

ORIGINAL

Decision No. 88499 FEB 7 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of:)
 GARY W. SILVA CO., INC. a)
 California corporation, to sell)
 and transfer and WILLCO OF SANTA)
 MARIA, INCORPORATED, a California)
 corporation, to purchase and)
 acquire operating right as a)
 certificated cement carrier)
 authorizing service to and within)
 the counties of Los Angeles,)
 San Luis Obispo and Santa Barbara,)
 in the State of California under)
 the provisions of Section 851 of)
 the California Public Utilities)
 Code.)

Application No. 57715
 (Filed December 1, 1977)

O P I N I O N

Gary W. Silva Co., Inc., (seller) a California corporation, requests authority to sell and transfer and Willco of Santa Maria, Incorporated, (purchaser) a California corporation, seeks authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a cement carrier.

The certificate was granted by Decision 83466, dated September 17, 1974 in Application 54975 and authorizes the transportation of cement to and within all points and places in the Counties of Los Angeles, San Luis Obispo and Santa Barbara.

Purchaser presently holds a dump truck carrier permit. The corporate stockholders of purchaser and that of Coast Rock Products, Inc., are generally the same parties and, to some degree, these corporations have a common management. In addition, John Will and Steven Will who participate in the stock ownership and management of Coast Rock Products, Inc., and Willco of Santa Maria, Incorporated, also are the principals in a partnership doing business as Willco Associates, which firm does not presently hold any operating authority issued by this Commission.

Pursuant to the Purchase Agreement of November 23, 1977 between the parties, consideration for the sale and transfer of the certificate is \$4,750 payable upon the Commission's approval of the transaction. Purchaser's unaudited balance sheet of September 30, 1977 shows a net worth of \$78,016. It controls two units of highway equipment.

Seller is party to tariffs published by Western Motor Tariff Bureau, Inc., Agent, which tariffs purchaser proposes to adopt.

Applicant seller has submitted a copy of a shipping document as evidence of operations during the past year under the authority proposed to be transferred.

Applicants have requested relief from the provisions of the Commission's Rules of Practice and Procedure, which require that copies of the application be widely disseminated. A copy of the application was mailed to the California Trucking Association and notice of the filing of the application was made in the Commission's Daily Calendar of December 2, 1977. No protests to the application have been received.

The Commission finds that the deviation from its Rules of Practice and Procedure should be authorized; that the proposed transfer would not be adverse to the public interest; and concludes that the application should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Gary W. Silva Co., Inc., and the issuance of a certificate in appendix form to Willco of Santa Maria, Incorporated. The authorization granted shall not be construed as a finding of the value of the rights authorized to be transferred.

In recognition of the affiliation of the stockholders and officers of purchaser with other corporations, individuals and partnerships, an appropriate "alter ego" restriction will be included in the certificate to be transferred.

Purchaser is 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, 1978, Gary W. Silva Co., Inc., a California corporation, may sell and transfer the operative rights referred to in the application to Willco of Santa Maria, Incorporated, a California corporation.
2. Within thirty days after the transfer, purchaser shall file with the Commission a written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the 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 transfer. The tariff filings shall comply with the Commission's General Order 117-Series. Failure to comply with the provisions of General Order 117-Series may result in cancellation of the operating authority granted by this decision.
4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Willco of Santa Maria, Incorporated, a California corporation, authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between the points set forth in Appendix A of this decision.

5. The certificate of public convenience and necessity granted to the seller by Decision 83466 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

7. 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 April 30 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.

8. Purchaser shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If it elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

9. Applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

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

Dated at San Francisco, California, this 2th day of FEBRUARY, 1978.

Robert Batimovich
President
William Synovae Jr
Vernon L. Stenger
Charles C. Gault
Clare T. Deloria
Commissioners

Willco of Santa Maria, Incorporated, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations 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 Los Angeles, San Luis Obispo and Santa Barbara, subject to the following restrictions:

RESTRICTION:

1. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.
2. Whenever Willco of Santa Maria, Incorporated, engages other carriers for the transportation of property of Willco of Santa Maria, Incorporated, a corporation, or Coast Rock Products, Inc., a corporation, or John Will or Steven Will, individuals and copartners, or customers, suppliers or affiliates of said corporations, individuals or copartnership, Willco of Santa Maria, Incorporated, shall not pay such other carriers rates and charges less than the rates and charges published in the tariffs of Willco of Santa Maria, Incorporated, on file with the Commission.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 88499, Application 57715.