**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held November 13, 2014

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

James H. Cawley

Pamela A. Witmer

Gladys M. Brown

Application of 610 Hauling, LLC, t/a College

Hunks Hauling Junk, for the right to begin to

transport, as a common carrier, by motor vehicle, A-2012-2334103

household goods in use, from points in the A-8915269

counties of Chester, Delaware, Montgomery,

Philadelphia, and Bucks, to points in Pennsylvania

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition to Reopen and for Reconsideration (Petition) filed by 610 Hauling, LLC, t/a College Hunks Hauling Junk (Applicant or 610 Hauling), on September 5, 2014, in the above-captioned proceeding. The Order to which the Petition refers was adopted and entered on August 21, 2014 (*August 2014 Order*). No Answer to the Petition has been filed. An Opinion and Order granting reconsideration pending review of and consideration on the merits was adopted on September 16, 2014, and entered that same day.

For the reasons stated herein, we will grant the Petition, vacate the *August 2014 Order,* and refer this matter to the Commission’s Bureau of Technical Utility Services (TUS) for such further action as may be warranted.

**History of Proceeding**

On November 5, 2012, 610 Hauling filed the above-captioned Application for the right to begin to transport, as a common carrier by motor vehicle, household goods in use between points in the Counties of Chester, Delaware, Montgomery, Philadelphia, and Bucks, to points in Pennsylvania. On May 24, 2013, a Joint Protest to the Application was filed by Adam Meyer, Inc.; Clemmer Moving & Storage, Inc.; Hughes Relocation Services, Inc.; Fischer-Hughes of Allentown, Inc.; Frick Transfer, Inc.; Glose Moving & Storage, Inc.; Glose Moving & Storage, Inc., d/b/a O’Brien’s Moving & Storage, Inc.; Keller Moving & Storage, Inc.; Reads Van Service, Inc.; and Shelly Moving & Storage, Inc. (Joint Protestants).

Following two requested continuances, an initial hearing was convened on February 11, 2014, at which the Applicant and the Joint Protestants agreed to a restrictive amendment that resolved all issues in the proceeding. On February 28, 2014, Administrative Law Judge (ALJ) Eranda Vero entered an order pursuant to 52 Pa. Code § 5.235 requiring, *inter alia*, that the restrictive amendment be reduced to writing and filed with the Secretary.

The Applicant filed the properly executed restrictive amendment on March 26, 2014. On April 3, 2014, the ALJ issued an Order finding that the amendment did not limit the Application in a manner previously found by the Commission to be contrary to the public interest. Accordingly, the ALJ reassigned the Application from the Office of Administrative Law Judge to the Bureau of Technical Utility Services for review pursuant to 52 Pa. Code § 3.381(c)(1)(iii), which allows for review of applications on the merits on the basis of verified statements filed by the Applicant if no protests are filed or if filed protests are withdrawn.

By letter issued May 20, 2014, to the Applicant without service on the Applicant’s counsel, TUS requested that the Applicant provide additional information to accommodate review of the Application, including verified statements and statements in support of the Application. The information was requested to be forwarded to the Secretary of the Commission at the Commission’s P.O. Box as well as faxed to the assigned Compliance Specialist within ten working days from the date of the letter, or by June 3, 2014. On June 2, 2014, the Applicant’s counsel contacted the Compliance Specialist to request an extension due to the service oversight. An extension to June 16, 2014 was granted. In our *August 2014 Order*, we denied the Application on the basis that more than thirty days had passed without the information being filed.

On September 5, 2014, the pending Petition was filed. No Answer to the Petition has been filed. By Order adopted and entered on September 16, 2014, we granted reconsideration of the *August 2014 Order* pending review of and consideration on the merits.

**Discussion**

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well-settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also* see, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. We recognize that, while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, at the same time "[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them." [*Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553](https://www.lexis.com/research/buttonTFLink?_m=a0bd972e1c44c934eac4dac31ed13919&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2012%20Pa.%20PUC%20LEXIS%201764%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b56%20Pa.%20PUC%20553%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=8&_startdoc=1&wchp=dGLzVzt-zSkAz&_md5=973ffa07ed1a747816aebcb86d9556c3) (Order entered December 17, 1982) (quoting [*Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)).](https://www.lexis.com/research/buttonTFLink?_m=a0bd972e1c44c934eac4dac31ed13919&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2012%20Pa.%20PUC%20LEXIS%201764%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b179%20A.%20850%2cat%20854%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=8&_startdoc=1&wchp=dGLzVzt-zSkAz&_md5=494bcb366ad1108a3184ba4682a149ae) Such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

**Applicant’s Petition**

Along with the Petition, the Applicant submitted copies of letters and other information the Applicant alleges was timely provided. In the Petition, the Applicant avers that, by letter dated June 12, 2014, verified statements and financials as of May 2014 were sent to the Commission’s Post Office Box. This was both the address that appeared on the letterhead of TUS’ May 20, 2014 letter and the address to which the Applicant was directed to submit the information to the Secretary’s Bureau. The Applicant further avers that, by letter dated July 21, 2014, and addressed to the TUS Compliance Specialist at the Commission’s Post Office Box, inquiry was made of the status of the Applicant’s June submission. The Applicant avers that, still hearing nothing, the Applicant’s counsel spoke with the Compliance Specialist on August 5, 2014, and was informed that no information or letter was received. Upon being informed that information had, in fact, been submitted in June, the Compliance Specialist directed the Applicant to the Secretary’s Bureau to determine the status of the information.

The Applicant avers that the Secretary’s Bureau advised that information sent to the Post Office Box may have been lost and, therefore, at the further direction of the Secretary’s Bureau, the Applicant forwarded by overnight mail addressed to the Commission’s street address a copy of the information averred to have been submitted with the June 12, 2014 letter. A FedEx delivery receipt appended to the Petition shows a Philadelphia pick-up on August 5, 2014, and delivery to “PA” on August 6, 2014.

By cover letter dated August 15, 2014, having still heard nothing from the Commission, the Applicant avers that a copy of all prior submissions was forwarded directly to three Commissioners and it was requested that the Application be approved at the “Hearing” scheduled for August 21, 2014. As stated above, at the August 21, 2014 Public Meeting, we entered an Order denying the Application for failure to comply with TUS’ request for information.

**Disposition**

As stated above, Petitions for Reconsideration are governed by *Duick*, which essentially requires a two-step analysis. First, we determine whether a party has offered new and novel arguments, or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. We will not reconsider our previous decision based on arguments that have already been considered. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument, or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. The second step of the *Duick* analysis is therefore to evaluate the new or novel argument, or overlooked consideration, in order to determine whether to exercise our discretion to modify our previous decision.

We believe the Applicant’s Petition contains new and novel arguments or considerations that may have been overlooked. In this case, there is an obvious disconnect between the averments in the Petition and the finding presented in our *August 2014 Order.* Specifically, the Applicant avers that a timely response to TUS’ requests for additional verified information was provided to the Post Office Box address identified for the Secretary’s Bureau on the TUS letter. Upon further inquiry by the Applicant after hearing nothing from the Commission, the Applicant avers that it was advised to resend the information directly to the Commission’s street address. Subsequent to this inquiry, all further information the Applicant avers was sent to the Commission appears to have been sent to the correct street address. A FedEx delivery receipt indicates a filing was made on August 6, 2014, however, the location of the address to which the delivery was made is identified as “PA” only. Because the Applicant makes credible averments in the Petition that several attempts to provide the requested information were made but, according to our Bureau of Technical Utility Services, were not successful, it appears that the Applicant has satisfied the *Duick* requirements for reconsideration of our *August 2014 Order*.

On review of the file in this proceeding, we will reinstate the Application and refer it to TUS for such further action as may be warranted. Under the circumstances described above, we find that the Application should not be dismissed on the basis that the information requested was not provided. We will therefore grant the Petition, vacate the *August 2014 Order,* and reinstate the Application. This matter will be referred to TUS for such further action as may be necessary.

**Conclusion**

Since the Applicant has raised new and novel arguments and raised considerations that appear to have been overlooked, we conclude that the criteria outlined above in *Duick* have been met. We will, therefore, take the following actions: (1) grant the Applicant’s Petition; (2) vacate our *August 2014 Order*; and (3) refer this matter to TUS for such further action as may be necessary; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition to Reopen and for Reconsideration, filed on September 5, 2014, by 610 Hauling, LLC, t/a College Hunks Hauling Junk with respect to our Order entered August 21, 2014, is granted.

2. That our Order entered August 21, 2014, is vacated.

3. That this matter is referred to the Bureau of Technical Utility Services for such further action as may be necessary.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 13, 2014

ORDER ENTERED: November 13, 2014