

ORIGINAL

Decision No. 87528 June 28, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
RALPH PANELLA, ROBERT A. PANELLA )  
and EUGENE J. PANELLA, partners )  
doing business as RALPH PANELLA )  
TRUCKING, to transfer a certificate )  
of public convenience and )  
necessity and assets to PANELLA )  
TRUCKING, INC., and to issue stock. )

Application No. 57257  
(Filed April 25, 1977)

O P I N I O N

Ralph Panella, Robert A. Panella and Eugene J. Panella, partners doing business as Ralph Panella Trucking, request authority to transfer a highway common carrier certificate of public convenience and necessity and certain related assets to Panella Trucking, Inc., and the latter seeks authorization to issue 15,530 shares of no par value common stock for an aggregate sum of \$155,530.

The partnership operates as a highway common carrier in California pursuant to authority granted by Decision No. 83326, dated August 20, 1974 in Application No. 54965. It authorizes the transportation of nuts, in bulk, to points in San Joaquin, Stanislaus, Sutter and Tulare Counties, from points in twenty-three counties in Central California. It also authorizes the transportation of foodstuffs and containers between points in Merced, Stanislaus, San Joaquin and Santa Clara Counties, and the San Francisco-East Bay Cartage Zone. Transportation activities are also conducted under Interstate Commerce Commission jurisdiction and under permits issued by this Commission in File T-76094.

In Exhibit D attached to the application, the partnership reports total operating revenues and net income of \$3,544,691 and \$132,823, respectively, for the year 1976. The December 31, 1976 balance sheet is summarized as follows:

<u>Assets</u>	<u>Amount</u>
Current assets	\$ 191,651
Carrier operating equipment, less accumulated depreciation	1,216,817
Other assets	<u>2,979</u>
Total	<u>\$1,411,447</u>

<u>Liabilities and Capital</u>	
Current liabilities	\$ 815,397
Equipment obligations	537,448
Partnership investment	<u>58,602</u>
Total	<u>\$1,411,447</u>

The partnership proposes to transfer the highway common carrier certificate of public convenience and necessity and other related assets to Panella Trucking, Inc., a California corporation incorporated on April 1, 1977, in exchange for 15,530 shares of the latter's no par value stock. A pro forma balance sheet giving effect to the transaction appears in Exhibit C attached to the application and is summarized as follows:

<u>Assets</u>	<u>Amount</u>
Cash	\$ 15,000
Service equipment - book value	87,614
Furniture and equipment - book value	46,597
Leasehold improvements - book value	<u>6,092</u>
Total	<u>\$155,303</u>
<u>Capital</u>	
Capital stock	<u>\$155,303</u>

In a letter dated May 22, 1977, the attorney for the parties informed the Commission that the intrastate transportation performed by the partnership and to be continued by Panella Trucking, Inc. under the highway common carrier certificate constitutes less than 2% of total revenues, and that the partnership will lease carrier equipment to the corporation on a long-term basis at a total rental price which will be comparable to the costs of the equipment plus a small return for the partnership. The attorney stated that the partners are incorporating the business as a part of the estate plan of Ralph Panella to reduce his contemplated estate taxes.

The application indicates that the partners are not parties to any through routes or joint rates with any other motor carrier. No protest to the application has been received.

After consideration the Commission finds that:

1. The proposed transactions would not be adverse to the public interest.
2. The proposed stock issue would be for a proper purpose.
3. The money, property or labor to be procured or paid for by the stock herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that the application should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Ralph Panella, Robert A. Panella and Eugene J. Panella, partners doing business as Panella Trucking and the issuance of a certificate in appendix form to Panella Trucking, Inc.

Panella Trucking, Inc. is 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. 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. The authorization herein granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1977, Ralph Panella, Robert A. Panella and Eugene J. Panella, partners doing business as Panella Trucking may sell and transfer the highway common carrier certificate and other assets referred to in the application to Panella Trucking, Inc.
2. Panella Trucking, Inc., on or after the effective date hereof and on or before December 31, 1977, may issue not exceeding 15,530 shares of its no par common stock in exchange for assets totaling \$155,303.
3. Panella Trucking, Inc. shall file with the Commission the report required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.
4. Within thirty days after the transfer Panella Trucking, Inc. shall file with the Commission written acceptance of the highway common carrier certificate of public convenience and necessity and a true copy of the bill of sale or other instrument of transfer.

5. Panella Trucking, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the 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 transfer. 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 the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.

6. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 5, a certificate of public convenience and necessity is granted to Panella Trucking, Inc. 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 set forth in Appendix A of this decision.

7. The certificate of public convenience and necessity granted by Decision No. 83326 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5.

8. Panella Trucking, Inc. shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

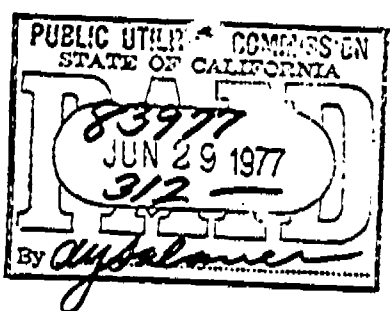
9. Panella Trucking, Inc. shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

11. The authority granted by this order to issue stock will become effective when Panella Trucking, Inc. has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$312. In all other respects the effective date of this order is the date hereof.

Dated at San Francisco, California, this 28<sup>th</sup> day of JUNE, 1977.

Robert Bateman  
President  
William J. ...  
...  
Richard ...  
Commissioners



Panella Trucking, Inc., a California corporation, 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:

- A. Nuts, in bulk, transported under rail bills of lading or substituted rail service to points in San Joaquin, Stanislaus, Sutter and Tulare Counties, from points in the following counties:

Butte	San Luis Obispo
Colusa	Santa Barbara
Contra Costa	Santa Clara
Glenn	Shasta
Kern	Solano
Lake	Stanislaus
Los Angeles	Sutter
Merced	Tehama
Monterey	Tulare
Napa	Yolo
San Benito	Yuba
San Joaquin	

- B. Food, foodstuffs, cans, boxes, bins, pallets and fiberboard boxes between points in Merced, Stanislaus, San Joaquin and Santa Clara Counties and the San Francisco-East Bay Cartage Zone, as described in Note A.

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

Issued by California Public Utilities Commission.

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## 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 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

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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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