**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held August 15, 2013

Commissioners Present:

 Robert F. Powelson, Chairman

 John F. Coleman, Jr., Vice Chairman

 Wayne E. Gardner

 James H. Cawley

 Pamela A. Witmer

Pennsylvania Public Utility Commission, P-2013-2359400

Bureau of Technical Utility Services A-00122591

 v.

Classic British Limousine Service, Inc.

 **OPINION AND ORDER**

**BY THE COMMISSION:**

 Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the “Appeal for Aged Vehicle Inspection, 52 Pa. Code
§ 5.44(a)”[[1]](#footnote-1) (Petition), filed by Classic British Limousine Service, Inc. (Petitioner) on April 22, 2013, relative to the above-captioned proceeding. The Petition purports to be an appeal from staff action, specifically, an appeal of a letter issued by the Commission’s Bureau of Technical Utility Services (TUS) on February 28, 2013 (*February 2013 Letter)*. No Response to the Petition has been filed. For the reasons set forth herein, we will grant the Petition, in part, and refer this matter to TUS to take such further action as may be warranted.

**History of Proceeding**

 By Order entered on August 15, 2006, the Petitioner was certified to provide limousine service at Docket No. A‑00122591.

 On February 28, 2013, TUS received the Petitioner’s Request for Waiver of Vehicle Age Requirement Application.[[2]](#footnote-2) In the *February 2013 Letter,* TUS stated that it had reviewed the information submitted by the Petitioner relative to its request for permission to use a vehicle more than eight model years old in its limousine service. TUS noted that, pursuant to the Commission’s Regulation at 52 Pa. Code § 29.333(e), vehicles operated in limousine service in the Commonwealth may be no more than eight model years old, unless otherwise permitted by the Commission.

 The *February 2013 Letter* also indicated that the Petitioner’s application was filed late, and that the application was incomplete. TUS denied the Application based on the Petitioner’s failure to timely file a waiver and its failure to file a complete application.

 As noted, the instant Petition was filed on April 22, 2013. No responses to the Petition have been filed.

**Discussion**

In considering this Petition, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

We begin by considering the nature of the Petition before us, because the analysis to be applied varies depending on the type of document under consideration. The Petition is a letter challenging action taken by staff. The Petition, however, was not filed within twenty days after the Commission served the *February 2013 Letter.* As a result, the staff action became the final action of the Commission. 52 Pa. Code § 5.44.

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsection 703(f) and (g), 66 Pa. C.S. §§ 703(f) and (g), relating to rehearings, as well as 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. We will treat the Petition as a Petition for Rescission, pursuant to 52 Pa. Code
§ 5.572(d), which may be filed at any time.

A petition for rescission may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation,* 490 Pa. 264, 416 A.2d 461 (1980). Additionally, 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 action, 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. Ct. 1935)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=118+Pa.+Super.+380)). 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.

**Vehicle Age Requirement**

As noted, the Commission’s vehicle age requirement is found at Section 29.333(e) of our Regulations, 52 Pa. Code § 29.333(e). It reads as follows:

**§ 29.333. Vehicle and equipment requirements**.

\* \* \*

(d) *Vehicle age.* Unless otherwise permitted by the Commission, a vehicle may not be operated in limousine service which is more than 8 model years old. For example, the last day on which a 1996 model year vehicle may be operated in limousine service is December 31, 2004. This provision is effective after August 6, 2007.

By Order entered June 1, 2007, the Commission clarified the procedure that a carrier may use to seek an exemption to the eight-year rule. *See Petition of the Pennsylvania Taxi and Paratransit Association*, Docket No. P-00072274 (Order entered June 1, 2007). In that Order, the Commission approved the procedural and substantive guidelines established by the Commission’s former Bureau of Transportation and Safety,[[3]](#footnote-3) noting that the guidelines are not substantive rules but rather “provide guidance on [the Bureau’s] interpretation of our regulation regarding the vehicle age requirement and the process by which the exemption requests will be evaluated.” *Id*. at 3, n.4.

 By Letter issued May 31, 2012 (*May 2012 Letter*), TUS informed all limousine operators of the requirements of Section 29.333(e). That Letter stated that, as soon as a new calendar year causes a vehicle not to meet the eight-year age requirement, that vehicle may not be used in transportation service unless certain steps have occurred. Specifically, the *May 2012 Letter* outlined the following steps:

**Request for Waiver of Vehicle Age Requirements.**

The carrier must be in good standing with all fines and assessments paid in full, have current financial information on file with the Commission’s fiscal office, and complete a request for waiver of vehicle age requirements. **If** the request is approved, a PUC Enforcement Officer (EO) will contact you to set a date for an inspection. Carriers should allow approximately 60 days for the request to be processed. Requests will be accepted beginning on July 1st of each year. **No** requests will be accepted after September 30th to ensure obtaining a waiver prior to December 31st.

*May 2012 Letter* at 1-2.

**The Petition**

In the Petition, the Petitioner does not deny that it was late in applying for an exemption, nor does it dispute that its application was incomplete. Petition at 1-2. The Petitioner avers that the filing was late due to the personal circumstances of the Petitioner’s Chief Executive Officer (CEO), which were beyond his control. Also, the Petitioner provided additional information to complete its application for waiver of vehicle age requirements. The Petitioner requests that the Commission reconsider TUS’s decision in the *February 2013 Letter* concerning the vehicle that is more than eight model years old. *Id*.

**Disposition**

We will grant the Petition, in part, and refer this matter to TUS to take such further action as may be warranted. The request for a waiver from the eight-year rule was rejected because an application was not filed timely, and because the application was not complete. In our view, the Petitioner clearly was notified that applications for a waiver of the “eight-year rule” must be submitted by September 30, 2012. However, in this case, there were extenuating circumstances which prevented the Petitioner from meeting the September 30, 2012 deadline. Specifically, the Petitioner stated that its CEO was deployed to the Middle East from December 2011 to late August or early September of 2012. Consequently, he did not resume limousine operations until January 2013.

Included with the Petition, the Petitioner provided additional information to complete its application for a waiver, thereby rectifying the identified deficiency. The materials submitted indicate that the Petitioner’s vehicle meets the criteria for scheduling an inspection. We will, therefore, refer this matter to TUS for scheduling of the vehicle inspection, and such further action as may be warranted.

**Conclusion**

For the reasons set forth above, we will grant the instant Petition, in part, and refer this matter to TUS for such further action as may be warranted; **THEREFORE,**

 **IT IS ORDERED:**

 1. That the “Appeal for Aged Vehicle Inspection, 52 Pa. Code
§ 5.44(a)” filed by Classic British Limousine Service, Inc., on April 22, 2013, is granted, in part.

 2. That this matter shall be referred to the Bureau of Technical Utility Services to take whatever further action may be warranted.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: August 15, 2013

ORDER ENTERED: AUGUST 15,2013

1. For reasons discussed *infra*, we will treat the Petition as a Petition for Rescission. [↑](#footnote-ref-1)
2. For a detailed discussion of the procedures for applying for a waiver of the vehicle age requirement, *see Rulemaking Re Motor Carrier Vehicle List and Vehicle Age Requirements*, Docket No. L-2013-2349042 (Proposed Rulemaking Order entered April 4, 2013) (*Proposed Rulemaking Order*). [↑](#footnote-ref-2)
3. The functions of the Commission’s former Bureau of Transportation and Safety have now been divided between TUS and the Bureau of Investigation and Enforcement. The Bureau of Investigation and Enforcement handles matters that are prosecutory in nature. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011). [↑](#footnote-ref-3)