**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held April 7, 2016 |
| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  Pamela A. Witmer  John F. Coleman, Jr.  Robert F. Powelson |  |
| Electric Generation Supplier License Cancellations of Companies with an Expired Financial Security  Application of Sprague Operating  Resources LLC to Abandon its Electric Generation Supplier License  License Application of Sprague Operating Resources LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Broker/Marketer | M-2015-2490383  A-2015-2494779  A-2012-2292048 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition) filed by Sprague Operating Resources LLC (Sprague) on September 10, 2015,[[1]](#footnote-1) seeking reconsideration of the Order entered August 28, 2015, in *Electric Generation Supplier License Cancellations of Companies with an Expired Financial Security*, Docket No. M‑2015-2490383 (Final Order entered August 28, 2015) (*Final Order*). No Answers to the Petition have been filed. Also before the Commission is the Application to Abandon Electric Generation Supplier License (Application), filed by Sprague on July 17, 2015, at Docket No. A-2015-2494779. For the reasons set forth herein, we shall grant the Petition, in part, modify the *Final Order*, and refer the Application to the Commission’s Bureau of Technical Utility Services (TUS) for such further action as may be warranted.

**History of the Proceeding**

Sprague received its license from the Commission to provide electric generation supplier (EGS) services as a broker/marketer in Pennsylvania on June 7, 2012, at Docket No. A-2012-2292048. As a licensed broker/marketer, Sprague was required to have a bond in the amount of $10,000 to satisfy its security requirement. *See*, *License Application of Sprague Operating Resources LLC*, Docket No. A-2012-2292048 (Order entered June 7, 2012).

On November 4, 2013, the Commission sent a Secretarial Letter to Sprague informing Sprague that the expiration of its bond or other approved security would occur on January 10, 2014. The Commission advised Sprague that it must file a proper financial security with the Commission in order to maintain its EGS license and that failure to do so may result in the cancellation of its license. *See* Docket No. A-2012-2292048 (Secretarial Letter issued November 4, 2013) (*November 2013 Secretarial Letter*).

On March 3, 2015, the Commission further notified Sprague by an additional Secretarial Letter that it was required to file an original financial security with the Commission within ten days and that failure to respond may result in cancellation of its EGS license. *See id*. (Secretarial Letter issued March 3, 2015) (*March 2015 Secretarial Letter*). The Secretarial Letter was sent to Sprague by Certified Mail at its address on file with the Commission, Two International Drive, Suite 200, Portsmouth, New Hampshire, 03801, and was returned to the Commission by the United States Postal Service as undeliverable on March 24, 2015.

By Tentative Order entered July 8, 2015, the Commission notified various EGSs, including Sprague,[[2]](#footnote-2) that they had not submitted a bond or other approved security to the Commission, as required by Sections 54.40(a) and (d) of the Commission’s Regulations, 52 Pa. Code §§ 54.40(a) and (d).[[3]](#footnote-3) *Electric Generation Supplier License Cancellations of Companies with an Expired Financial Security*, Docket No. M-2015-2490383 (Tentative Order entered July 8, 2015) (*Tentative Order*). The Commission indicated that failure to file a proper bond or other security may result in cancellation of an EGS license. *Id*. at 1. Accordingly, the Commission tentatively concluded that it was appropriate to cancel Sprague’s EGS license without the necessity of a formal complaint, consistent with the public interest. *Id*. at 3.

On July 8, 2015, the *Tentative Order* was served on Sprague at Two International Drive, Suite 200, Portsmouth, New Hampshire, 03801, and was returned as undeliverable on July 24, 2015. The *Tentative Order* was published in the *Pennsylvania Bulletin* on July 18, 2015, at 45 *Pa*. *B*. 3955, with a thirty-day comment period. Additionally, on July 31, 2015, the *Tentative Order* was resent to Sprague at 185 International Drive, Portsmouth, New Hampshire, 03801, and was not returned to the Commission. The *Tentative Order* provided that, absent the filing of adverse public comment or an approved security within thirty days after publication in the *Pennsylvania Bulletin*, the licenses held by each EGS would be cancelled. *Tentative Order* at 4.

On July 17, 2015, the day before the *Tentative Order* was published in the *Pennsylvania Bulletin*, Sprague filed its Application. The Application provided the following: “Please let this letter serve as notice to the [Commission] of [Sprague’s] intent to withdraw/abandon its license as an Electric Broker/Marketer in the state.” Application at 1. Sprague also stated that after the abandonment, it would have a business presence in Pennsylvania as a natural gas supplier only. *Id*. There is no record of any contact by the Commission with Sprague relating to the Application.

In the *Final Order*, the Commission stated that the *Tentative Order* had become final by operation of law and the EGS license held by Sprague was cancelled, as Sprague did not file an adverse comment or approved security within thirty days after publication of the *Tentative Order* in the *Pennsylvania Bulletin*. The *Final Order* did not address Sprague’s Application.

Sprague filed its Petition for Reconsideration on September 10, 2015, seeking reconsideration of the *Final Order*. Sprague attached to the Petition copies of a bond in the amount of $250,000, which exceeded the $10,000 bond required for Sprague as a broker/marketer.[[4]](#footnote-4) The bond covered the entire period during which Sprague was a licensed broker/marketer and expired in January 2016.

By Opinion and Order, entered September 17, 2015, the Commission granted Sprague’s Petition, pending further review of and consideration on the merits.

On January 21, 2016, Sprague filed an original bond continuation certificate for its bond which covers the time period through January 10, 2017. In the letter accompanying the continuation certificate, Sprague requested that the Commission accept the certificate until the Commission acted on the instant Petition.

On April 5, 2016, Sprague filed a “Supplement” to its Petition for Reconsideration (Supplement).[[5]](#footnote-5)

On April 8, 2016, Sprague filed a Petition to Abandon Electric Generation Supplier License, in which it represented that it is seeking Commission authority to abandon its license, rather than providing a notice of its intent to abandon as it did in the Application.

**Discussion**

We note that any issue or argument 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 Corporation 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. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, \*12-13:

A Petition for Reconsideration, under the provisions of

66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsyl­vania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . what we expect to see raised in such petitions are new and novel arguments, not previously heard, or considera­tions which appear to have been overlooked by the Commission.

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. 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. *Id*. at \*13.

In its Petition, Sprague requests that the Commission reconsider the *Final Order*, reinstate Sprague’s EGS license, and grant Sprague’s request for abandonment. Sprague asserts that it meets the *Duick* standards for granting reconsideration on the basis that it has produced new evidence to demonstrate that it had an appropriate bond in place for the relevant period, that it had no electric customers in Pennsylvania, and that it was not marketing to customers in Pennsylvania during the relevant period. Sprague concedes that the failure to file a bond and the resulting cancellation of its license was due to its own inadvertence. Petition at 3. Sprague explains that it moved its office to a new location, 185 International Drive, Portsmouth, New Hampshire, 03801, and that it failed to notify the Commission of its new address. Accordingly, Sprague states that it did not receive the *November 2013* or *March 2015* *Secretarial Letters* from the Commission. According to Sprague, from the date of its license application to the present, it has continually had the required surety in place. Sprague attached license bonds and continuation certificates, which are marked confidential, to the Petition. *Id*. at 2, 4. Sprague avers that it did not have any EGS customers in Pennsylvania in 2013, 2014, or 2015, and that it did not conduct marketing of retail electric generation supply during those years. *Id*. at 4.

Sprague additionally states that reconsideration should be granted because its oversight was administrative in nature and it has put procedures in place to ensure that such oversights will not happen in the future. Sprague avers that, in response to the Commission’s cancellation of its license, Sprague and its affiliates have updated their compliance procedures to ensure that each regulatory license is associated with the correct mailing address and to ensure that the Commission’s dockets are routinely reviewed. *Id*.

Further, Sprague contends that reconsideration should be granted because the Commission’s cancellation of Sprague’s license has impacted and prejudiced, or may impact and prejudice, Sprague and its affiliates in the fourteen states in which they conduct energy marketing of natural gas and electricity due to the negative perception associated with a certification cancellation and any resulting undue regulatory requirements in Pennsylvania and other states in which Sprague and its affiliates hold licenses. *Id*. at 5, 6. Sprague explains that one of its affiliates, Sprague Energy Solutions, Inc. (Sprague Energy Solutions)[[6]](#footnote-6) has been impacted by the Commission’s cancellation of Sprague’s license. Sprague avers that its license cancellation caused electric market participants, including electric distribution companies, to question Sprague Energy Solutions’ good standing, although the two companies’ licenses are separate. Sprague also avers that the Commission’s cancellation of its license presents a compliance issue that is larger than Sprague’s failure to file its bond, because nearly every state in which Sprague holds an EGS license requires notification of a license cancellation. *Id*. at 6.

The Petition for Reconsideration is predicated on the assertion that Sprague had a bond in place, although it was not on file with the Commission during the period in question; that Sprague had no Pennsylvania customers during the period in question; and that Sprague’s failure to file the bond and to respond to the Commission’s many communications was a matter of administrative inadvertence. Although we do not find these arguments persuasive, we conclude that under the *Duick* standards, we will grant the Petition because Sprague’s Application was not considered prior to the entry of the *Final Order*. Our determination is also based on other particular circumstances in this case, including the fact that Sprague is a broker/marketer, that Sprague had no Pennsylvania customers, and that Sprague had a bond in place, although not on file with the Commission.

Based on our determination to grant Sprague’s Petition, in part, we shall modify the *Final Order* and hold the *Tentative Order* in abeyance, only as these Orders pertain to Sprague, pending consideration of the Application. The Application is, therefore, referred to TUS for such further action as may be warranted. If the Application is not granted, the Commission will take further action, as necessary, on the *Tentative Order* as it pertains to Sprague.

**Conclusion**

For the reasons set forth above, we shall grant, in part, Sprague’s Petition, modify the *Final Order*, and refer the Application to TUS for such further action as may be warranted, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration filed by Sprague Operating Resources LLC on September 10, 2015, seeking reconsideration of the Final Order entered August 28, 2015, at Docket No. M-2015-2490383, is granted, in part.

2. That the Final Order entered August 28, 2015, at Docket No. M‑2015-2490383, is modified by deleting Sprague Operating Resources LLC from Table 2 – Supplier Cancellation.

3. That the Tentative Order entered July 8, 2015, at Docket No. M‑2015-2490383, is held in abeyance with respect to Sprague Operating Resources LLC, pending the Commission’s consideration of Sprague Operating Resources LLC’s Application to Abandon Electric Generation Supplier License at Docket No. A-2015-2494779.

4. That the Application to Abandon Electric Generation Supplier License filed by Sprague Operating Resources LLC on July 17, 2015, at Docket No. A‑2015-2494779, is referred to the Bureau of Technical Utility Services for such further action as may be warranted.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 7, 2016

ORDER ENTERED: May 4, 2016

1. Sprague filed the required verification to the Petition on September 16, 2015. [↑](#footnote-ref-1)
2. The *Tentative Order* was served on Sprague and twenty six other EGSs. [↑](#footnote-ref-2)
3. Section 54.40(a) provides that an EGS license will not be issued or remain in force until the licensee furnishes a bond or other security approved by the Commission. Additionally, Section 54.40(d) provides that the maintenance of an EGS license is contingent on the licensee providing proof to the Commission that a bond or other approved security in the amount directed by the Commission has been obtained. [↑](#footnote-ref-3)
4. *See License Application of Sprague Operating Resources LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Broker/Marketer*, Docket No. A-2012-2292048 (Order entered June 7, 2012). [↑](#footnote-ref-4)
5. Sprague filed the Supplement well after the fifteen-day time frame for filing a Petition for Reconsideration. Because Sprague filed the Supplement after the deadline and our Regulations do not provide for the filing of Supplements to Petitions for Reconsideration, we will not consider the Supplement in this case. [↑](#footnote-ref-5)
6. Sprague Energy Solutions is an EGS that serves industrial and commercial customers in fourteen states. The Commission issued an EGS license to Sprague Energy Solutions on June 11, 2015, at Docket No. A-2015-2469110. [↑](#footnote-ref-6)