

ISSUE DATE: August 25, 1997

DOCKET NO. P-507/D-97-403

ORDER CERTIFYING DEPRECIATION RATES AND REQUIRING A REVISED FIVE-YEAR DEPRECIATION STUDY

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
Don Storm

Chair
Commissioner
Commissioner
Commissioner

In the Matter of Callaway Telephone
Company's Request for Certification of
Depreciation Rates for 1996

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PROCEDURAL HISTORY

On June 20, 1991, the Commission issued an Order in Docket no. P-507/D-91-284 requiring Callaway Telephone Company (Callaway or the Company) to file its five-year depreciation study by April 15, 1996.

At that time, Callaway was in process of being acquired by Arvig Enterprises, Inc. Due to the time and effort involved in preparing for the acquisition, Callaway requested an extension of time to file its depreciation study.

On May 22, 1996, the Commission granted Callaway an extension of time to file its depreciation study, exercising its authority to vary time periods established by its own rules for good cause shown, pursuant to Minn. Rules, Part 7829.3100. The Commission granted Callaway until 30 days after a Commission decision on the proposed acquisition of Callaway by Arvig Enterprises, Inc. or 30 days after the companies would determine not to finalize the acquisition transaction.

On September 27, 1996, the Commission granted Arvig authority to acquire Callaway. Docket No. P-507/PA-96-638. As a result, Arvig became the holding company for Callaway. Based on the issue date of the Commission's Order approving the acquisition, Callaway's depreciation study was due on October 27, 1996.

Following the September 27, 1996 Order, the Department contacted Arvig periodically regarding Callaway's depreciation filing which was eventually filed on March 18, 1997.

On April 17, 1997, the Department filed its comments.

On May 12, 1997, Callaway filed a letter explaining the lateness of the depreciation study and requesting that the Commission take no action against Callaway relating to the timing of the filing.

The matter came before the Commission for consideration on July 1, 1997.

FINDINGS AND CONCLUSIONS

A. Depreciation Study: Proposed Depreciation Factors

In its March 18, 1997 depreciation study, Callaway proposed no changes from the Company's existing live and salvage factors. Following its analysis, the Department proposed no prior period adjustment and noted that Callaway's proposed life and salvage factors would temporarily allow a reasonable recovery of plant investment while updated values are being considered.

The Commission agrees with the Department's analysis and will authorize Callaway's proposed life and salvage factors for 1996.

B. Knowing and Intentional Violation

Callaway's delay in filing its depreciation study until March 18, 1997 represented a violation of Commission Rules, Part 7810.7700 and of the Commission's Order dated June 20, 1991 in Docket No. P-507/D-91-284 as supplemented by the Commission's June 22, 1996 letter.

In this case, the Commission finds that the action of Callaway described above represents a knowing and intentional violation of Minnesota Rules and the Commission's Order.¹ East Otter Tail, on behalf of Callaway, had indicated to Department staff that it delayed filing in part because it intended to propose some changes in the life and salvage factors. However, based on its extension request and a number of discussions with Department staff, it is clear that the Company was well aware of the filing requirement and also was aware that it had not and was not filing the required depreciation study. In short, it failed to timely file and for several months persisted in failing to file the required study and was aware of the facts necessary to make its conduct in violation of the Commission's rules and Order.

C. Referral to Attorney General for Penalties

Minn. Stat. § 237.461, subd. 2 states:

A person who knowingly and intentionally violates a provision of this chapter or rule or order of the commission adopted under this chapter shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of at least \$100 and not more than \$5,000 for each day of each violation.

The statute also notes that penalties provided for in this section may be recovered by a civil action brought by the attorney general in the name of the state. If the Commission determines that a violation was knowing and intentional, it has the discretion to refer the matter to the Attorney General for pursuit of penalties.

¹ In its most recent decisions, the Commission has explained the meaning of "knowing and intentional" by citing a 1994 Minnesota Court of Appeals case involving violations of the Minnesota Open Meeting Law, Claude v. Collins, 507 N.W. 2d 452, 457 (Minn. App. 1993), aff'd in part, 518 N.W. 2d 843 (Minn. 1994) which enunciated two requisites: 1) that the actor has a purpose to do the thing or cause the result specified and 2) that the actor has "knowledge of those facts that are necessary to make the actor's conduct criminal". Note that it was not found necessary that the actor knew that its conduct was illegal, only that it intended to do and knew that it was doing activity that was, in fact, illegal.

Although the violation was knowing and intentional, there are mitigating factors that incline the Commission to exercise its discretion under the statute and not refer the violation matter to the Attorney General for pursuit of penalties under Minn. Stat. § 237.461 and simply require that the Company file a revised five-year depreciation study by October 1, 1997.

As noted by the Department, no financial adjustment is proposed based on the violation and the Company's actions are expected to have no impact on customer rates. In addition, the Company noted several mitigating circumstances: that the due diligence process involved in the acquisition transaction required much more time than was anticipated; that because of the delay in closing, plant upgrades that were originally planned for late in 1996 under the new ownership are now scheduled for 1997; and that the Company did not anticipate depreciation rates to change for 1996.

ORDER

1. The Commission hereby authorizes Callaway's proposed life and salvage factors for 1996.
2. Callaway shall file a revised five-year depreciation study by October 1, 1997.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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