

ek

ORIGINAL

Decision No. 79220

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application No. 52768
(Filed July 23, 1971)

O P I N I O N

Applicant, Van Cleve Construction Co., Inc., (hereinafter called Van Cleve) is authorized to transport cement as a certificated cement carrier from any and all points of origin to all points and places within the Counties of Fresno, Kings and Tulare pursuant to Decision No. 76734, issued February 3, 1970, in Application No. 51485.

Greater Valley Transport, Inc., (hereinafter called Greater Valley) is a corporation organized under the laws of the State of California for the primary purpose of engaging in the trucking of general commodities as a radial highway common carrier. A certified copy of Greater Valley's Articles of Incorporation is attached to the application herein as Exhibit "A".

On or about July 14, 1971, Van Cleve and Greater Valley entered into an agreement attached to the application as Exhibit "B" under which Van Cleve has agreed to sell, and Greater Valley has agreed to purchase, Van Cleve's certificate of public convenience and necessity to transport cement to and within the Counties of Fresno, Kings and Tulare for a total purchase price of \$2,500 payable \$500 down and the balance of \$2,000 upon the date of consummation of the transfer should it be authorized by this Commission.

Van Cleve desires to withdraw from the for-hire trucking service as a cement carrier. If the transfer of the certificate is authorized by the Commission, the withdrawal of Van Cleve from certificated cement carrier operations will balance the entry of Greater Valley into the certificated cement carrier service in Fresno, Kings and Tulare Counties.

Greater Valley alleges that it is in a financial position to purchase Van Cleve's certificate of public convenience and necessity to operate as a cement carrier. Exhibit "D" attached to the application, which is a balance sheet of Greater Valley as of July 2, 1971, shows assets of \$26,752, liabilities of \$19,252 and capital stock in the amount of \$7,500. A list of Greater Valley's motor vehicle equipment is attached to the application as Exhibit "E". Greater Valley alleges that it is financially able to purchase additional equipment should such additional equipment be required.

Zachary F. Totten, President and Director of Greater Valley, was general manager of a general trucking business for three years. Charles E. Newman, Vice President and a Director of Greater Valley, was supervisor of Bay Area Rapid Transit for six years. Martin M. Carlson, a stockholder of Greater Valley, has been a computer-programmer for six years.

Greater Valley states that it will not handle C.O.D. shipments subject to General Order 84-Series, and that it will not use leased equipment or engage the services of subhauliers, subject to the provisions of General Order No. 102-Series.

If the transfer of the certificate is authorized, Greater Valley will transport portland or similar cement, either alone or in combination with lime or powdered limestone in bulk or in packages.

Applicants request authority for Van Cleve to sell and Greater Valley to purchase Van Cleve's certificate of public convenience and necessity described above. They further request that the order herein be made effective on the date it is issued and that tariff publication be made on five days' notice to the Commission and to the public.

After consideration, the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it should be authorized. A public hearing is not necessary. The order which follows will provide, in the event the transfer is consummated, for the revocation of the certificate presently held by Van Cleve and the issuance of a certificate in appendix form to Greater Valley.

Greater Valley 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 December 31, 1971, Van Cleve Construction Co., Inc., may sell and transfer, and Greater Valley Transport, 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. 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 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 Greater Valley Transport, 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 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 to Van Cleve Construction Co., Inc., by paragraph 5 of Decision No. 76734, issued February 3, 1970, in Application No. 51485, 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. 200-F.

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 the date hereof.

Dated at San Francisco, California, this 5th day of OCTOBER, 1971.

[Signature]
Chairman
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

jmd

Appendix A

GREATER VALLEY TRANSPORT, INC.
(a corporation)

Original Page 1

Greater Valley Transport, 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 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. 79220, Application No. 52768.