

**ORIGINAL**

Decision No. \_\_\_\_\_

**60456**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 FORTIER TRANSPORTATION COMPANY, a  
 corporation, for a certificate of  
 public convenience and necessity to  
 extend highway common carrier service.

Application No. 41201

Bertram S. Silver and Berol & Silver, by Bruce R. Geernacrt,  
 for applicant.

Matthew H. Witteman and R. W. Walker, Henry M. Moffatt and  
Kenneth D. Thompson, for The Atchison, Topeka and Santa  
 Fe Railway Co., Santa Fe Transportation Co. and Railway  
 Express Agency; Robert C. Ellis, for California Motor  
 Transport Co., Ltd. and California Motor Express Ltd.;  
Ray L. Harris, for Delta Lines; F. S. Kohles, for Valley  
 Express Co. and Valley Motor Lines, Inc.; Robert C. Ellis,  
 for Circle Freight Lines and Stockton Motor Express;  
Marion L. Frost, Jr., for Oregon-Nevada-California Fast  
 Freight, Inc., Southern California Freight Lines and  
 Southern California Freight Forwarders, protestants.

O P I N I O N

Fortier Transportation Company is a highway common carrier  
 operating under certificates of public convenience and necessity  
 issued by this Commission. Fortier seeks, by this application,  
 additional highway common carrier operating rights.

A duly noticed public hearing was held in this matter before  
 Examiner Donald B. Jarvis at San Francisco on October 14 and 15 and  
 November 20, 1959; at Los Angeles on October 28, 29, 30, 1959; at  
 Fresno on November 5, 1959 and at Sacramento on November 18, 19,  
 1959. The matter has been submitted and is now ready for decision.

Fortier's operating rights consist of rights initially  
 granted to Fortier and rights acquired by purchases, with the appro-  
 val of this Commission, of Zimmerman Transportation Company, Inc.,  
 and Sacramento Freight Lines, Inc. The conglomerate rights are

extensive and may be generally summarized by stating that Fortier is authorized to transport general commodities, with varying limited exceptions, between: the San Francisco Territory and the Los Angeles Territory; the San Francisco Territory and all points and places on U.S. Highways 101 and 101 By-Pass to and including Gilroy; all points and places in the Los Angeles Territory; San Francisco and San Diego; the Los Angeles Territory and San Diego; the Los Angeles Territory and Oxnard, Santa Barbara, Ventura, Point Mugu and Port Mueneme; all points on U.S. Highway 99 between Sacramento and Los Angeles; Sacramento and various specified points to the north and east thereof; the Los Angeles Territory and Redding; enumerated military installations; and various points on State Highways 33 and 152. There are restrictions contained in some of the enumerated operating rights which restrict Fortier from rendering local service in certain areas and from establishing through routes and joint rates, charges and classifications between certain separate operating authorities. Fortier has the authority to transport, with certain restrictions, fresh fruit and vegetables, petroleum products in bulk, canned goods and explosives, between enumerated points. Fortier also holds a certificate of public convenience and necessity issued by this Commission authorizing it to operate as a petroleum irregular route carrier.

By this application, Fortier seeks: (1) authority to transport general commodities between all points it is presently authorized to serve and to establish through routes and joint rates, charges and classifications between all of these points, and (2) additional territorial operating rights.

Fortier has approximately 675 pieces of operating equipment. It has terminals in Los Angeles (2), Bakersfield, Fresno, Stockton,

Sacramento, Quincy, Oakland and San Francisco. Fortier has about 506 employees. It had an operating ratio of 96.44 percent during 1958 and 99.13 percent during 1959. It had a total unappropriated surplus of \$440,152 on August 31, 1959.

The Commission finds that Fortier has the ability, including financial ability, to conduct the operations for which authority is herein sought.

Fortier contends that removal of the restrictions in its present certificates which prohibit establishing through routes and joint rates, charges and classifications among all points it is authorized to serve would enable it to render a more efficient and expeditious transportation service which would benefit the shipping public and that public convenience and necessity require removing the restrictions and granting the additional territorial operating rights.

Numerous members of the shipping public testified on behalf of Fortier. Some witnesses testified that they were dissatisfied with the service rendered by existing highway common carriers between various points involved in this application. Several witnesses testified that the shipping needs of their companies on many occasions require the use of specific types of carrier equipment; that Fortier has always furnished the requested type of equipment; that they have, on many occasions, experienced difficulty in obtaining proper equipment from other carriers for shipments between points for which Fortier herein seeks authority to serve; and that if the requested authority were granted it would benefit their companies because they could use Fortier to these points and be assured of always getting proper equipment.

The office manager of the Puritan Preserve Company of San Francisco and the owner of the Southwestern Rubber Company of Los Angeles testified that their firms had no dock space; that it was necessary to ship and receive freight from the sidewalk adjoining their premises; that the use of many carriers caused traffic congestion as well as inconvenience to their companies; that they were presently using Fortier for some of their transportation needs; and that if Fortier were granted the authority herein sought they could reduce the number of carriers they are presently using and help ameliorate their transportation problems.

Six witnesses, representing companies located throughout Fortier's operating area, testified that their companies had limited dock space; that they preferred to limit the number of carriers with whom they dealt; that they were presently using Fortier and it was rendering good service; and that if the application were granted it would be of benefit to their companies because they would use Fortier in a greater territorial area and thereby reduce the number of carriers calling upon them.

Some witnesses testified that there was no direct one-carrier service between certain points here involved, thereby adding additional time in transit because of the requisite interline between carriers, and that if the application were granted Fortier would be able to give them quicker one-carrier service between these points.

Each of the following protestants introduced evidence in its behalf during the proceeding: Santa Fe Transportation Co.; California Motor Transport Co., Ltd.; California Motor Express, Ltd.; Delta Lines; Valley Express Co.; Valley Motor Lines, Inc.; Circle Freight Lines and Stockton Motor Express. In general, this evidence consisted of showings of the equipment, personnel, and terminal

facilities as well as the operating authorities of the named protestants. Each of said protestants holds a certificate of public convenience and necessity to operate as a highway common carrier for the transportation of general commodities, with limited exceptions, between various points involved in this application. The witnesses who appeared in behalf of said protestants testified that the granting of the authority herein sought, insofar as it pertained to an area in which their company served, would dilute the business of said protestants thereby injuring them.

As indicated, Fortier's operating rights are extensive. The requests for removal of restrictions and additional territorial operating area encompass numerous points from San Diego to Redding. The evidence heretofore cited indicates that there is a public need for the granting of additional operating rights to Fortier. However, the record does not establish that this need exists with respect to every point for which authority to serve is requested.

The Commission finds that public convenience and necessity require the granting of the application to the extent hereinafter set forth.

In order to avoid confusion among the shipping public and to assist the Commission in its regulatory functions, the additional operating authority herein granted and Fortier's existing certificates of public convenience and necessity will be consolidated.

Applicant 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 over a particular route. 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

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby granted to Fortier Transportation Company, a corporation, authorizing it to serve as a petroleum irregular route carrier as defined by Section 214 of the Public Utilities Code for the transportation of petroleum and petroleum products in tank trucks and tank trailers between all points and places in the State of California.
2. A certificate of public convenience and necessity is hereby granted to Fortier Transportation Company, a corporation, authorizing the transportation of property as a highway common carrier as defined by Section 213 of the Public Utilities Code between the points and over the routes as set forth in Appendices A, B, and C attached hereto and made a part hereof.
3. In providing service pursuant to the certificates herein granted, applicant shall comply with and observe the following service regulations:
  - (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificates herein granted. By accepting the certificates of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99

and insurance requirements of the Commission's General Order No. 100-A. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Orders Nos. 99 and 100-A, may result in a cancellation of the operating authority granted by this decision.

- (b) Within sixty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, applicant shall establish the services herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

4. The certificates of public convenience and necessity granted in paragraphs 1 and 2 of this order are in lieu of and supersede all existing operating rights heretofore granted to and acquired by Fortier Transportation Company, a corporation, which operating authorities are hereby canceled and revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 3(b) hereof.

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

Dated at San Francisco, California, this 28th day of July, 1960.

President  
Commissioners

Everett C. McKeage  
Commissioner S. Theodore H. Jenner being  
necessarily absent, did not participate  
in the disposition of this proceeding.

Appendix A                      FORTIER TRANSPORTATION COMPANY      Original Page 1  
(a corporation)

I. Fortier Transportation Company, a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between any and all points and places in the area described in subparagraph (A), on or within ten miles of the routes described in subparagraph (B), the points described in subparagraph (C), and between points and places in the San Francisco Territory as described in Appendix B attached hereto, on the one hand, and all points and places described in subparagraphs (A), (B) and (C) hereinafter set forth, on the other hand:

- (A) Between all points and places within the area described as follows:

Beginning at the intersection of Sunset Boulevard and U.S. Highway No. 101, Alternate; thence northeasterly on Sunset Boulevard to State Highway No. 7; northerly along State Highway No. 7 to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U.S. Highway No. 99; northwesterly along U.S. Highway No. 99 to and including the City of Redlands; westerly along U.S. Highway No. 99 to U.S. Highway No. 395; southerly along U.S. Highway No. 395 to State Highway No. 18 to U.S. Highway No. 91; westerly along U.S. Highway No. 91

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to State Highway No. 55; southerly on State Highway No. 55 to the Pacific Ocean; westerly and northerly along the shore line of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and U.S. Highway No. 101, Alternate; thence northerly along an imaginary line to point of beginning.

(B) Between all points on or within 10 miles of the following routes:

1. U.S. Highways Nos. 101, 101 By-Pass and 101 Alternate between San Francisco and San Diego.
2. U.S. Highways Nos. 99, 99E and 99W between Los Angeles and Redding.
3. U.S. Highway No. 40 between San Francisco and Auburn.
4. U.S. Highway No. 50 between Sacramento and Placerville.
5. State Highway No. 152 between Gilroy and Califa.
6. U.S. Highway No. 50, State Highway No. 17 and State Highway No. 120 between San Francisco and Manteca.
7. State Highway No. 33 between Tracy and Maricopa.
8. State Highway No. 166 between the intersection of said State highway and U.S. Highway No. 99 and Maricopa.
9. U.S. Highway No. 40, Alternate between Davis and Portola.
10. State Highway No. 89 at the point of intersection with U.S. Highway No. 40 Alternate and Greenville and unnumbered highways diverging from State Highway No. 89 at Greenville and at or near Crescent Mills to Taylorsville, this being in the

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## Appendix A

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nature of a loop operation; returning over the same routes in the reverse direction.

11. Portola and Hurlong via U.S. Highways 40 Alternate and 395; thence via unnumbered State or County road to Hurlong.
12. State Highway No. 32 between Orland and Chico.
13. Unnumbered County road between Willows and Glenn.
14. Unnumbered County roads between Hamilton City and Colusa.
15. Unnumbered County road between Codora and the point of intersection of said road with U.S. Highway No. 99E.
16. State Highway No. 20 between Williams and Marysville.
17. State Highway No. 16 between Woodland and Sacramento.
18. State Highway No. 4 between the point of intersection with said State highway with U.S. Highway No. 40 and the point of intersection of said State highway with U.S. Highway No. 99 near Stockton.
19. State Highway No. 12 between the point of intersection with said State highway with U.S. Highway No. 40 and the point of intersection of said State highway with U.S. Highway No. 99 near Lodi.
20. State Highway No. 24 between Sacramento and the point of intersection with said State highway with State Highway No. 4 near Antioch.
21. State Highway No. 132 between Modesto and Vernalis.
22. State Highway No. 140 between Merced and Gustine.

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23. Unnumbered County roads and State highways between Fresno and Famoso, via Sanger, Reedley, Dinuba, Orosi, Visalia, Exeter, Lindsay, Porterville and Famoso.
  24. Unnumbered County roads and State highways between Tipton and Fresno, via Corcoran, Hanford, Lemoore, Riverdale and Fresno.
  25. State Highway No. 180 between Mendota and Fresno.
  26. State Highway No. 198 between Coalinga and the point of intersection of said State highway with U.S. Highway No. 99.
  27. U.S. Highway No. 466 between Famoso and the point of intersection of said U.S. highway with State Highway No. 33.
  28. State Highway 178 between McKittrick and Bakersfield.
  29. U.S. Highway No. 399 between Taft and Greenfield.
- (C) Between the following points and places and between any of said points and places and the points and places described in all the preceding subparagraphs:

Alameda Naval Air Station  
Benicia Arsenal  
Camp Beale  
Camp Cook  
Camp Irwin  
Camp McQuaid  
Camp Pendleton  
Camp Roberts  
Camp San Luis Obispo  
Castle Air Force Base  
Shelly Air Force Base  
Edwards Air Force Base  
Fort Ord  
Naval Test Station - El Centro  
Hamilton Air Force Base  
Naval Installation at Long Beach, San Pedro  
and Wilmington

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March Air Force Base  
Mare Island  
Mather Air Force Base  
McClellan Air Force Base  
Marine Corps Base and Naval Installation - San Diego  
Naval Supply Annex - Stockton  
Naval Supply Depot - Oakland  
Norton Air Force Base  
Lemoore Naval Station  
Oakland Army Base  
Parks Air Force Base  
Port Chicago Naval Ammunition Dump  
Presidio - San Francisco  
Sacramento Signal Depot  
Sharp General Depot - Lathrop  
Sharp General Depot Annex - Lyoth  
Sierra Ordnance Depot  
Camp Stoneman  
Travis Air Force Base  
U.S. Marine Transit and Storage Depot near Barstow  
George Air Force Base  
Naval Test Station - Inyokern  
Air Force Station at Oxnard and Santa Rosa  
Cheli Air Force Base  
Naval Supply Depot - National City  
Mira Loma Quartermaster Department  
Point Mugu  
Port Hueneme

- (D) Through routes and rates may be established between any and all points specified in paragraph I, subparagraphs (A), (B) 1 through 29, and (C), and between any of those points, on the one hand, and San Francisco Territory as described in Appendix B, on the other hand.

Unless otherwise authorized in subparagraphs (B) and (C) above, applicant does not have the authority to render local service between points and places within said San Francisco Territory.

- (E) Applicant shall not transport any shipments of:

Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A.

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II. Fortier Transportation Company, a corporation, is authorized to transport fresh fruits or vegetables (not cold pack nor frozen) including mushrooms, and canned goods as described in Item No. 610-0 to Minimum Rate Tariff No. 2, between all points and places described in paragraph I hereof, on the one hand, and all points and places on and along the following routes, on the other hand:

- (1) State Highway No. 71 between Elsinore and Corona and within 25 miles of either side of said highway.
- (2) State Highway No. 150 between Carpinteria and Santa Paula and State Highway No. 126 between Santa Paula and Castaic Junction, and within 10 miles of either side of said highways.
- (3) U.S. Highway No. 40 between Auburn and Colfax.
- (4) Unnumbered County road between Davis and Winters.

The authority granted in this paragraph is subject to the following restrictions:

- (a) The transportation of fresh fruits and vegetables originating or destined off the highways traversed and outside of incorporated communities shall be limited to shipments of not less than 10,000 pounds, or to shipments which shall carry a charge no lower than that applicable to shipments of not less than 10,000 pounds.
- (b) No shipment of fresh fruits or vegetables shall be transported which has both origin and destination along the routes or within the territory described in subparagraphs (1) and (2) hereof.

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III. The authorities contained in paragraphs I and II hereof do not apply:

(A) On fresh or green fruits, fresh or green vegetables or mushrooms when the point of destination of the shipment is a cannery, accumulation station, cold storage plant, pre-cooling plant, or winery, or

(B) On fresh or green fruits, fresh or green vegetables or mushrooms when transported from the field or point of growth to a packing plant or a packing shed.

Exception: Except for the transportation of citrus fruits in field boxes or in bulk, or avocados, the provisions of paragraph (B) will not apply when the distance between point of origin and point of destination exceeds 50 constructive miles, or

(C) On sugar beets when the point of destination of the shipment is a sugar beet factory or a railroad loading dump.

IV. Fortier Transportation Company, a corporation, may use any appropriate route, for operating convenience only, in rendering service between any of the points it is herein authorized to serve.

End of Appendix A

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APPENDIX 3 TO DECISION NO. 60456

SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U. S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simia to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U. S. Highway 101; northwesterly along U. S. Highway 101 to Tully Road; north-easterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway 40 (San Pablo Avenue); northerly along U. S. Highway 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

Fortier Transportation Company, a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport petroleum products in bulk, except liquid asphalts and hot road oils and any other petroleum products requiring insulated tanks, between any and all points and places on or within 50 miles of the following:

1. U.S. Highways Nos. 101 and 101 By-Pass between Oregon-California State Line and California-Mexico Line.
2. U.S. Highways Nos. 99, 99E and 99W between Oregon-California State Line and the Mexican border.
3. U.S. Highway No. 299 between Redding and Alturas.
4. U.S. Highway No. 395 between the Oregon-California State Line and the California-Nevada State Line, via Alturas and Johnstonville.
5. State Highway No. 36 between Junction U.S. Highway No. 99E near Red Bluff and Junction U.S. Highway No. 395 at Johnstonville.
6. State Highway No. 20 between Marysville and Junction U.S. Highway No. 40.
7. U.S. Highway No. 40 between San Francisco and California-Nevada State Line.
8. U.S. Highway No. 50 between Sacramento and California-Nevada State Line.
9. U.S. Highway No. 395 between California-Nevada State Line at Topaz Lake and Junction U.S. Highway No. 66.
10. U.S. Highway No. 66 between Los Angeles and Needles.
11. U.S. Highway No. 60 between Los Angeles and California-Arizona State Line.
12. U.S. Highways Nos. 91 and 466 between Barstow and Nevada-California State Line.

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Appendix C

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13. State Highway No. 127 between Baker and Nevada-California State Line.
14. U.S. Highway No. 80 between San Diego and the California-Arizona border.

Applicant may use any appropriate route, for operating convenience only, in rendering service between any of the points it is herein authorized to serve.

Through routes and rates may be established between any and all points specified in subparagraphs 1 through 14 above.

End of Appendix C

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