recovery of 100 percent of the Sycamore Project costs is consistent with Commission precedent providing for the recovery of all prudently incurred costs in certain circumstances. While SDG&E recognizes that in Opinion No. 295 the Commission adopted a rule that provides for 50 percent recovery of prudently incurred abandonment costs, SDG&E notes that subsequently in *San Diego Gas & Elec. Co.*, 98 FERC ¶ 61,332 (2002) the Commission held that not all cancellations are within the control of utility management and that in certain cases full recovery may be appropriate.<sup>17</sup> SDG&E cites *SoCal Edison*<sup>18</sup> as an instance where the

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<sup>9</sup> *Id.* at 6. On August 10, 2004, a consumer group filed a complaint and requested a temporary restraining order to restrain SDG&E from performing any work on the Sycamore Project. The CPUC lifted the temporary restraining order on December 23, 2004. *Id.*

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

<sup>11</sup> *Id.* at 3-4.

<sup>12</sup> *Id.* at 4-5.

<sup>13</sup> *Id.* at 7-8.

<sup>14</sup> *Id.* at 8.

<sup>15</sup> The Commission approved the formula rate settlement on May 18, 2007. *See San Diego Gas & Electric Co.*, 119 FERC ¶ 61,169 (2007).

<sup>16</sup> SDG&E Transmittal Letter at 1.

<sup>17</sup> Appendix 1 at 1.

Commission applied a case-by-case approach to grant a utility's request for 100 percent recovery of abandoned plant costs.

7. SDG&E argues that the same factors that led the Commission to grant 100 percent cost recovery to SoCal Edison are present here and should lead the Commission to authorize 100 percent recovery of the Sycamore Project's abandonment costs. Specifically, SDG&E states that, in *SoCal Edison*, the Commission permitted full recovery of the abandonment costs because: (1) SoCal Edison's management did not control the decision to develop or abandon the wind generation project and SoCal Edison's shareholders did not share in the earnings associated with the new wind resources; (2) the project was prompted by a California Public Utilities Commission (CPUC) order and the CPUC had control over the ultimate design of the project; and (3) SoCal Edison was not a wind developer, did not directly benefit from these facilities, and therefore should not bear the risk of the project.<sup>19</sup>

8. According to SDG&E, the Sycamore Project qualifies for 100 percent cost recovery because the decision of its management to develop the Sycamore Project was prompted by the CAISO's and CPUC's transmission planning processes and the CPUC's exercise of its siting authority. Moreover, SDG&E contends that the circumstances giving rise to the cancellation of the Sycamore Project involved factors outside of SDG&E's control, including deferral of the in-service date to accommodate CPUC processes and the approval and in-service date of the Sunrise Powerlink Project.<sup>20</sup>

9. SDG&E contends that allowing 100 percent recovery of cancelled costs for the Sycamore Project is consistent with the a settlement pertaining to its formula rate, which precluded SDG&E from seeking transmission rate incentives during the settlement term.<sup>21</sup> According to SDG&E, it is not seeking an incentive but a case-specific application of the ratemaking principle that allows recovery for "all prudently incurred

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<sup>18</sup> *Southern California Edison Co.*, 112 FERC ¶ 61,014, at PP 58-61 (*SoCal Edison*), *reh'g denied*, 113 FERC ¶ 61,143, at PP 9-15 (2005).

<sup>19</sup> Ex. SDG-1 at 1-2.

<sup>20</sup> SDG&E Appendix 1 at 2.

<sup>21</sup> The term of the settlement was from July 1, 2007 through August 31, 2013. During that time, SDG&E was not authorized to request transmission incentives for any project going into effect during that term. *See San Diego Gas & Electric Company, Certification of Uncontested Settlement*, 119 FERC ¶ 63,005, at PP 4-6 (2007).

costs.”<sup>22</sup> SDG&E requests that the Commission apply its pre-Order No. 679<sup>23</sup> line of cases and determine that SDG&E’s recovery of 100 percent of the Sycamore Project’s abandonment costs is just and reasonable.

10. SDG&E proposes to include the costs related to the cancelled Sycamore Project in its formula rate final true-up, which will be filed in 2014.

11. SDG&E also requests that the Commission provide any waivers deemed necessary to permit the filing to become effective as filed. Finally, SDG&E requests that the Commission establish hearing and settlement procedures to permit the parties to explore a negotiated resolution of any disputed issues of fact.

### **III. Notice, Interventions, and Responsive Pleadings**

12. Notice of SDG&E’s filing was published in the Federal Register, 77 Fed. Reg. 61,403 (2012), with interventions and comments due on or before October 19, 2012.

13. Timely motions to intervene were filed by California Department of Water Resources State Water Project, and the City of Santa Clara, California and M-S-R Public Power Agency. A notice of intervention and protest was filed by the CPUC. A timely motion to intervene and protest was filed by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities). On October 23, 2012, SoCal Edison filed a motion to intervene out-of-time.

### **Protests and Comments**

14. Six Cities requests that the Commission deny SDG&E’s request to recover 100 percent of the costs associated with the Sycamore Project from transmission customers. According to Six Cities, the Commission should authorize SDG&E to recover no more than 50 percent of its cancelled Sycamore Project costs through CAISO rates.<sup>24</sup> Six Cities contends that SDG&E has presented no unique circumstances that

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<sup>22</sup> SDG&E Transmittal Letter at 2 and Appendix 1 at 3-4. SDG&E also states that it is not clear that Section 3.1 of the Formula Rate Settlement applies to the Sycamore Project since the Sycamore Project never went into service during the effective term of the settlement. SDG&E Appendix 1 at 3.

<sup>23</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76, *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062, (2007).

<sup>24</sup> Six Cities Protest at 1-2.

would warrant an exception to the 50/50 principle.<sup>25</sup> Six Cities also adds that the project for which SDG&E seeks abandoned plant cost recovery, if constructed, would have comprised part of SDG&E's low-voltage transmission system.

15. Six Cities also notes that Order No. 679 recognized abandoned plant cost recovery as one of several incentives designed to minimize defined risks for non-routine projects that are needed to increase reliability or reduce the cost of delivered power by alleviating congestion. However, according to Six Cities, SDG&E seeks 100 percent recovery of cancelled project costs based only on assertions that the expenditures were prudent and the Sycamore Project was cancelled for reasons outside of SDG&E's control. Six Cities argues that permitting 100 percent recovery in these circumstances would significantly lower the evidentiary bar.<sup>26</sup>

16. Six Cities also contends that granting SDG&E's request has the potential to undermine the Commission's authority to grant specialized ratemaking treatments where such treatments are warranted to the facts of a particular project. SDG&E distinguishes *SoCal Edison*, wherein the Commission granted SoCal Edison 100 percent recovery of abandoned plant costs after finding that the project entailed significant risk and uncertainty. In contrast, according to Six Cities, the Sycamore Project appears to be a routine upgrade to 69 kV facilities that could have been alleviated by any number of alternative projects.<sup>27</sup> Six Cities claims that granting SDG&E's request could render 100 percent recovery of abandonment costs routine, even for projects that do not present unique development risks.<sup>28</sup>

17. Finally, both Six Cities and the CPUC dispute SDG&E's assertion that seeking 100 percent recovery of its cancelled Sycamore Project costs does not conflict with the Formula Rate Settlement. Six Cities contends that the ratemaking treatment SDG&E is seeking is widely viewed as an incentive. According to Six Cities, it is inconsistent with the spirit of the Formula Rate Settlement to approve a generally recognized incentive

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<sup>25</sup> *Id.* at 5.

<sup>26</sup> *Id.* at 7.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 8.

ratemaking treatment for a routine project.<sup>29</sup> The CPUC contends that SDG&E's request is a collateral attack on the Formula Rate Settlement.<sup>30</sup>

18. The CPUC also disputes SDG&E's assertion that abandonment of the Sycamore Project was the result of delays outside of SDG&E's control. According to the CPUC, SDG&E fails to accept its own culpability for the Sycamore Project's delay. The CPUC states that the CPUC Advice Letter<sup>31</sup> approving the Sycamore Project was based on the incomplete information offered to the CPUC by SDG&E. According to the CPUC, SDG&E agreed to submit a permit to construct application. Thus, the CPUC argues that the Commission should only allow SDG&E to recover 50 percent of the abandoned plant costs because SDG&E has not demonstrated that these costs are reasonable or that the abandonment was outside of SDG&E's control.<sup>32</sup>

19. The CPUC also states that it is not clear that the abandonment costs cited by SDG&E were prudently incurred. CPUC states that it is not clear whether SDG&E, its parent company, or a third party owns the yard rented to store the steel poles. The CPUC also states that it is not clear how much money SDG&E spent preparing a Permit to Construct application and a Proponent's Environmental Assessment that SDG&E ultimately decided not to file with the CPUC. The CPUC further states that it is not clear from the table provided in Exhibit SDG-2-4 what costs make up the SDG&E "overhead" charge. The CPUC also questions whether SDG&E included a return on equity in this or any other charge it seeks to assess to ratepayers.<sup>33</sup>

20. The CPUC also states that it believes it can reach a settlement with SDG&E regarding the appropriate amount of abandonment costs that should be shared between ratepayers and SDG&E. Thus, the CPUC agrees with SDG&E that this matter should be

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<sup>29</sup> *Id.*

<sup>30</sup> CPUC Protest at 3.

<sup>31</sup> Under the CPUC's procedures, a utility can file an Advice Letter claiming that a proposed project is exempt from the requirement to obtain a permit to construct under California law. If the CPUC approves the Advice Letter, no permit to construct is necessary for the project to proceed.

<sup>32</sup> CPUC Protest at 4.

<sup>33</sup> *Id.* at 5.

set for hearing and that settlement procedures should be established to permit the parties to negotiate a resolution of any disputed issues.<sup>34</sup>

#### **IV. Discussion**

##### **Procedural Matters**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (d) (2013), the Commission will grant the late-filed motion to intervene submitted by SoCal Edison, given SoCal Edison's interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

##### **Commission Determination**

22. We deny SDG&E's request to recover 100 percent of the prudently incurred costs associated with its abandonment of the Sycamore Project. First, we note that SDG&E expressly stated that it was not seeking a transmission rate incentive. According to SDG&E, the company is requesting that we apply the Opinion No. 295 cost sharing principle, and the exceptions to that principle, to determine whether SDG&E should recover 100 percent of the Sycamore Project's abandonment costs.

23. Our policy, pursuant to Opinion No. 295, dictates that SDG&E is eligible to recover 50 percent of Sycamore Project related costs, provided those costs are found to be prudently incurred.<sup>35</sup> While the Commission has granted, on rare occasions, 100 percent recovery of abandonment costs, we made clear that such recovery would be atypical.<sup>36</sup> In the absence of unique circumstances that warrant deviation from this general principle, our standard 50/50 sharing of cancelled project costs should be applied.

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<sup>34</sup> *Id.* at 2.

<sup>35</sup> Opinion No. 295, 42 FERC ¶ 61,016 at PP 60-61 (explaining that SoCal Edison should not bear the risk of the project where: (1) it did not control the decision to develop or abandon the wind generation projects; (2) the shareholders do not share in the earnings associated with these resources; (3) the CPUC has control over the ultimate design; and (4) the generator could decide to terminate the project).

<sup>36</sup> *See, e.g., SoCal Edison*, 112 FERC ¶ 61,014 at PP 57, 60-61.

24. We find that SDG&E has failed to present any unique circumstances which would warrant our granting an exception to the Opinion No. 295 cost sharing principle. The Sycamore Project did not entail significant risk or uncertainty. In fact, the project is a routine upgrade to SDG&E's low voltage transmission system connecting two substations by way of an approximately nine mile 69 kV line. In the absence of unique risks or uncertainty, we find that a 50/50 sharing of abandonment costs appropriately balances the interests of shareholders and ratepayers.<sup>37</sup>

25. We also find that the circumstances presented here by SDG&E are distinguishable from those presented to us in *SoCal Edison*. In that proceeding the Commission allowed the recovery of 100 percent of abandonment costs because: (1) the Commission identified the potential failure of the planned wind farm project as an unusual element of risk that was beyond the company's control; and (2) the Commission noted that SoCal Edison did not directly benefit from the project since it was not a wind developer.<sup>38</sup> In contrast, the Sycamore Project was developed and proposed as a response to overloads on SDG&E's transmission system, a standard project that contains normal elements of risk and directly benefits SDG&E. SDG&E incorrectly asserts that the Sycamore Project was prompted by the CAISO and CPUC transmission planning processes and the CPUC's exercise of its siting authority. SDG&E conflates CAISO and the CPUC's actions as a part of a transmission planning process with the decision to construct the project. SDG&E, not CAISO or the CPUC, proposed the Sycamore Project in its 2002 Grid Assessment Study. CAISO and the CPUC merely acted on SDG&E's proposal.

26. Moreover, the delays experienced in the approval of the Sycamore Project are a usual part of the processes necessary to approve a contested project and do not constitute unique circumstances. The project was threatened and ultimately abandoned not because of an unusual circumstance, but because a more desirable alternative presented itself before the line could be placed into service. We note that SDG&E advocated approval of the Sunrise Powerlink Project.<sup>39</sup> As such, SDG&E cannot argue that the approval of the Sunrise Powerlink Project was a factor outside of its control. We note that, given the lack of unique risks or uncertainty of the Sycamore Project and the reasons for its cancellation, SDG&E's assertions in support of its request for 100 percent cost recovery could be made by almost any utility with regard to any cancelled transmission project.

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<sup>37</sup> We note that the problems this upgrade was originally designed to alleviate were ultimately resolved by the alternatives SDG&E identified and selected.

<sup>38</sup> *SoCal Edison*, 112 FERC ¶ 61,014 at P 61.

<sup>39</sup> See Testimony of John M. Jontry, Ex. SDG-1 at 8.

27. Consistent with Commission precedent, we will authorize SDG&E to recover 50 percent of all prudently incurred abandonment costs associated with the Sycamore Project. However, the specific amount of abandoned plant costs that SDG&E proposes to recover as prudently incurred costs raises issues of material fact that cannot be resolved based upon the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

28. Our preliminary analysis indicates that SDG&E's request to recover approximately \$1.1 million in abandonment costs associated with the Sycamore Project has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we set all issues related to the level of abandonment costs SDG&E is permitted to recover for its Sycamore Project for hearing and settlement judge procedures.

29. While we are setting this matter for trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>40</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>41</sup>

30. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to the presiding judge.

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<sup>40</sup> 18 C.F.R. § 385.603 (2013).

<sup>41</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

The Commission orders:

(A) SDG&E's request to recover 100 percent of the project abandonment costs is hereby denied, as discussed in the body of this order.

(B) SDG&E is authorized to recover 50 percent of investments in the Sycamore Project, following the evidentiary hearing and/or settlement procedures established by this order to determine whether the proposed \$1.1 million in abandonment costs were prudently incurred.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the prudence of SoCal Edison's \$1.1 million in abandonment costs. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D), (E), and (F) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in

these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.