Decision No. 36711

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of NORTHERN TRANSPORTATION COMPANY, a corporation, for a certificate of public convenience and necessity authorizing the performance of a highway common carrier operation between Los Angeles, California and points and places on California Highway 127 between Baker, California and the California-Nevada State Line, including all intermediate points, and points and places within a radius of 15 miles of said highway.	Application No. 25547
In the Matter of the Application of LLOYD F. HARVEY for certificate of public convenience and necessity to operate a stage and truck service as a common carrier, between Yermo, California, and Death Valley Junction, California.	Application No. 25607
In the Matter of the Investigation by the Commission upon its own motion into the operations of GUY S. ALEXANDER doing business as BEACON TRANSPORT CO., as a highway common carrier and as a passenger stage corporation.	Case No. 4678

ARTHUR H. GLANZ, for Northern Transportation Company, applicant in Application No. 25547; and for Lloyd F. Harvey, applicant in Application No. 25607.

BART F. WADE, for Guy S. Alexander, doing business as Beacon Transport Company, protestant in Applications Nos. 25547 and 25607, and respondent in Case No. 4678.

DON H. MOORE, for Asbury Transportation Company, interested party.

WYMAN C. KNAPP, for Transportation Department, Railroad Commission.

BY THE COMMISSION:

O P I N I O N

In these proceedings, which were consolidated for hearing and decision, applicants Northern Transportation Company, a corporation, and Lloyd F. Harvey severally have sought certificates of public convenience and necessity authorizing them to serve the Death Valley region, in Inyo County, as highway common carriers, and also permitting Harvey to conduct a passenger stage service; and the Commission, upon its own motion, has instituted an investigation into the adequacy of the service performed by the present operator, Guy S. Alexander, doing business as Beacon Transport Company.(1) Public hearings were had before Examiner Austin at Death Valley Junction and Los Angeles, when the matter was submitted, following oral argument.

The primary issue presented for consideration is the adequacy of the service now accorded this area by Alexander. Both Northern and Harvey assert that during the past year or more this has been wholly insufficient to meet the requirements of the public--a claim disputed by Alexander, who defended the adequacy of his service, in view of the characteristics of the territory, and the unusual conditions created by the war.

The territory involved, which extends from Barstow to Death Valley Junction, is, generally speaking, an arid desert,

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(1) For convenience Northern Transportation Company, a California corporation, applicant in Application No. 25547, will be referred to as Northern; and protestant and respondent, Guy S. Alexander, doing business as Beacon Transport Company, will be designated as Alexander or as Beacon.

sparsely populated, and producing but little traffic. The principal communities affected are Barstow, Yermo, Baker, Tecopa, Shoshone and Death Valley Junction.(2) West of the point last named lies Death Valley, a national monument, which long has been a winter resort area. Because of the war emergency the resorts did not open during the 1942-1943 season, and it is anticipated they will remain closed for the duration. Throughout the area traversed by California Highway No. 127 are scattered several small mines, producing talc, lead, manganese and tin. Between the communities mentioned are occasional service stations, stores and restaurants. At Death Valley Junction, Pacific Coast Borax Company operates a clay mill and conducts a resort hotel. During the summer high temperatures, sometimes reaching 130° F., prevail throughout this region.

Subject to certain territorial restrictions, Alexander operates as a highway common carrier of general commodities between Los Angeles and Stovepipe Wells, in Death Valley National Monument, via Barstow, Yermo, Baker, Shoshone and Death Valley Junction; east of Baker his operations extend to Wheaton Springs, on U. S. Highway 466, situated about 12 miles west of the California-Nevada State Line. He also conducts a passenger stage service, carrying passengers, baggage and express (subject to a weight limit of 200 pounds per shipment), between Barstow and

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(2) This territory, which will be designated as the Death Valley region, is reached from Los Angeles via U. S. Highway 66 to Barstow, thence via U. S. Highway 466 to Baker, and thence via California State Highway 127 to the California-Nevada State Line, about six miles north of Death Valley Junction. Tecopa is situated four miles east of California Highway 127, being reached by a county road diverging from the latter highway at a point ten miles south of Shoshone. Neither Victorville nor Oro Grande is served by Alexander, nor does either applicant propose to serve them.

Stovepipe Wells.[3] In addition, Alexander operates as a passenger stage corporation and as a highway common carrier between Bishop and Bishop Creek; and in conjunction with L. B. Larson, his partner in that undertaking, he conducts a passenger stage service between Bishop and Mono Lake.[4] Formerly, Alexander carried the mail between Yermo and Death Valley Junction under a contract with the government but upon its termination applicant Harvey underbid him. Since July 1, 1942, the latter has handled the mail under a contract expiring June 30, 1946.

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(3) By Decision No. 33112, rendered May 21, 1940, in Application No. 23331, Alexander was authorized to engage in the transportation of passengers, baggage and express, and also in the transportation of general commodities, between Barstow and Yermo, respectively, and Stovepipe Wells, via Yermo, Baker, Death Valley Junction and Furnace Creek, serving also intermediate points, and points within a lateral zone extending 10 miles on each side of the highway between Baker and Stovepipe Wells. No passengers can be handled originating at or destined to points between Barstow and Baker, inclusive. Express can be handled only between Yermo and Stovepipe Wells and intermediate points; it must be carried on passenger vehicles and is subject to a weight limitation of 200 pounds per shipment. By Decision No. 34766, rendered November 18, 1941, in Application No. 24475, Alexander was authorized to acquire from Nevada Consolidated Fast Freight an operative right, as a highway common carrier, authorizing the transportation of general commodities between Los Angeles, Colton and San Bernardino, on the one hand, and all points between Yermo (but not including Yermo) and the California-Nevada State Line near Wheaton Springs, on the other hand. This decision also authorized the abandonment of that portion of the operation extending easterly from Wheaton Springs to the California-Nevada State Line. Pursuant to Section 50-3/4(c), Public Utilities Act, as amended in 1941 (Stats. 1941, Ch. 612), Alexander has consolidated his operations under the operative rights described.

(4) See Decision No. 11722, in Application No. 8027; Decision No. 13610, in Application No. 10066; Decision No. 19579, in Application No. 13878; Decision No. 19689, in Application No. 13819; and Decision No. 33086, in Application No. 23331.

In Case No. 4678 the Commission instituted on its own motion an investigation into Alexander's operations both as a highway common carrier and as a passenger stage corporation, to ascertain whether the service had been abandoned, to inquire into the adequacy of the service presently rendered, and to determine whether such operative rights should be revoked.

Northern Transportation Company, the applicant in Application No. 25547, is a California corporation, maintaining its headquarters at Los Angeles. It proposes to operate as a highway common carrier, engaging in the transportation of general commodities between Los Angeles and points within a radius of 30 miles from First and Main Streets, on the one hand, and all points on California Highway 127, between Baker and the California-Nevada State Line north of Death Valley Junction, on the other hand. Included among the latter are Baker, Tecopa, Shoshone and Death Valley Junction. The intermediate points served would be limited to those lying between Los Angeles (including the 30 mile radius) and Yermo, on the one hand, and Baker and the California-Nevada line, on the other. Express shipments moving to or from Yermo by rail would not be handled between Yermo and points on California Highway 127; nor would milk in bottles or in bulk, nor empty milk containers returning, be carried between Barstow and points on California Highway 127. Off-route points situated within a zone extending 15 miles on each side of California Highway 127, between Baker and the state line would also be served. Excepting traffic moving to or from Tecopa, shipments received from or destined to points distant more than one mile from the highway would be subject to a weight minimum of 10,000 pounds.

Under certificates of public convenience and necessity issued by the Interstate Commerce Commission, Northern operates

as a common carrier by motor vehicle, handling general commodities, between Los Angeles, including points within a radius of 30 miles from First and Main Streets, and Silverpeak, Nevada, (near Tonopah) including also points within a radius of 80 miles from Silverpeak. The service may be conducted via U. S. Highway 6 and connecting Nevada state highways from Los Angeles to the Silverpeak territory; and also, for operating convenience, via U. S. Highway 66 from Los Angeles to Barstow, U. S. Highway 466 to Baker, and California State Highway 127, and connecting highways in Nevada, to Silverpeak. In addition, Northern is authorized to transport mining and milling machinery, equipment and supplies between San Francisco and Silverpeak.

By Application No. 25607, as amended, Harvey seeks a certificate as a highway common carrier authorizing service both independently and as an underlying carrier for Railway Express Agency, Incorporated (5) between Yermo and Death Valley Junction via Baker, Tecopa and Shoshone. The operation would be conducted over U. S. Highway 466 from Yermo to Baker, and thence via California Highway 127. Off-route points, excepting Tecopa, would not be served directly. In addition, he seeks authority to operate a passenger stage service between these points. Harvey also proposes to transport milk, and empty containers returning, between Barstow and points on California Highway 127 between Baker and Death Valley Junction. The relations between Harvey and Express Company would be governed by the terms of a contract following the customary form save only in certain

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(5) For brevity, Railway Express Agency, Incorporated, of Delaware. will be referred to subsequently as Express Company.

particulars, to be discussed later. Traffic other than that handled for Express Company would be subject to a weight limit of 250 pounds per shipment. All traffic would receive a prior or a subsequent movement by rail, to or from Yermo. Harvey holds a permit as a highway contract carrier, issued by this Commission; and, as stated, he carries the mail between Yermo and Death Valley Junction.

The essential characteristics of the service to be provided by Northern and Harvey, respectively, were described in detail. Each submitted the schedule to be observed, a description of the equipment that would be used, and a statement disclosing his financial responsibility.

Northern's proposal was described by its president, Lee R. Martin, who acquired control of that company in July, 1941. This applicant maintains a terminal at Los Angeles, where it offers a pickup and delivery service in connection with its interstate service, which also would accommodate the contemplated intrastate operations. Of the equipment now used in its interstate operations,(6) one unit, comprising a tractor and semi-trailer, would carry the intrastate traffic. More could be supplied if necessary. For the small volume of perishable freight offered, refrigeration facilities would be available. At the outset less-truckload traffic would be handled semi-weekly; for truckload shipments, subject to a minimum of 10 tons, an on-call service would be provided. The proposed time schedule offers an

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(6) The equipment owned by Northern comprises 4 pickup and delivery trucks, 4 truck and trailer units, and 3 tractor and semi-trailer units.

overnight service leaving Los Angeles at 7:00 P.M. on Mondays and Thursdays and reaching Death Valley Junction at 10:00 A.M. on the following morning.(7) To comply with the regulations of the Office of Defense Transportation, and to conserve equipment, the local traffic would be combined with that moving in the interstate operations. Upon less-truckload traffic no weight limitation would be imposed. Rates based upon the minima prescribed by this Commission would be published; the precise rates to be observed were not submitted. Northern appears to be financially able to provide the service, if authorized to do so. Martin testified he constantly sought to replenish the supply of tires and repair parts, thus anticipating future needs.

Applicant Harvey described the service he proposed to establish. Since July 1, 1942 he has operated between Yermo and Death Valley Junction a Chevrolet 1-ton panel delivery truck for the purpose of carrying the mail. This would also be used to transport express as well as passengers, of whom four could be accommodated. He contemplates the purchase of a 2-wheel trailer to handle additional traffic, when necessary. Harvey himself would drive the truck and conduct the business. Under the time

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(7) Northern proposes to operate under the following time schedule:

Los Angeles	Lv	7:00 P.M.	Mon. & Thurs.
Yermo	Ar	11:30 P.M.	"
Yermo	Lv	12:30 A.M.	Tues. & Fri.
Baker	Ar	2:30 A.M.	"
Baker	Lv	3:30 A.M.	"
Tecopa	Ar	6:00 A.M.	"
Tecopa	Lv	7:30 A.M.	"
Shoshone	Ar	8:00 A.M.	"
Shoshone	Lv	9:00 A.M.	"
Death Valley Jct.	Ar	10:00 A.M.	"

Returning to Los Angeles over the same route, but under no definite schedule, picking up traffic that is available.

schedule submitted a daily service would be offered, excepting on Sundays and holidays. The truck would leave Yermo at 4:15 A.M. and reach Death Valley Junction at 8:45 A.M., leaving that point immediately and returning to Yermo by 1:00 P.M.(8) This applicant, it appears, is financially able to provide the service.

As stated, Harvey would serve the public directly, and also indirectly as an underlying carrier for Express Company. Upon the latter traffic no weight limitation would be imposed; otherwise, however, no shipment in excess of 250 pounds would be accepted. In addition to the terms ordinarily contained in agreements of this character, the contract between Harvey and Express Company would permit him, at non-agency points, to accept shipments and execute proper shipping documents, but would require him to account for such shipments upon reaching the next agency point. For handling the express traffic Harvey would be compensated at the rate of 47 cents per 100 pounds, Express Company in turn collecting its tariff charges from the shippers. Under a highway contract carrier permit issued by the Commission,(9) Harvey has transported milk from Barstow consigned to three shippers at Tecopa, Shoshone and Death Valley Junction, respectively. Until the permit was issued, this traffic was handled gratuitously.

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(8) Harvey proposes to operate under the following time schedule:

Miles						
00	4:15 A.M.	Lv	Yermo	Ar	1:00 P.M.
52	5:45 "	Lv	Baker	Lv	11:30 A.M.
106	7:25 "	Lv	Tecopa	Lv	9:50 "
116	7:45 "	Lv	Shoshone	Lv	9:35 "
143	8:45 "	Ar	Death Valley Jct.	Lv	8:45 "

(9) Harvey now holds highway contract carrier permit No. 36-1234, issued September 4, 1942.

Applicants' showing relating to the alleged inadequacy of Alexander's service was presented through merchants, mine operators, wholesale dealers and others engaged in business in the Death Valley region or at Los Angeles, the distributing center. Their criticisms of the Beacon service fell generally within four categories, viz., (1) failure to observe the time schedule, resulting in delayed delivery of shipments; (2) failure to forward promptly shipments received at Yermo from Union Pacific Railroad Company, the connecting carrier; (3) failure to advise the shippers of changes in the location of the Los Angeles terminal; and (4) failure to account promptly for C.O.D. collections. These will be considered in their respective order.

The delays assertedly experienced in the delivery of traffic were described by various witnesses. Charles Brown, who conducts a general store at Shoshone, distributing to several mines in the surrounding area, testified that shipments often were from four to five days late and sometimes as much as one month. These delays were attributed to Alexander, rather than the Los Angeles wholesale distributors from whom he purchased supplies, he having confirmed that the latter had promptly filled the orders. A shipment of bottles returning to Los Angeles had been held in Alexander's terminal at that point for three months. For some time, he stated, the truck seldom had arrived on time. Recently, Brown drove his truck some 30 miles to pick up shipments belonging to him and others, when Alexander's truck broke down north of Baker. E. L. Grimshaw, a merchant at Tecopa, also described the delays in the delivery of his merchandise. Ice cream distributors, he stated, refused to ship their products to this territory because of the poor transportation service. On a recent occasion, other than that described by Brown, when

Alexander's truck again broke down, he was obliged to drive 30 miles to obtain his shipments, which included perishable produce, and also those destined to Brown and to Pacific Coast Borax Company. W. B. Davis, manager of the Shoshone Mine, situated near Tecopa, asserted that frequently he had been unable to purchase grocery supplies at Tecopa or Shoshone because of the late arrival of the Beacon truck, and had therefore been compelled to return the next day. Donald Kempferr, superintendent of Sierra Talc Company, which operates five mines in the Shoshone area, described the difficulties of obtaining mining supplies at Shoshone due to delays in Alexander's service. For this reason, his company frequently found it necessary to haul supplies in its own truck from Lone Pine, near which it operates a mill. Company trucks calling at Shoshone for groceries, at Mr. Brown's store, have been obliged to return empty to the mines because of delayed arrival of the Beacon truck. His testimony was corroborated by that of F. A. Booth, vice-president of the company. Wayne Burns, traffic manager, at Los Angeles, for Wilson Company, Inc., meat packers, testified that in many instances the Beacon service had been unsatisfactory. Several customers in the Death Valley territory had complained of the service and had refused to use it. H. P. Gower, superintendent of Pacific Coast Borax Company, at Death Valley Junction, testified that after Alexander had lost the mail contract his service had been slow. Instances of delayed deliveries were supplied by witness Lowder, the company's accountant. Two shipments were mentioned, one of which was en route nearly five months and the other, eight months.

Shipments moving by rail from Los Angeles to Yermo and there delivered to Alexander as a connecting carrier, have been held in the latter's warehouse at that point, it was stated, for

periods ranging from a few days to several months. Instances were cited by the shippers whom applicants called. Mr. Brown referred to a shipment of cookies and crackers held at Yermo for two weeks, and to another shipment of coffee, retained there for several days. Oxygen tanks consigned to the Shoshone Mine at Tecopa remained at Alexander's warehouse in Yermo for three months; other shipments have likewise been delayed. A shipment of steel destined to Western Talc Company at Tecopa was held up by Alexander for three weeks, and another shipment laid in his terminal for three months, it being necessary in each instance to re-order the goods from the wholesale houses. To obviate such delays this shipper has used its own truck to haul supplies from Los Angeles. Sierra Talc Company has experienced similar delays. A shipment of linoleum consigned to that company at Shoshone was delayed several days at Yermo; a drum-hoist was detained for three weeks; and other similar delays have occurred. On three occasions during the past winter, so Mr. Grimshaw testified, he drove to Yermo in his automobile to pick up and return with groceries consigned to him, which had been held there by Alexander for three weeks.

At Los Angeles, the shippers, so they testified, have experienced considerable difficulty in locating Alexander. Between January, 1942 and March, 1943, Alexander four times moved his headquarters and terminal in that city. On two such occasions, it was shown, his telephone had been disconnected. Because of these changes, the shippers asserted, they had found it difficult, and some said it had been impossible, to reach him when they desired to use the Beacon service.(10) This condition, however, no longer

(10) The shippers, whose representatives so testified, comprised Stuart Oxygen Co., California Hardware Co., Sierra Talc Co., Western Machinery Co., Wilson Company, Inc., and Haas-Baruch & Co.

prevails. Since March 19, 1943, Asbury Transportation Co. has performed the pickup and delivery service for Alexander at Los Angeles. Asbury's service, the shippers stated, was satisfactory.

Complaint of Alexander's practices in handling C.O.D. shipments was voiced by certain shippers. Assertedly, he had been slow to remit the proceeds, and, in some instances, he had failed to account for them. Mrs. Pauline Williams, proprietor of a service station and restaurant at Renoville, 22 miles north of Baker, testified that Alexander never had accounted for the amount collected by his driver as the purchase price of a small shipment of meat, as a result of which she had been billed for the price by the seller, a merchant at Yermo. Some six months after delivery of the merchandise, she asserted, Alexander admitted to her he had received the money, and stated that he soon would take care of the bill. M. F. Peterson, manager of the Victorville-Barstow Truck Line, which operates as a highway common carrier between Victorville, Barstow and Daggett, testified that Alexander, notwithstanding his promise to do so, had neglected to account for C.O.D. collections upon shipments interchanged with the latter at Yermo. He admitted, however, that the accounts between the two carriers had not been adjusted, off-sets having been claimed by Alexander. Wayne Burns, traffic manager for Wilson Company, Inc., asserted that Alexander had failed to remit the charges collected upon a small C.O.D. shipment delivered to a consignee at Baker; ultimately, he said, this item had been written off the books.

Some of the shippers produced by applicants testified that the service proposed would be adequate for their needs. A semi-weekly service for the transportation of freight, some stated, would be sufficient, but a daily express service is essential to meet their requirements. A representative of Pacific Coast Borax

Company, the largest shipper, testified that, preferably, freight should be handled separately from the passengers and the express. Several said they would patronize both of the applicants were they permitted to operate.

In support of his protest, and responsive to the Commission's investigation, Alexander himself testified, describing his operations, contradicting some of the statements of applicants' witnesses, and explaining others. He also called shippers engaged in business at Los Angeles and in the Death Valley region.

Alexander described the service presently conducted as well as that formerly provided. For the transportation of freight he now operates under a semi-weekly schedule leaving Los Angeles Monday and Thursday evenings, reaching Yermo early the next morning, and arriving during the afternoon at Death Valley Junction. Between Baker and Wheaton Springs an on-call service is provided, operating approximately once a week. A tri-weekly service for the transportation of express between Yermo and Death Valley Junction, available on Tuesdays, Thursdays and Saturdays, is offered regularly, and recently, a schedule leaving on Fridays was added. Before the Death Valley resorts were closed, he operated one truck between Los Angeles and Stovepipe Wells, serving the Valley itself, and another between Los Angeles and Death Valley Junction, serving points north of Baker. A tri-weekly service was then provided for the transportation of freight, and express moved daily excepting Sundays and holidays. However, the service now terminates at Death Valley Junction.

Following the closing of the Valley resorts, the volume of traffic decreased substantially. During the past six months, Alexander asserted, the express movement, practically all of which

is handled for Express Company, had dropped off about two-thirds. At present, he said, this averaged about one ton per month.(11)

The equipment used in this operation was fully described. Alexander now owns a total of 15 units to conduct the passenger and freight service in both the Death Valley and the Bishop operations. Of these, six are suitable for the transportation of passengers and express; the remainder are designed to handle freight alone. Because of inability to replace parts, motors and tires, three passenger units cannot now be used. Three passenger units and two trucks have been assigned to the Bishop operation, of which one is not available for use.

Alexander, it appears, is financially able to conduct the service. Making allowances for two minor judgments, which were not listed, his net worth was shown to be approximately $11,000.

The charge of undue delay was denied by Alexander; on the contrary, he asserted, the service had been as expeditious as circumstances would permit. He undertook to answer in detail the charges voiced by the shippers whom applicants had called. The traffic of some, he said, was quite small in volume.(12) Others, he asserted, were themselves responsible for the delays complained

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(11) From the testimony of the shippers called by both parties, it appears that the movement of both freight and express averages at least five tons daily. Since some were unable to estimate the volume of their traffic, or were not questioned in that respect, this is a conservative estimate.

(12) Included in this group of shippers are Western Talc Co., Sierra Talc Co., Southern California Minerals, and California Hardware Co.

of.[13] Shipments consigned to the Shoshone Mine currently are delivered at Tecopa, at the consignee's request; formerly, they were delivered at the mine, situated some 12 miles east of Tecopa. The charges assessed for this additional haul were disputed by the consignee, who declined to pay them.[14] Other shippers, including Mr. Brown and Pacific Coast Borax Company, he said, had off-set asserted loss and damage claims against freight transportation charges, settling with him for the balance. He attributed to some of the shippers themselves the delays occurring in the unloading of freight, which tended to slow up his operations.[15] Formerly, Alexander had advanced the rail freight charges upon traffic interchanged with him at Yermo by the Union Pacific. Assertedly, because of delays in collecting these charges from the shippers, notably Mr. Brown and Pacific Coast Borax Company, Alexander arranged with Union Pacific to collect them directly from the consignees themselves. This relieved him, he said, from the burden of carrying the advance charges, sometimes amounting to several hundred dollars.

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(13) Pacific Coast Borax Company, he said, was responsible for misdelivery of a carbonator; however, he admitted that two shipments of oxygen tanks were delayed at his Yermo terminal. Delays in the movement of oxygen tanks shipped from Stuart Oxygen Company to Shoshone Mine, and empty tanks returning, he asserted, were attributable to employees of the Shoshone Mine.

(14) Involved in this controversy are questions concerning the proper tariff rate or charges applicable; Alexander's right to perform the service under his permit as a highway contract carrier; and the contention, asserted by Alexander and denied by applicants, that the highway reaching the mine was, in part, a private road. These questions need not detain us here, since the charges were assessed, and likewise disputed, in good faith under a colorable claim of right to perform the service. It is not necessary to enter upon an investigation of the legality of Alexander's operations, in this respect.

(15) For example, Alexander complained of Brown's employees who, he asserted, delayed the checking of freight to such an extent as to impede his operations.

The delays occurring at Yermo in handling freight received from the Union Pacific were due, in part, to the rail line itself, so Alexander testified. Formerly, express was available at the Yermo station at 5:30 A.M., when it would be transferred to the truck, but, at present, he asserted, due to war conditions, the shortage of employees and the falling off in traffic occasioned by the closing of the Valley resorts, express is not delivered before 8:00 A.M., thus postponing the time of his departure until 10:00 A.M. or later. Frequently, he said, passenger trains handling express from Los Angeles reached Yermo too late to connect with his stage schedule, thus delaying delivery for at least another day. Alexander conceded that on twelve occasions between July 1 and September 30, 1942, he was responsible for delays incurred at Yermo, and he assumed responsibility for another delay which occurred during June, 1943. These seldom were of greater duration than three hours, he said. Some were ascribed to mechanical trouble, others to blowouts, and at least two to drunken drivers. On the latest occasion, he testified, the truck had been stolen by the driver. The desert, he said, was hard on equipment. He disclaimed responsibility for the condition in which consignments of milk reached Death Valley points. These shipments, he testified, moved by rail express from Barstow to Yermo, where they arrived during the night and were left on the platform outside the station. Although the milk had been iced before delivery to Express Company at Barstow, the hot desert winds melted the ice and dried the wet sacks covering the containers. However, it was re-iced when loaded upon the stages. As stated, Alexander no longer handles this traffic.

Alexander challenged the claim that he had failed to account for C.O.D. collections, asserting, on the contrary, that

these accounts had been settled regularly. Upon express shipments it was his practice to collect from consignees situated at non-agency points, and to remit the proceeds to the nearest agent, usually at Baker or Death Valley Junction. The shipment described by Mrs. Pauline Williams, he testified, never was handled as a C.O.D. collection; on the contrary, he stated, this transaction was a personal matter between Mrs. Williams and the driver, who assertedly had been previously employed by Mrs. Williams and subsequently re-entered her employ. Alexander produced a freight bill covering a subsequent shipment, billed as a C.O.D. collection and consigned to Mrs. Williams, the proceeds of which, he said, had been remitted to the consignor. All C.O.D. collections received for the account of Victorville-Barstow Truck Line upon interline traffic, he stated, had been remitted to that carrier; the account between them remains unsettled, the balance, assertedly, being still in dispute. The item mentioned by Wilson & Co., Inc., he testified, related to a disputed damage claim for a shortage allegedly discovered in a shipment consigned to Baker; it did not rest upon any failure to account for C.O.D. collections. Substantial sums, he said, had been collected from Mr. Grimshaw, at Tecopa, upon C.O.D. shipments. Freight bills were produced covering 11 such shipments during November and December, 1942, under which the collections, exclusive of transportation charges, aggregated $1,517.23, all of which, he stated, had been accounted for. Statements were offered itemizing the freight interchanged between Alexander and Union Pacific at Yermo, and indicating the charges thereon. No difficulty, he stated, had ever been experienced with the railroad regarding these settlements.

During the latter half of 1942, Alexander testified, he was obliged to move his terminal at Los Angeles on several occasions

Alexander personally, as well as his drivers, endeavored to advise the shippers but was unable to reach all of them. Generally, he undertook to give this notice when calling to pick up freight, and sometimes could not contact the shippers. Eventually, Alexander arranged with Asbury Transportation Co., as his agent, to provide a daily pickup service, which was established during March, 1943.

Several shippers, engaged in business in the Death Valley region and at Los Angeles, testified in support of Alexander. Bert Failing, who conducts a general merchandise store at Baker, stated that the Beacon service had been satisfactory, and adequate for his needs. To the same effect was the testimony of Mrs. Lafe Hoffman, whose husband operates a garage at Baker. Charles Haythorn, who maintains a service station between Baker and Wheaton Springs and who also is associated with the Evening Star Mining and Milling Company, the operator of a tin mine nearby, voiced his approval of the Beacon service, which had been used to carry groceries and supplies. David Kendall, manager of Manganese Mining Co. at Owl Springs, 31 miles east of California Highway No. 127, who had used Alexander's service to haul machinery, lumber and supplies inbound, and ore outbound, found it satisfactory. Harry Nasland, operator of the Black Magic Mine near Owl Creek, had used the Beacon service on two occasions, once to haul a carload of ore from the mine to Daggett, on the Union Pacific, and later to transport some camp buildings to Owl Springs from a point between Yermo and Daggett. Both trips were between points not served by Alexander under his certificate, he having provided the transportation as a highway contract carrier. The service, Nasland testified, was satisfactory. Courtland Berry of Bellows Contracting Company, general contractors, testified that Alexander had transported food and supplies for his firm, during 1942, while

it was engaged in removing the rails of Tonopah & Tidewater Railroad Co. between Beatty, Nevada, and Crucero, Nevada, the junction with the Union Pacific. The service, he stated, was satisfactory. Virgil Miller, of Loose-Wiles Biscuit Company, which had used the Beacon service to handle crackers and cookies from Los Angeles to the Death Valley territory, found the service satisfactory. Max Lackaye, superintendent of Dohrmann Hotel Supplies Company of Los Angeles, testified that Alexander had transported shipments of merchandise, restuarant and hotel machinery, equipment and supplies, to the Death Valley territory. The service, he said, was satisfactory. Except on rare occasions the shipments moved f.o.b. Los Angeles.

In rebuttal, Mr. Brown testified that the practice of adjusting claims, by offsetting them against the freight charges, had been initiated at his own suggestion. The arrangement with Union Pacific for the payment of charges by the consignees themselves, upon traffic interchanged at Yermo, so he said, had been made at his own instance, rather than that of Alexander. This practice was inaugurated, Brown asserted, following a conference between him and the railroad officials.

As stated at the outset, the primary issue before us is the adequacy of the Beacon service. Both of the applicants, it was shown, are qualified to provide the service they seek to undertake. That there is a need for an adequate transportation service within the territory affected, was established by the record.

The charge of inadequacy leveled against Alexander's service, rests, as we have said, upon four general specifications, to which the evidence was directed. We shall consider each, in turn.

The preponderance of the evidence, we are convinced, clearly supports applicants' contention that traffic moving to and from the Death Valley region has been unreasonably delayed. Alexander, it was shown, has subjected his patrons to prolonged and unexplained delays in the delivery of merchandise, wholly unjustified even in the light of existing war conditions. For example, delays of one month, as described by Mr. Brown, and of five months, as specified by Mr. Gower, are inexcusable. These are typical of others disclosed by the record.

It is an established fact that shipments delivered by Union Pacific to Alexander, at Yermo, were held in his terminal for unreasonably long periods. Although it is true that trains sometimes were late, thus postponing the departure of scheduled bus or truck connections, and that the railroad no longer provides the service formerly accorded to expedite the interchange of traffic, nevertheless, delays of several weeks, and even months, as shown by applicants' witnesses, are entirely unwarranted.

The difficulties formerly encountered by shippers in contacting Alexander at his Los Angeles terminal, have now been obviated by the selection of Asbury Transportation Company to perform the pickup and delivery service at that point. For several months, however, shippers were unable at times to locate the terminal, or to arrange for the transportation of their freight. The efforts made to advise them of changes in Alexander's address were ineffective, they having been confined to the occasions when either he or his drivers called to pick up freight. Had a real effort been made to do so, the shippers could readily have been reached.

Although the record does not establish that Alexander

ever wilfully or intentionally converted the proceeds of any C.O.D. collections, nevertheless, it clearly indicates that such matters were loosely handled. The shipment delivered to Mrs. Williams, it is true, was not actually billed as a C.O.D. collection, but the driver was Alexander's agent, apparently acting within the scope of his employment, for whose acts the latter was responsible. He cannot be permitted so cavalierly to repudiate the acts of his employee. The contention that Alexander had failed to account to Victorville-Barstow Truck Line for C.O.D. collections, was not established, the record indicating the existence of a disputed account between them, which still remains unsettled. And there appears to be some uncertainty regarding the actual nature of the claim asserted against him by Wilson Company, Inc.

The inadequacies and deficiencies of Alexander's service, which have been described, are sufficient, in our judgment, to warrant the certification of applicants, Northern and Harvey, who have established their ability to serve this territory. In the conduct of his operations, Alexander has delayed, unreasonably and inexcusably, the transportation and delivery of shipments committed to his care. Aside from a few shippers engaged in business at Baker and between that point and Theaton Springs, those situated north of Baker, along California Highway 127, universally condemned his service as insufficient to meet their needs; and such also was the verdict of all but two of the wholesale distributors situated at Los Angeles, who were called upon to express their views. Because of his derelictions in the performance of his duty as a common carrier, Alexander's certificate, authorizing service in the Death Valley region, will be revoked. Such, accordingly, will be the order.

Northern Transportation Company and Lloyd F. Harvey are severally placed upon 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, 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 to the number of rights which may be given.

O R D E R

Applications having been made as above entitled; a public hearing having been had in the above-entitled proceedings; and the Commission now finding that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) That a certificate of public convenience and necessity be and it hereby is granted to Northern Transportation Company, a corporation, authorizing the establishment and operation of a service as a highway common carrier, as defined by Section 2-3/4, Public Utilities Act, between Los Angeles and points within a radius of 30 miles from First and Main Streets, on the one hand, and points on California Highway 127 between Baker and the California-Nevada State Line north of Death Valley Junction, inclusive, on the other hand, serving as intermediate points those lying between Los Angeles (including said 30 mile radius) and Yermo

on the one hand, and between Baker and the California-Nevada State Line, on the other hand. Applicant may also serve off-route points situated within a zone extending 15 miles laterally on each side of California Highway 127 between Baker and the California-Nevada State Line.

Said certificate is granted subject to the following limitations:

(a) That no express traffic handled by said applicant as an underlying carrier for any express corporation authorized to serve said points or any of them, may be transported between Yermo, on the one hand, and points on California Highway 127 between Baker and the California-Nevada State Line, inclusive, on the other hand, where said shipments may have received or would receive a prior or a subsequent movement by rail to or from Yermo.

(b) That no shipment of milk in bottles or in bulk, nor empty milk containers returning, may be transported between Barstow and any points on California Highway 127 between Baker and the California-Nevada State Line, inclusive.

Said certificate is granted subject to the following condition:

The authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act and further to the condition that Northern Transportation Company, its successors or assigns, shall never claim before this Commission, or any court or other public body, a value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such rights.

(2) That a certificate of public convenience and necessity be and it hereby is granted to Lloyd F. Harvey, authorizing the establishment and operation of a service as a highway common carrier, as defined by Section 2-3/4, Public Utilities Act, serving the public both directly and as an underlying carrier for

Railway Express Agency, Incorporated (an express corporation) for the transportation of general commodities (a) between Yermo and Death Valley Junction, and intermediate points, and (b) for the transportation of milk and empty milk carriers returning, between Barstow and Death Valley Junction, and intermediate points; and also authorizing the establishment and operation of a service as a passenger stage corporation, as defined by Section 2¼, Public Utilities Act, between Yermo and Death Valley Junction, and intermediate points.

Said certificate is granted subject to the following limitation:

> No shipment, other than traffic handled by applicant as an underlying carrier for Railway Express Agency, Incorporated, may be transported between any of the points described, weighing in excess of 250 pounds.

Said certificate is granted subject to the following condition:

> The authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act and further to the condition that Lloyd F. Harvey, his successors or assigns, shall never claim before this Commission, or any court or other public body, a value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such rights.

(3) (a) That the certificates of public convenience and necessity now held by respondent Guy S. Alexander, doing business as Beacon Transport Company, heretofore granted to and acquired by him pursuant to Decision No. 33112, rendered May 21, 1940, in Application No. 23331, and Decision No. 34766, rendered November 18, 1941, in Application No. 24475, and collectively authorizing operation as a highway common carrier, as defined by Section 2-3/4, Public Utilities Act, subject to certain restrictions, between Los

Angeles, Wheaton Springs and Stovepipe Wells, and certain intermediate points, via Barstow, Yermo and Baker; and also authorizing operation as a passenger stage corporation, as defined by Section 2¼, Public Utilities Act, between Barstow and Stovepipe Wells and certain intermediate points, be and they are, and each of them is, hereby revoked.

(b) That any and all tariffs and time schedules heretofore filed with the Railroad Commission by respondent Guy S. Alexander, doing business as Beacon Transport Company, and now in effect, relating to said operations, be and they hereby are, and each of them is, cancelled and annulled.

(4) That in the operation of the highway common carrier service herein authorized Northern Transportation Company shall comply with and observe the following service regulations:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.

2. Applicant shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.

3. Subject to the authority of this Commission to change or modify them at any time by further order, applicant shall conduct said highway common carrier service over and along the following routes:

   Via U. S. Highway 66 from Los Angeles to Barstow; via U. S. Highway 466 from Barstow to Baker; and via California State Highway 127 from Baker to California-Nevada State Line north of Death Valley Junction; using connecting highways and county roads to serve off-route points, where authorized to do so.

(5) That in the operation of the highway common carrier and passenger stage service herein authorized, Lloyd F. Harvey shall comply with and observe the following service regulations:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.

2. Applicant shall comply with the provisions of General Orders Nos. 79 and 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.

3. Applicant shall file, in triplicate, within sixty (60) days after the effective date hereof, copies of any contracts entered into between him and any express corporation relating to the operation of the service authorized hereunder.

4. Subject to the authority of this Commission to change or modify them at any time by further order, applicant shall conduct said highway common carrier and passenger stage operations over and along the following routes:

   Via U. S. Highway 466 from Barstow to Baker; and via California State Highway 127 from Baker to Death Valley Junction.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at Los Angeles, California, this 16th day of November, 1943.

Franck R. Havenner

Justus F. Craemer

Richard Sachse

Wm. Y. Olson

COMMISSIONERS