

Decision No. 26822

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of  
CHEW CHICK, doing business as the  
BAY CITY HAULING COMPANY for an order  
clarifying his certificate of public  
convenience and necessity to operate  
freight service between Sunnyvale, Moun-  
tain View, Palo Alto and San Francisco. )

Application No. 19123.

ORIGINAL

Samuel T. Bush for applicant.  
R. G. Hillebrand for Southern Pacific Company  
and Pacific Motor Transport Company.  
Edward Stern, by R. G. Hillebrand, for  
Railway Express Agency, Inc.

BY THE COMMISSION:

O P I N I O N

The applicant, Chew Chick, doing business under the firm name and style of the Bay City Hauling Company, by this application seeks an order clarifying the certificate of public convenience and necessity for the operation of an automobile truck service as a carrier of freight between San Francisco on the north, and Palo Alto on the south, as authorized by the Certificate of Public Convenience and Necessity granted by our Decision No. 8228 in Application No. 6012 dated October 11, 1920.

The applicant by this proceeding seeks an order amending and clarifying our Decision No. 8228, supra, to cover an automobile truck line as a common carrier of freight instead of a contract carrier between the points originally authorized and more precisely described as San Francisco on the north and Lawrence, Sunnyvale, Mountain View and Palo Alto on the south, serving the intermediate points and ranches within approximately five miles on either side of the two highways traversed, as per Exhibit "A" filed subsequent to the hearing and made a part of the record. This Exhibit shows in red ink the actual territory served, all embraced between the points named above.

A public hearing was held before Examiner Geary at San Francisco January 3, 1934, and the proceeding having been duly submitted, is now ready for our opinion and order.

Under date of October 11, 1920, this Commission by its Decision No. 8228 in Application No. 6012, granted to the Bay City Hauling Company a certificate of public convenience and necessity for the operations as a contract carrier, the order reading in part as follows:

"that public convenience and necessity require the operation by Chew Gong and Chew Chick, co-partners doing business under the firm name and style of Bay City Hauling Company, of an automobile truck line as a contract carrier of freight for those certain producers named in said application between Sunnyvale, Mountain View, Palo Alto and San Francisco and intermediate points; provided, however, that applicants shall file with this Commission copies of all contracts under which they are now conducting this service and that no discrimination shall exist as regards rates on similar commodities handled between specific points and; provided, further, that tariffs covering such contract rates shall be filed with this Commission, as required by the provisions of General Order No. 51;"

The record in this proceeding shows that in the year 1925 the partner named Chew Gong withdrew from the business of the Bay City Hauling Company and surrendered and assigned to the remaining partner Chew Chick all his right, title and interest in the co-partnership, and that Chew Chick has continued the operations and is the sole owner of the Bay City Hauling Company, also that the retired partner Chew Gong, who participated in Application No. 6012, had only a working interest in the partnership and had no capital invested therein.

Applicant's testimony was to the effect that the trucking services were offered to the public beginning with the year 1919, under a few specific contracts, that the business has gradually developed, that the practice of securing contracts was discontinued a number of years ago upon the conclusion that the operations were those of a common carrier by reason of the fact that applicant has continuously paid the five per cent (5%) of the annual gross revenue taxes assessed against common

carrier truck operations by the State of California, and also that it is a member of the Association of Regulated Carriers.

Tariffs have been on file with the Commission since the commencement of operations under the authority of Decision No. 8228 of October 11, 1920. The present tariff C.R.C. No. 2, effective January 5, 1930, was issued in the name of the Bay City Hauling Company by Chew Chick, Proprietor, and this tariff and the one canceled have been applied to all service rendered to the general public. The services have been offered to the general public as a common carrier for practically the entire period beginning some 15 years ago. The commodities hauled consisted entirely of farm products into San Francisco and the return of empty boxes, crates and other shipping packages. There is no merchandise of any kind handled on the return trips; the farm products consisting principally of berries, fruits, vegetables and flowers are originated almost entirely from Chinese and Japanese tillers of the soil. The tonnage will vary from as little as 500 pounds to 10 tons per day, dependent upon the season. Applicant owns six trucks and three trailers, and supplements this fleet with rented vehicles when the shippers quantity lots require additional equipment. There are about 25 regular consignors producing the tonnage on the farms and some 50 consignees mainly commission merchants at San Francisco.

Without doubt this applicant, before he undertook to operate as a common carrier of freight, should have applied to this Commission and secured a certificate of public convenience and necessity under Chapter 213, Statutes of 1917. The testimony clearly indicates that applicant was of the opinion that his operations were entirely proper and this proceeding is a desire to straighten out errors which have crept into the activities due to his ignorance of the legal necessities. The Southern Pacific Company and Railway Express Agency, Inc., appeared at the hearing

as parties protestant, but after learning from the testimony of the witnesses that only farm products and empty containers were being transported and that there was no desire by this application to enlarge the scope of the actual operations which have been the same since the beginning, the protests were withdrawn. Attorney for applicant agreed and stipulated that the clarified certificate should be properly limited.

There is positive proof of the need for a common carrier operation for the transportation of farm products in the territory and between the points where this applicant has been performing a trucking service to the farming communities. (Application No. 6012, Decision No. 8228, October 11, 1920.)

We are of the opinion that the application should be granted and the certificate amended.

#### O R D E R

A public hearing having been held in the above entitled application, the matter having been submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
HEREBY DECLARES that public convenience and necessity require the operation by Chew Chick, operating under the firm name of the Bay City Hauling Company, of an automobile truck line as a common carrier for the transportation of berries, fruits, vegetables, flowers and other farm products and for the return movement of empty boxes, crates and other shipping packages between San Francisco on the north, and Lawrence, Sunnyvale, Mountain View and Palo Alto on the south, serving intermediate points and territory within approximately five miles on either side of the highways traversed, as per Exhibit "A" made a part of this record.

IT IS HEREBY ORDERED that the certificate of public convenience and necessity heretofore granted by Decision No. 8228 in

Application No. 6012, dated October 11, 1920, be and the same is amended and clarified and Chew Chick is hereby authorized to continue the operations, under the firm name of the Bay City Hauling Company, as a common carrier of farm products and shipping packages, between the points as hereinabove described, subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof. The acceptance shall stipulate that the clarified and changed certificate herein authorized is limited to farm products and shipping packages and shall supersede the authority granted by Application No. 6012, Decision No. 8228 of October 11, 1920.
2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than ten days' notice to the 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 the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted.
3. Applicant shall file, in duplicate and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the 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.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 26th day of February, 1934.

Q. Leary  
Leon O'Connell  
W. J. Carr  
M. B. Harris  
Walter Harris