

BY THE COMMISSION:

O P I N I O N

John Lisle filed Application No. 23314, seeking a certificate of public convenience and necessity from this Commission to operate as a common carrier by motor vehicle for the transportation of passengers, baggage, express and freight between Yermo, San Bernardino County, and Death Valley Junction, Inyo County, and intermediate points.

Guy S. Alexander, doing business as Beacon Transport Company, filed Application No. 23331, requesting that this Commission grant him a certificate of public convenience and necessity to operate as a common carrier by motor vehicle for the transportation of passengers, baggage, express and freight between Barstow, San Bernardino County, and Death Valley, Inyo County, and intermediate points, as well as for certain operations in and about Bishop, Inyo County. ⁽¹⁾

Public hearings on these applications were conducted by Commissioner Craemer and Examiner Gorman at Death Valley Junction on March 15, 1940, and at Los Angeles on March 25, 1940, at which time Application No. 23314 was submitted and Application No. 23331 was submitted for decision on that portion of the application involving service to and from Death Valley.

Mr. Lisle at the hearing on March 15th, amended his application in the following respects:

- (1) Withdrew offer to transport passengers;
- (2) Withdrew offer to transport shipments weighing 100 pounds or less between Yermo and Baker and intermediate points;
- (3) Withdrew request for lateral rights except to Tecopa;
- (4) Withdrew request for any rights beyond Death Valley Junction.

(1) That portion of the application dealing with the request for a certificate between Bishop and other points was disposed of by the Commission in its Decision No. 33086, dated May 6, 1940, and need not be further discussed.

Mr. Alexander amended his application by limiting his offer to transport freight and express to points between Yermo and Death Valley instead of between Barstow and said points.

The Tonopah and Tidewater Railroad Company, operating between Death Valley Junction and Crucero, at which point it connects with the Union Pacific Railroad, has been authorized by the Interstate Commerce Commission and by this Commission to abandon all of its rail service, effective April 15, 1940. As a result of this proposed rail abandonment, the instant applications were filed.

John Lisle, at present a contract carrier, proposes to operate a highway common carrier service between Yermo and Death Valley Junction on a schedule of three trips per week.

Guy S. Alexander, operating as Beacon Transport Company, proposes to transport freight and express as a highway common carrier between Yermo and points in Death Valley, including Stove Pipe Wells, and to transport passengers between Barstow and said points. This applicant proposes a daily service.

Upon the abandonment of rail service by The Tonopah and Tidewater Railroad Company, Death Valley will be without any common carrier transportation service, unless the Commission authorizes either or both of the applicants herein to perform common carrier service by motor vehicle.

Several witnesses testified as to the need of a common carrier transportation service to and from Death Valley points upon the abandonment of rail service. The record is convincing that public convenience and necessity warrant the establishment of common carrier service by motor vehicle concurrently with the abandonment of said rail service. The record is replete with evidence showing that sufficient traffic would be available to provide for a compensatory service by one carrier but insufficient traffic

exists to warrant two common carrier services by motor vehicle. The problem is to determine which of the two applicants should be authorized to perform the service.

John Lisle has priority filing; however, he is proposing a tri-weekly service not including the transportation of passengers, while Guy Alexander is proposing a daily service, including the transportation of passengers. Likewise, Lisle is proposing to operate to Death Valley Junction, only, while Alexander is proposing to serve all of the principal points within the Death Valley Monument.

The evidence shows that a tri-weekly service would generally meet the present-day requirements of some of the consignors and consignees; however, some of the witnesses testified that a daily service is required and a service into Death Valley proper would more adequately meet their needs and convenience.

Guy Alexander was the successful bidder for the mail contract, so the revenue from this source, in conjunction with the revenues derived from the freight and passenger business, would place him in a more favorable position to make his proposed common carrier operations a financial success.

After carefully considering all of the evidence in this proceeding, we are of the opinion and hereby conclude that public convenience and necessity require, concurrently with the abandonment of rail service by The Tonopah and Tidewater Railroad Company, the establishment of common carrier transportation service by motor vehicle to and from Death Valley points and that Guy Alexander, having proposed a more complete service than John Lisle, a certificate for such service should be granted to him.

Applicant Alexander made no showing of public convenience and necessity to justify the granting of a certificate of public convenience and necessity for motor truck operation between Baker

and Ludlow and this portion of the application should be denied.

Guy S. Alexander, doing business as Beacon Transport Company, is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed 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

The above-entitled applications having been filed, public hearings having been held and the Commission being fully apprised of the facts;

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require:

I. The establishment and operation of an automotive truck service for the transportation of property as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by Guy S. Alexander, doing business as Beacon Transport Company, between Yermo and Stove Pipe Wells and intermediate points, over and along the following route:

From Yermo via U. S. Highway 91 to Baker, thence via State Highway through Death Valley Junction and Furnace Creek to Stove Pipe Wells.

II. The establishment and operation of an automotive service for the transportation of passengers, baggage and express as a passenger stage corporation, as defined in Section 2-1/4 of the Public Utilities Act, between Barstow and Stove Pipe Wells and intermediate points, over and along the following route:

From Barstow via U. S. Highway 91 to Baker, thence via State Highway through Death Valley Junction and Furnace Creek to Stove Pipe Wells.

IT IS HEREBY ORDERED that certificates of public convenience and necessity therefore be and the same are hereby granted to Guy S. Alexander, doing business as Beacon Transport Company, in accordance with the foregoing declaration, subject to the following conditions:

- (1) Applicant shall file his written acceptance of the certificates herein granted within a period of not to exceed fifteen (15) days from the date hereof.
- (2) Applicant shall commence the service herein authorized concurrently with the abandonment of rail service by The Tonopah and Tidewater Railroad Company and shall file in triplicate, and concurrently make effective on not less than three (3) days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with rates and rules as shown in the application and to conform to the certificates herein granted, or rates and rules satisfactory to the Railroad Commission.
- (3) Applicant shall file in duplicate and make effective with the abandonment of rail service by The Tonopah and Tidewater Railroad Company, on not less than three (3) days' notice to this Commission and the public, time schedules covering the service herein authorized, in a form satisfactory to the Railroad Commission.
- (4) The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned, unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
- (5) No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.
- (6) Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.
- (7) Applicant shall not transport any passengers having both origin and destination along the route between Barstow and Baker, both points inclusive.

- (8) Applicant shall not transport express except between Yermo and Stove Pipe Wells and intermediate points and all such shipments shall be transported on passenger carrying vehicles, provided no shipment of express exceeding 200 pounds in weight shall be transported.
- (9) Applicant shall have the right to serve points within a distance of ten (10) miles laterally on either side of the highway between Baker and Stove Pipe Wells.

IT IS HEREBY FURTHER ORDERED that Application No. 23314 be and the same is hereby denied.

IT IS HEREBY FURTHER ORDERED that Application No. 23331 insofar as it relates to a request for a certificate of public convenience and necessity for the operation of a motor truck service between Baker and Ludlow be and the same is hereby denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 21st day of May, 1940.

Ray C. Kelly
Frank R. Sullivan
Russell W. Smith
H. W. Allen
Justus J. Casman
COMMISSIONERS