

**ORIGINAL**Decision No. 60728

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of A. S. FITZ-GERALD,  
an individual, doing business as  
FITZ-GERALD BROS., to extend high-  
way common carrier operations.

Application No. 40379

Gordon, Knapp, Gill and Hibbert, by Warren H. Grossman, and Wyman C. Knapp, for applicant.  
Glanz & Russell, by Arthur H. Glanz and Theodore W. Russell, for California Motor Transport, California Motor Express, Smith Transportation Company, Southern California Freight Lines, Southern California Freight Forwarders, Constructors Transport Company, Merrifield Trucking Company, and Griley Security Freight Lines, protestants;  
Henry J. Bischoff, for Oxnard Trucking Service and Marine Transport Company, protestants.  
Charles P. Barrett of the Commission's staff.

O P I N I O N

Applicant now holds a certificate of public convenience and necessity authorizing him to transport as a highway common carrier: (1) limited commodities, between the Los Angeles Drayage Area, on the one hand, and Santa Maria and Betteravia, on the other hand, (2) fruits and vegetables, between Santa Maria, on the one hand, and the Los Angeles Drayage Area, on the other hand, and (3) sugar, between Betteravia, on the one hand, and San Jose and the Los Angeles Drayage Area, on the other hand (Decision No. 53640).

By this application, as amended, authority is sought to transport general commodities between the "Los Angeles Metropolitan Area", as described in the application, on the one hand, and Port

Hueneme, Oxnard and Ventura, serving points intermediate of Oxnard and Ventura, on the other hand.

Public hearings were held at Los Angeles on May 19 and July 30, 1959, and at Oxnard on May 21, 1959, before Examiner Mark V. Chiesa and at Los Angeles on July 7, 1960, before Examiner Wilson E. Cline. Evidence having been adduced and the matter having been submitted, the Commission finds and concludes as follows:

That applicant is an experienced highway common carrier having, in addition to the certificate of public convenience and necessity hereinabove mentioned, permits which authorize him to operate as a radial highway common carrier, highway contract carrier and city carrier; that his principal places of business are in Los Angeles and Santa Maria; that he employs 40 persons; that he owns and operates approximately 103 pieces of equipment; that as of March 31, 1958, applicant's financial condition consisted of assets, \$162,864.04, liabilities, \$151,160.29, or a net worth of \$11,703.75; that net operating profit for the first three months of 1959 was \$3,654.92; that terminals are maintained in Los Angeles, Santa Maria and Oxnard; that applicant also operates under authority of the Interstate Commerce Commission; and that the transportation service proposed is a daily (except Sunday) over-night service with following-morning delivery.

Applicant called seventeen shipper witnesses who testified in support of the application. Said witnesses testified that they are now using applicant's highway common or permitted service to some extent, and that they need and would use the proposed service. A majority of them testified that they did not know how many highway common carriers are now authorized to serve between the proposed points and places, and some testified that they have used or are

using other carriers only to a limited extent. Some dissatisfaction with present carriers was indicated by several witnesses, while others stated they had no complaint about the services rendered by other carriers.

Operating personnel representing eight protesting highway common carriers authorized to render a transportation service between Los Angeles and the Oxnard-Ventura points, such as herein proposed, testified to the effect that their respective companies are now serving, and stand ready, able and willing to serve, the public on an over-night basis and that their facilities are more than adequate to take care of additional business.

Applicant is now restricted as to the commodities which he may transport as a certificated highway common carrier and is also restricted as to the points and places he may serve, none of which are located in Ventura County. In view of the testimony of the shipper witnesses, the granting of authority for the transportation of general commodities, as herein proposed, appears to be justified. We find that a sufficient portion of the public would be inconvenienced by, and is in need of, the proposed service and that the public convenience and necessity require that the application be granted. Applicant's present operating rights will be restated by issuing an in lieu certificate in the place of the present authority contained in Decision No. 53640.

A. S. Fitz-Gerald 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 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.

A petition to set aside submission and reopen this proceeding was filed on April 20, 1960 by George C. Smith, Jr., doing business as Smith Transportation Company. Applicant filed an answer to such petition the following day. The alleged purpose of the petition was to permit introduction of evidence in this record of the action taken by the Commission in Case No. 6196 and what applicant herein did to comply with Decision No. 59788 issued in said case. On May 17, 1960, the Commission issued its order setting aside submission and reopening this proceeding for further hearing.

At the further hearing the record in Case No. 6477 was incorporated by reference. The Commission takes official notice of the findings and conclusions and of the order discontinuing the investigation set forth in the decision in said Case No. 6477 which is being issued concurrently with the issuance of this decision.

Since the decisions in Case No. 6477 and in this proceeding are being issued concurrently it is unnecessary to rule on the motion of protestant Smith Transportation Company that the decision in this matter be held in abeyance until the decision in said Case No. 6477 is issued.

O R D E R

Public hearings having been held, the Commission being fully advised in the premises and having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to A. S. Fitz-Gerald, doing business as Fitz-Gerald Bros., authorizing him to operate as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of property between the points as more particularly set forth in Appendices A, B, and C attached hereto and made a part hereof.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

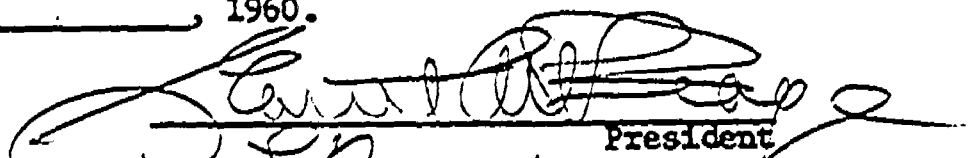
- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that he will be required, among other things, to file annual reports of his 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 service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

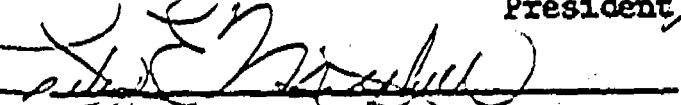
(3) That all other highway common carrier operative rights heretofore granted to applicant by Decision No. 53640, in Application No. 36432 are cancelled simultaneously with the effective


date of tariff filings required by and pursuant to the provisions of paragraph 2(b) hereof.

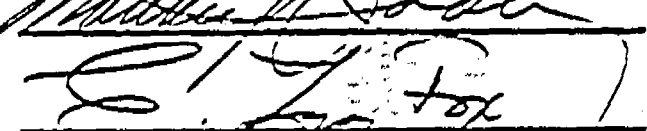
The effective date of this order shall be twenty days after the date hereof.

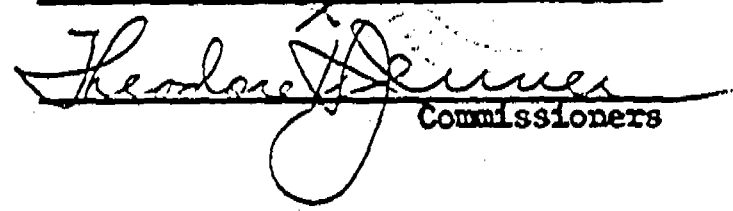
Dated at San Francisco, California, this 20th day of September, 1960.

  
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President

  
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Commissioner

  
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Commissioner

  
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Commissioner

  
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Commissioners

A. S. Fitz-Gerald, an individual, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport the following commodities:

1. AGRICULTURAL IMPLEMENTS, OTHER THAN HAND, as listed under that heading in Items Nos. 595 through 980 of Western Classification No. 75, Cal. P.U.C. No. 8, George H. Dumas, Agent, on the issue date thereof and Supplements Nos. 41, 46, 48 and 50 thereto.

ALUMINUM, as listed under that heading in Items Nos. 1535 through 1790 of Western Classification No. 75, Cal. P.U.C. No. 8, George H. Dumas, Agent, on the issue date thereof and Supplements Nos. 41, 46, 48 and 50 thereto.

AUTOMOBILE PARTS OR ACCESSORIES, as listed under that heading in Items Nos. 2805 through 3505 of Western Classification No. 75, Cal. P.U.C. No. 8, George H. Dumas, Agent, on the issue date thereof and Supplements Nos. 41, 46, 48 and 50 thereto.

FEED, ANIMAL OR POULTRY, as listed under that heading in Items Nos. 17065 through 17385 of Western Classification Nos. 75, Cal. P.U.C. No. 8, George H. Dumas, Agent, on the issue date thereof and Supplements Nos. 41, 46, 48 and 50 thereto.

FURNITURE, as listed under that heading in Items Nos. 19510 through 20494 of Western Classification No. 75, Cal. P.U.C. No. 8, George H. Dumas, Agent, on the issue date thereof and Supplements Nos. 41, 46, 48 and 50 thereto.

GROCERIES AND GROCERS' SUPPLIES, as listed under that heading in Item No. 360 of Fifth Revised Page 38 of Minimum Rate Tariff No. 2.

Issued by California Public Utilities Commission.

Decision No. 60778 Application No. 40379.

HARDWARE, as listed under that heading in Items Nos. 22455 through 23600 of Western Classification No. 75, Cal. P.U.C. No. 8, George H. Dumas, Agent, on the issue date thereof and Supplements Nos. 41, 45, 48 and 50 thereto.

PAPER, as listed under that heading in Items Nos. 35440 through 35771 of Western Classification No. 75, Cal. P.U.C. No. 8, George H. Dumas, Agent, on the issue date thereof and Supplements Nos. 41, 46, 48 and 50 thereto.

PAPER ARTICLES, as listed under that heading in Items Nos. 35785 through 36307 of Western Classification No. 75, Cal. P.U.C. No. 8, George H. Dumas, Agent, on the issue date thereof and Supplements Nos. 41, 46, 48 and 50 thereto.

PETROLEUM OR PETROLEUM PRODUCTS, IN PACKAGES, INCLUDING COMPOUNDED OILS OR GREASES HAVING A PETROLEUM BASE, as listed under that heading in Items Nos. 36390 through 36465 of Western Classification No. 75, Cal. P.U.C. No. 8, George H. Dumas, Agent, on the issue date thereof and Supplements Nos. 46 and 50 thereto.

SEEDS, as listed under that heading in Items Nos. 39865 through 40150 of Western Classification No. 75, Cal. P.U.C. No. 8, George H. Dumas, Agent, on the issue date thereof and Supplement No. 48 thereto.

MISCELLANEOUS COMMODITIES, VIZ.:

Advertising displays  
Advertising display equipment  
Barrels, empty  
Batteries, electric, dry cell or storage  
Cartons, fibreboard  
Cement  
Coke  
Doors, wooden  
Earth (soil)  
Fibreboard  
Filters

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Gypsum  
Lamps, electric  
Lime  
Lumber  
Manure, animal  
Notions  
Oil, linseed  
Paint  
Pallets  
Paste, adhesive  
Plant supports  
Sodium phosphate  
Stakes, iron, steel or wooden  
Structural iron or steel  
Tires, pneumatic  
Tubes, tire  
Trailers  
Twine  
Wheels  
Windows,

Between Los Angeles Drayage Area as defined in Appendix B, on the one hand, and Santa Maria and Betteravia, on the other hand.

2. Fruit, fresh or green (not cold pack or frozen),  
Vegetables, fresh or green (not cold pack or frozen),  
including mushrooms, fresh,

Between Santa Maria, on the one hand, and Los Angeles Drayage Area, as defined in Appendix B and Long Beach, on the other hand.

3. Sugar,

Between Betteravia, on the one hand, and Los Angeles Drayage Area as defined in Appendix B and San Jose, on the other hand.

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## 4. General Commodities,

Between the Los Angeles Territory, as defined in Appendix C, on the one hand, and Port Hueneme, Oxnard and Ventura, including points intermediate between Oxnard and Ventura, on U.S. Highway No. 101, on the other hand.

Applicant shall not transport any shipments of:

- (a) 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.
- (b) Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
- (c) Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers stags or swine.
- (d) Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
- (e) Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles, other than sugar.
- (f) Commodities when transported in bulk in dump trucks or in hopper-type trucks.
- (g) Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

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- (h) Commodities which by reason of their size, bulk or weight require special equipment.
- (i) Articles of extraordinary value as set forth in Rule 3 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.
- (j) Logs.

5. The authority herein granted in paragraphs 1, 2, 3 and 4 of of this appendix does not include the right to render service to, from or between intermediate points except points intermediate between Oxnard and Ventura, as set forth in paragraph 4 hereof.

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APPENDIX B TO DECISION NO. 50773

LOS ANGELES DRAYAGE AREA includes the area embraced by the following boundary:

Beginning at the intersection of 88th Street and Vermont Avenue; southerly along Vermont Avenue to 120th Street; easterly along 120th Street and its prolongation to Alameda Street; northerly along Alameda Street to Century Boulevard; easterly along Century Boulevard to Santa Fe Avenue; northerly along Santa Fe Avenue to Tweedy Boulevard; easterly along Tweedy Boulevard to Stanford Avenue; northerly along Stanford Avenue to Southern Avenue; easterly along Southern Avenue to Atlantic Avenue; southerly along Atlantic Avenue to Southern Avenue; easterly along Southern Avenue to the west bank of the Los Angeles River; northerly along the west bank of the Los Angeles River to Gage Avenue; easterly along Gage Avenue to Garfield Avenue; northeasterly along Garfield Avenue to Anaheim Telegraph Road; southeasterly along Anaheim Telegraph Road to Church Street; northeasterly along Church Street and its prolongation across the Atchison, Topeka and Santa Fe right of way to Vail Avenue; northeasterly along Vail Avenue to Ferguson Drive; westerly along Ferguson Drive to Gerhart Street; northerly along Gerhart Street to Hubbard Avenue; westerly along Hubbard Avenue and its prolongation to Eastern Avenue; southerly along Eastern Avenue to Whittier Boulevard; westerly along Whittier Boulevard to Downey Road; northerly along Downey Road to Hubbard Avenue; westerly along Hubbard Avenue to Indiana Street; northerly along Indiana Street and its prolongation to City Terrace Drive; northerly along City Terrace Drive to Ramona Boulevard; northeasterly along Ramona Boulevard to Eastern Avenue; northerly along Eastern Avenue and Marianna Avenue to the boundary line of the City of Los Angeles; easterly, northerly and westerly along the boundary of the City of Los Angeles to the boundary of Forest Lawn Memorial Park; southwestly and northwestly along the boundary of Forest Lawn Memorial Park to Rosslyn Street; southwestly along Rosslyn Street to San Fernando Road; southeasterly along San Fernando Road to Tyburn Street; southwestly along Tyburn Street to its intersection with the boundary of the City of Los Angeles; northwestly and westerly along the boundary of the City of Los Angeles to Barham Boulevard; southerly along Barham Boulevard to Cahuenga Boulevard; southeasterly along Cahuenga Boulevard to Mulholland Highway; westerly along Mulholland Highway to Coldwater Canyon Road; southerly along Coldwater Canyon Road to the boundary of the City of Beverly Hills; southeasterly along the boundary of the City of Beverly Hills to the intersection of La Cienega Boulevard and Olympic Boulevard; easterly along Olympic Boulevard to Victoria Avenue; southerly along Victoria Avenue to Exposition Boulevard; easterly along Exposition Boulevard to Crenshaw Boulevard; southerly along Crenshaw Boulevard to Stocker Street; westerly along Stocker Street to Victoria Avenue; southerly along Victoria Avenue to Slauson Avenue; westerly along Slauson Avenue to Brynhurst Avenue; southerly along Brynhurst Avenue to 59th Street; easterly along 59th Street to Van Ness Avenue; southerly along Van Ness Avenue to 74th Street; easterly along 74th Street to Normandie Avenue; southerly along Normandie Avenue to 88th Street; easterly along 88th Street to the point of beginning.

LOS ANGELES TERRITORY includes that area embraced by the following boundary: 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 State Highway No. 118; northeasterly along State Highway No. 118 through and including the City of San Fernando; continuing northeasterly and southeasterly along State Highway No. 118 to and including the City of Pasadena; easterly along Foothill Boulevard from the intersection of Foothill Boulevard and Michillinda Avenue to Valencia Way; northerly on Valencia Way to Hillcrest Boulevard; easterly and northeasterly along Hillcrest Boulevard to Grand Avenue; easterly and southerly along Grand Avenue to Greystone Avenue; easterly on Greystone Avenue to Oak Park Lane; easterly on Oak Park Lane and the prolongation thereof to the west side of the Sawpit Wash; southerly along the Sawpit Wash to the north side of the Pacific Electric Railway right of way; easterly along the north side of the Pacific Electric Railway right of way to Buena Vista Street; south and southerly on Buena Vista Street to its intersection with Meridian Street; due south along an imaginary line to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Beverly Boulevard; southeasterly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to Telegraph Road; westerly on Telegraph Road to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway; westerly on Imperial Highway to State Highway No. 19; southerly along State Highway No. 19 to its intersection with U. S. Highway No. 101, Alternate, at Ximeno Street; southerly along Ximeno Street and its prolongation 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.