**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held April 15, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

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| Petition of JMI Consultants, LLC for Reconsideration of the Pennsylvania Public Utility Commission’s Order entered August 25, 2020 and Reinstatement as a Broker/Marketer of Electric Generation Supplier Services | A-2019-3009003 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Letter Petition (Petition)[[1]](#footnote-2) filed on August 26, 2020 by JMI Consultants, LLC (JMI or the Petitioner) requesting reconsideration of the Commission’s Final Order entered on August 25, 2020,[[2]](#footnote-3) which cancelled JMI’s electric generation supplier (EGS) license due to an expired financial security.[[3]](#footnote-4) Through its Petition, JMI seeks reinstatement of its license to operate as an EGS in the Commonwealth of Pennsylvania. No answer to the Petition has been filed. For the reasons, outlined below, we shall grant JMI’s Petition for Reconsideration and reinstate its license to provide EGS services in Pennsylvania as a broker/marketer.

# History of Proceeding

On March 14, 2019, JMI filed an application seeking a license from the Commission to provide EGS services as a broker/marketer in all electric distribution service territories throughout the Commonwealth of Pennsylvania (Application).

By Order entered July 11, 2019, the Commission approved JMI’s Application and concurrently issued JMI a license to provide EGS services “as a broker/marketer to residential, small commercial (25 kW and under demand), large commercial (over 25 kW demand), industrial, and governmental customers in all of the electric distribution company service territories throughout the Commonwealth of Pennsylvania.” *See* *Application of JMI Consultants, LLC for Approval to Offer, Render, Furnish or Supply Electric Generation Services as a Broker/Marketer*, Docket No. A‑2019-3009003 (Order entered July 11, 2019) (*July 2019 Order*). As noted in the *July 2019 Order*, the Commission reduced the bond and security amount for JMI from the usual $250,000 to $10,000, pursuant to 66 Pa. C.S. § 2809 and 52 Pa. Code § 54.40(c), because JMI averred that “it will not be collecting any gross receipts from its customers, paying customer bills or taking title to electricity.” *July 2019 Order* at 4. The Commission found that the reasoning on which JMI based its request for a bond reduction was similar to that offered by other EGSs that successfully petitioned for a bonding level of $10,000. *Id.* Consequently, the Commission reduced JMI’s bond to $10,000. In addition, the Commission directed JMI that if it planned to change its business model, it must notify the Commission forty-five days prior to the change*. July 2019 Order* at 7.

As proof of financial security, JMI furnished Bond Number 98 CH K658 7 through State Farm Fire and Casualty Company (State Farm), valid through March 30, 2020.

On December 19, 2019, the Commission’s Bureau of Technical Utility Services (TUS), sent JMI a Bond Renewal Notice letter in which it indicated that JMI’s bond, or other approved security, was set to expire on March 30, 2020. The letter advised JMI that it must provide proof to the Commission, within thirty days prior to its security expiration date, that it had obtained a bond or other approved security to maintain its status as a licensed electric supplier in Pennsylvania. The letter also stated that failure to do so may cause the initiation of a formal proceeding which could result in the cancellation of JMI’s EGS license.

On June 18, 2020, the Commission entered a Tentative Order at Docket No. M-2020-3015227 to initiate a process for cancelling the licenses of EGSs that fail to maintain their EGS licenses by providing proof to the Commission that they have a bond or other approved security in the amount or language directed by the Commission, to replace a bond which is expired or which is non-compliant with Commission Regulations.[[4]](#footnote-5) *See Electric Generation Supplier License Cancellations of Companies with an Expired Financial Security, Insufficient Financial Security Amount or Language*, Docket No. M-2020-3015227 (Tentative Order entered June 18, 2020) (*June 2020 Tentative Order*).

As a result of failing to comply with the Commission’s *June 2020 Tentative Order* within the time prescribed therein, JMI was named in the Commission’s *August 2020 Final Order*, entered on August 25, 2020, which cancelled JMI’s EGS license.

On August 26, 2020, JMI filed the instant Petition requesting reconsideration of the *August 2020 Final Order* and reinstatement of its EGS license. Along with its Petition, JMI provided the Commission with a copy of a bond continuation certificate, continuing its bond through March 30, 2021. The bond continuation certificate was returned to the Petitioner by Secretarial Letter dated September 8, 2020 (*September 2020 Secretarial Letter*), through which the Secretary’s Bureau advised the Petitioner that the provided copy was unacceptable, as the “Commission requires a supplier to file an **original** bond, letter of credit, continuation certificate, amendment, or other financial instrument as part of a supplier’s licensing requirements under Section 2809(c) of the Pennsylvania Public Utility Code.” In response to the *September 2020 Secretarial Letter*, JMI timely filed an original bond continuation certificate, continuing its bond through March 30, 2021.[[5]](#footnote-6) As noted above, an answer to the Petition has not been filed.

# Discussion

In considering the Petition, we note that any issue that we do not specifically address 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).

**Legal Standards**

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.

In relevant part, Section 703(g) of the Code, which governs petitions for reconsideration, provides as follows:

The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

66 Pa. C.S. § 703(g). By the terms of this Code provision, the Commission has the power to amend or rescind its own orders at any time subject only to the requirements of due process. *See Department of Highways v. Pa. PUC*, 185 Pa. Super. 418, 138 A.2d 143 (1958). Because such relief may result in disturbance of final orders, a petition to amend or rescind a final order must be granted judiciously and only under appropriate circumstances. *See City of Pittsburgh v. Pennsylvania Department of Transportation,* 490 Pa. 264, 416 A.2d 461 (1980).

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 (Order entered December 17, 1982) (quoting [*Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=118+Pa.+Super.+380) (*Duick*). 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* at 559.

Both the Code and Commission Regulations require that an EGS furnish a bond or other approved financial security instrument to ensure the EGS’s financial responsibility and the supply of electricity at retail in accordance with contracts, agreements, or arrangements. 66 Pa. C.S. § 2809(c)(1)(i) and 52 Pa. Code § 54.40. No license will be issued or remain in force unless the EGS provides or maintains a valid bond with the Commission. *Id*.

## Petition

In its Petition, JMI requests that the Commission reconsider its *August 2020 Final Order* cancelling the Petitioner’s EGS license and reinstate the license. Petition at 1. More specifically, JMI asserts that its bond never lapsed; it was paid for and updated through March 30, 2021. JMI notes that it included with its Petition a copy of the Continuation Certificate as proof that its bond was continued and valid through March 30, 2021. JMI appears to acknowledge that it failed to provide the Commission with documentation of its most recent continuation certificate; however, it argues for reconsideration and reinstatement in light of: (1) its claim that it had not received either the electronic or paper copy notifications of the Commission’s *June 2020 Tentative Order*; (2) the adjustments being made both within the Commission and among all organizations amidst the COVID-19 pandemic; and (3) the procedural changes JMI avers it has made to ensure that the Commission promptly receives any required documentation in the future. Petition at 1.

## Disposition

A petition for reconsideration is governed by *Duick*, which essentially requires the Commission to perform a two-step analysis. First, the Commission must determine whether the petitioner has offered any new arguments that were not addressed by the Commission in its previous order. The Commission will not reconsider its previous decision based on arguments that have already been made. Second, the Commission must evaluate any new argument or evidence and decide whether modification of its previous order is warranted. However, the Commission will not necessarily modify a prior order just because a petitioner offers a new argument that was not addressed by the Commission in its previous order. Under the circumstances in this case, we find that JMI has satisfied the standards for reconsideration.

Here, JMI argues in support of its Petition that it: (1) was “unable to locate” the Commission’s warning; and (2) updated its original bond but mistakenly failed to ensure that the continuation certificate was furnished to the Commission and approved by the Commission. The Commission does not take lightly an EGS’s failure to maintain a bond or other financial security instrument. However, we will grant JMI’s request for relief because it appears that (1) it did update its bond and (2) its failure to successfully *furnish* the bond continuation certificate was based in part on workplace and mail disruptions caused by the COVID-19 pandemic lockdown.

The supporting documentation indicates that State Farm continued JMI’s bond through March 30, 2021. However, there is no record that a continuation certificate was timely received by the Commission.

It appears that JMI erroneously thought its bond had been properly updated. While JMI took no steps to confirm its belief with the Commission, the Commission concludes that JMI’s failure to provide proof of this bond was unintentional. Its bond on file with the Commission expired on March 30, 2020. Although JMI’s bond may have been continued by State Farm to March 30, 2021, it did not ensure that its bond continuation certificate was furnished to and approved by the Commission. However, JMI’s failure to furnish an updated bond may have been based on the fact that it did not receive our *June 2020 Tentative Order*. As previously stated, it is unclear whether the *June 2020 Tentative Order* was properly served by the Commission to JMI as a result of workplace and mail disruptions caused by the pandemic lockdown. Under these limited and unique circumstances, we will grant JMI’s Petition.[[6]](#footnote-7)

Here, we find credible JMI’s assertions that its bond was renewed on time but that the bond update was not successfully provided to or received by the Commission due to the specific pandemic emergency-related workplace disruption discussed herein. We further note that JMI has timely submitted its bond continuation certificate on February 12, 2021, continuing its bond through March 30, 2022.

Under the circumstances outlined herein, the Commission finds that: (1) JMI has satisfied the *Duick* standards for reconsideration; and (2) modification of the *August 2020 Final Order* is warranted. Accordingly, we will grant JMI’s Petition and reinstate its EGS license.

Further, we advise JMI that any future failure to timely file an updated financial security instrument at least thirty (30) days prior to the expiration of the current financial security instrument on file may cause Commission staff to initiate a formal proceeding that may lead to the cancellation of its EGS license, fines and penalties, removal of its information from the Commission’s website, and notification to all electric distribution companies in whose service territory JMI is licensed to operate.

# Conclusion

For the reasons discussed herein, we shall grant the instant Petition of JMI Consultants, LLC, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration and request for reinstatement of its electric generation supplier license, filed by JMI Consultants, LLC on August 26, 2020, at Docket No. A-2019-3009003, is granted, consistent with this Opinion and Order.
2. That JMI Consultants, LLC’s license to offer, render, furnish, or supply electric generation service as a broker/marketer to residential, small commercial (25 kW and under demand), large commercial (over 25 kW demand), industrial, and governmental customers in all of the electric distribution company service territories throughout the Commonwealth of Pennsylvania be reinstated, consistent with this Opinion and Order.
3. That going forward JMI Consultants, LLC continue to file an updated financial security instrument at least thirty (30) days prior to the expiration of the current financial security instrument on file with the Commission or, in the alternative, furnish the Commission with a continuous bond.
4. That the Secretary’s Bureau shall mark this docket closed.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 15, 2021

ORDER ENTERED: April 15, 2021

1. We will treat this Petition as a Petition for Reconsideration and request for reinstatement of JMI’s electric generation supplier license, based on the fact that it is contesting the *August 2020 Final Order* and was filed one day after that Order was entered, well within the fifteen-day time frame for filing petitions for reconsideration under 52 Pa. Code § 5.572(c). [↑](#footnote-ref-2)
2. *See, Electric Generation Supplier License Cancellations of Companies with an Expired Financial Security*, Docket No. M-2020-3015227 (Final Order entered August 25, 2020) (*August 2020 Final Order*). [↑](#footnote-ref-3)
3. Section 54.40(a) of our Regulations, 52 Pa. Code § 54.40(a), states 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. In addition, Section 54.40(d), 52 Pa. Code § 54.40(d), states 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-4)
4. Based on the Commission’s records, it is unclear whether the *June 2020 Tentative Order* was properly served by the Commission to JMI as a result of workplace and mail disruptions caused by the COVID-19 pandemic lockdown referenced herein. [↑](#footnote-ref-5)
5. JMI also filed an original bond continuation certificate on February 12, 2021, continuing its bond through March 30, 2022. [↑](#footnote-ref-6)
6. Service issues sometimes warrant relief to ensure that due process has been provided. *See*, *Petition of Curvin W. Martin d/b/a Crystal Clear Merchant Consultants for Reconsideration of the Pennsylvania Public Utility Commission’s Order entered August 25, 2020 and Reinstatement as a Broker/Marketer*, Docket No. A-2012-2306196 (Order entered December 3, 2020) and *Petition of TruEnergy Services, LLC for Rescission of the Pennsylvania Public Utility Commission’s Final Order entered August 25, 2020 and Reinstatement as a Broker/Marketer of Electric Generation Supplier Services*, Docket No. A-2019-3009734 (Order entered December 17, 2020)*; see also Gerald S. Lepre, Jr. v. Equitable Gas Company*, Docket No. C-2010-2189362 (Order entered January 30, 2012). [↑](#footnote-ref-7)