

ORIGINAL

Decision No. 76734

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of HARRY MCKENZIE TRUCKING CO.,)
a corporation, to sell and transfer)
a certificate of public convenience)
and necessity authorizing the)
transportation of cement to VAN)
CLEVE CONSTRUCTION CO., INC., a)
California corporation.)

Application No. 51485
(Filed November 17, 1969;
Amended December 26, 1969)

O P I N I O N

Harry McKenzie Trucking Co. 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. 13825, dated June 23, 1964, in File No. T-50,690, and authorizes operations as a cement carrier to and within the Counties of Fresno, Kings and Tulare. It is proposed to transfer only the operating authority involving Kings and Tulare Counties. The agreed consideration is \$1,000 payable \$100 upon date of consummation of the transfer and \$100 per month until fully paid. Applicant purchaser's primary business is the construction and manufacture of concrete pipe and irrigation systems and it is also a common carrier authorized to conduct operations under a certificate of public convenience and necessity as a cement carrier from any and all points of origin to all points and places within the County of Fresno. As of September 30, 1969, purchaser indicated a net worth in the amount of \$80,769.

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By the amendment filed December 26, 1969, applicants request that the Commission authorize Harry McKenzie Trucking Co. to cancel its participation in Pacific Coast Tariff Bureau Local Freight Tariff No. 9, Cal. P.U.C. No. 30, for the Counties of Kings and Tulare and for Van Cleve Construction Co., Inc., to transfer its rates for the Counties of Kings and Tulare to participate in Western Motor Tariff Bureau, Inc., Local Freight Tariff No. 17, Cal. P.U.C. No. 21 so that all rates published for Van Cleve Construction Co., Inc., will be in one tariff, thus simplifying the rating and determination of rates by the Commission and the public.

No protests to the granting of the application as amended have been submitted to the Commission.

After consideration, the Commission finds (1) that the proposed transfer would not be adverse to the public interest, and (2) that the increases in rates and charges authorized herein are justified, that the rates and charges authorized herein are reasonable, and that the present rates and charges, insofar as they differ from those herein prescribed, are, subsequent to the completion of the transfer and the amendment or reissuance of the tariffs authorized by the order herein, unjust and unreasonable. A public hearing is not necessary. The order which follows will provide, in the event the transfer is consummated, for (1) the issuance of a

certificate in appendix form to Van Cleve Construction Co., Inc., (2) the revocation of the operating authority granted to Harry McKenzie Trucking Co. by Sub. 18 of Resolution No. 13825, dated June 23, 1964, and (3) the revocation of the operating authority granted to Van Cleve Construction Co., Inc., by Decision No. 76273, dated October 15, 1969, in Application No. 51328.

In the light of the transfer hereinafter authorized, in order to avoid confusion among the shipping public and assist the Commission in its regulatory functions, the certificate of public convenience and necessity authorizing Harry McKenzie Trucking Co. to operate as a cement carrier in Fresno County only, should be restated in appendix form.

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, such 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 July 1, 1970, Harry McKenzie Trucking Co. may sell and transfer, and Van Cleve Construction Co., Inc., may purchase and acquire, the operative rights and property 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. Seller shall amend or reissue its tariffs on file with the Commission to cancel its participation in Pacific Coast Tariff Bureau, Local Freight Tariff No. 9, Cal. P.U.C. No. 30, for the Counties of Kings and Tulare, and to name rates and rules governing its common carrier operations in the County of Fresno. Purchaser shall amend or reissue its tariffs on file with the Commission to include in its participation in Western Motor Tariff Bureau, Inc., Local Freight Tariff No. 17, Cal. P.U.C. No. 21, rates and rules governing its common carrier operations in the Counties of Kings and Tulare. The tariff filings shall be made effective not earlier than five days after the effective date of this order or 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 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. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Harry McKenzie Trucking Co., authorizing it to operate as a cement carrier as defined in Section 214.1 of the Public Utilities Code between the points particularly set forth in Appendix A, attached hereto and made a part hereof.

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 particularly set forth in Appendix B, attached hereto and made a part hereof.

6. The certificates of public convenience and necessity granted in paragraphs 4 and 5 of this order shall supersede the certificates of public convenience and necessity granted by Sub. 18 of Resolution No. 13825 and by Decision No. 76273, dated October 15, 1969 in Application No. 51328, both of which certificates are 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, applicants shall file written acceptances of the certificates 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. The certificates of public convenience and necessity granted by this order, if accepted, shall lapse and terminate if not exercised for a period of one year.

9. 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.

10. 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 Diego, California, this 3rd day of FEBRUARY, 1970.

William J. Grouse, Jr.
President

[Signature]

[Signature]

[Signature]
Commissioner

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

Harry McKenzie Trucking Co. 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 restriction:

"This certificate of public convenience and necessity 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. 76734, Application No. 51485.

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 Counties of Fresno, Kings and Tulare 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 B)

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