

ORIGINAL

Decision No. 76273

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SAMMY S. NAKAGAWA, an Individual, for)
 authority to transfer a certificate of)
 public convenience and necessity autho-)
 rizing him to operate as a cement car-)
 rier to VAN CLEVE CONSTRUCTION CO.,)
 INC., a California Corporation; and)
 VAN CLEVE CONSTRUCTION CO., INC., a)
 California Corporation, to lease real)
 and personal property from VAN CLEVE)
 CONSTRUCTION COMPANY, a general part-)
 nership composed of Margaret Van Cleve)
 Andresen and Louise F. Dail, partners.)

Application No. 51328
(Filed August 19, 1969)

O P I N I O N

Sammy S. Nakagawa requests authority to sell and transfer and Van Cleve Construction Co., Inc., requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a cement carrier.

The certificate was set forth in Commission Resolution No. 13821, Sub. 32, dated June 23, 1964, in Application No. 46377, File T-74,678, and authorizes the transportation of cement to and within the County of Fresno. The agreed cash consideration is \$500.

Applicant purchaser is primarily engaged in the construction and manufacture of concrete pipe. It operates five units of equipment. As of May 31, 1969, it indicated a net worth in the amount of \$68,327.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by Sammy S. Nakagawa and the issuance of a certificate in appendix form to Van Cleve Construction Co., Inc.

Van Cleve Construction Co., Inc., is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, these rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or before May 1, 1970, Sammy S. Nakagawa may sell and transfer, and Van Cleve Construction Co., Inc., may purchase and acquire, the operative rights referred to in the application.
2. Within thirty days after the consummation of the transfer herein authorized, purchaser shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.
3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. The tariff filings

A. 51328 Mjo

made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 117. Failure to comply with and observe the provisions of General Order No. 117 may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Van Cleve Construction Co., Inc., authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A, attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 5 of this order shall supersede the certificate of public convenience and necessity granted by Resolution No. 13821, Sub. 32, in Application No. 46377, File T-74,678, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. Within thirty days after the transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate herein granted. Purchaser is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and

observe the safety rules of the California Highway Patrol, and insurance requirements of the Commission's General Order No. 100-E.

8. Purchaser shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

9. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th day of OCTOBER, 1969.

William Sproul, Jr.
President

[Signature]

[Signature]

[Signature]
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Van Cleve Construction Co., Inc. by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, from any and all points of origin to all points and places within the county of Fresno subject to the following restrictions:

1. Whenever Van Cleve Construction Co., Inc., engages other carriers for the transportation of property of Margaret Van Cleve Andresen and/or Louis F. Dail or Van Cleve Construction Company, a partnership, or Van Cleve Construction Co., Inc., a corporation or customers, suppliers or subsidiaries of said individuals, partnership, companies or corporation, Van Cleve Construction Co., Inc. shall not pay such other carriers rates and charges less than the rates and charges published in Van Cleve Construction Co., Inc.'s tariffs on file with the Commission.
2. This certificate shall lapse and terminate if not exercised for a period of one year.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 76273, Application No. 51328.