

ORIGINAL

Decision No. 80357 1

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FRANK PANELLA and BERNARD R. PANELLA,)
a Partnership, Doing Business As)
B. PANELLA DRAYAGE CO., to transfer)
Highway Common Carrier and Petroleum)
Irregular Route Certificates to)
B. PANELLA DRAYAGE CO., a California)
corporation.)

Application No. 53622
(Filed October 5, 1972)

O P I N I O N

By this application Frank Panella and Bernard R. Panella, copartners, doing business as B. Panella Drayage Co., request authority to transfer highway common carrier and petroleum irregular route carrier certificates to B. Panella Drayage Co., a California corporation.

The certificates were granted by Decision No. 61041 dated November 15, 1960 and Decision No. 44251 dated May 26, 1950, respectively.

Transferors Bernard R. Panella and Frank Panella who wish to continue the business under a corporate entity are president and vice-president, respectively, of the transferee corporation.

After consideration, the Commission finds that the proposed transfers would not be adverse to the public interest and concludes that they should be authorized. A public hearing is not necessary. The order which follows will provide for, in the event the transfers are consummated, the revocation of the certificates presently held by transferors and the issuance of certificates in appendix form to transferee.

The route descriptions used in said appendices will reflect current designations of roads and highways and will not broaden nor enlarge the authority being transferred.

B. Panella Drayage Co. 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, these rights extend to the holder a full or partial monopoly of a class of business. 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

IT IS ORDERED that:

1. On or before October 1, 1973, Frank Panella and Bernard R. Panella may transfer, and B. Panella Drayage Co. may acquire, the operative rights referred to in the application.
2. Within thirty days after the consummation of the transfers herein authorized, transferee shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfers.
3. Transferee shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfers herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series. Failure to comply with and observe the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.
4. On or before the end of the third month after the consummation of the transfers as herein authorized, transferee shall cause

to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the transferor for the period commencing with the first day of the current year to and including the effective date of the transfers.

5. In the event the transfers authorized in paragraph 1 hereof are consummated, certificates of public convenience and necessity are granted to B. Panella Drayage Co., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A attached hereto and made a part hereof and to operate as a petroleum irregular route carrier as defined in Section 214 of the Public Utilities Code with authority as set forth in Appendix B attached hereto and made a part hereof.

6. The certificates of public convenience and necessity granted in paragraph 5 of this order shall supersede the certificates of public convenience and necessity granted by Decisions Nos. 44251 and 61041, which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

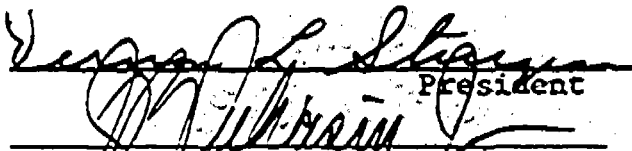

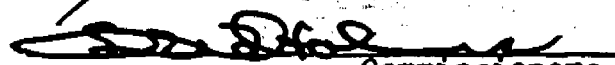
7. Within thirty days after the transfers herein authorized are consummated, transferee shall file a written acceptance of the certificates herein granted. Transferee is placed on notice that, if it accepts the certificates of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

8. Transferee shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

9. Transferee shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If transferee elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 16th day of JANUARY, 1973.


President


Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

B. Panella Drayage Co., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities between any and all points and places:

1. In the San Francisco-East Bay Cartage Zone as described in Note A;
2. On or within five miles laterally of U.S. Highway 101 and State Highway 82 between San Mateo and San Jose;
3. On or within five miles laterally of State Highways 17 and 238 between Hayward and San Jose;
4. Within a radius of ten miles of San Jose.

In performing the service herein authorized, applicant may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

Except that pursuant to the authority herein granted, carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B.
2. 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.

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3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Logs.
8. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
9. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

NOTE A

SAN FRANCISCO-EAST BAY CARTAGE ZONE

The San Francisco-East Bay Cartage Zone includes the area embraced by the following boundary: Beginning at the point where the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard; thence southerly along said Lake Merced Boulevard to South Mayfair Avenue; thence westerly along said South Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point one mile west of State Highway 82; thence southeasterly

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along an imaginary line one mile west of and paralleling State Highway 82 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence along said boundary line to U.S. Highway 101 (Bayshore Freeway); thence leaving said boundary line proceeding to the junction of Foster City Boulevard and Beach Park Road; thence northerly and easterly along Beach Park Road to a point one mile south of State Highway 92; thence easterly along an imaginary line one mile southerly and paralleling State Highway 92 to its intersection with State Highway 17 (Nimitz Freeway); thence continuing northeasterly along an imaginary line one mile southerly of and paralleling State Highway 92 to its intersection with an imaginary line one mile easterly of and paralleling State Highway 238; thence northerly along said imaginary line one mile easterly of and paralleling State Highway 238 to its intersection with "B" Street, Hayward; thence easterly and northerly along "B" Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to Somerset Avenue; thence westerly along Somerset Avenue and 168th Street to Foothill Boulevard; thence northwesterly along Foothill Boulevard to the southerly boundary line of the City of Oakland; thence easterly and northerly along the Oakland Boundary Line to its intersection with the Alameda-Contra Costa County Boundary Line; thence northwesterly along said County Line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point one mile northeasterly of San Pablo Avenue (State Highway 123); thence northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue to its intersection with County Road 20 (Contra Costa County); thence westerly along County Road 20 to Broadway Avenue; thence northerly along Broadway Avenue to San Pablo Avenue (State Highway 123) to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence northerly along Collins Avenue to Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Company right-of-way and continuing westerly along the prolongation of Morton Avenue to the shoreline of San Pablo Bay; thence southerly and westerly along the shoreline and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line to the San Francisco waterfront at the foot of Market Street; thence westerly along said waterfront and shoreline to the Pacific Ocean; thence southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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B. Panella Drayage Co., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a petroleum irregular route carrier, as defined in 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.

RESTRICTION:

Transportation of waste materials under this certificate is subject to obtaining and maintaining a valid registration certificate as a hauler of liquid waste from the State Water Resources Control Board.

(END OF APPENDIX B)

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