

New Jersey Commissioner of Education

Final Decision

Board of Education of the Township of Brick,
Ocean County,

Petitioner,

v.

New Jersey Natural Gas Company,

Respondent.

Synopsis

This matter involves a provision of the Public School Contracts Law (PSCL) that prohibits boards of education from contracting with companies doing certain business in Iran. Pursuant to *N.J.S.A. 18A:18A-49.4*, an entity bidding on or entering into a contract with a board of education must certify that the entity is not on the State Department of the Treasury’s list of entities engaged in investment activities in Iran (Disclosure Form). In this case, the Board filed a motion for summary decision, seeking a ruling that respondent – which supplies natural gas to the Board – must provide a Disclosure Form as a condition for payment. Respondent filed a cross-motion for summary decision, seeking a ruling that it is not required to provide a Disclosure Form, and ordering the Board to pay amounts due for gas already supplied by respondent.

The ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; the threshold issue here is one of jurisdiction; respondent is a public utility that provides natural gas services in several counties in New Jersey in accordance with a tariff approved by the New Jersey Board of Public Utilities (BPU); the petitioning Board contended that the respondent is required by the PSCL, through the law prohibiting public contracts with companies doing business with Iran, to sign the Disclosure Form “as a prerequisite to formalizing a purchase order/payment of public funds”; respondent argued that New Jersey public utilities are regulated by the BPU, not the Department of Education, so the case must be dismissed for lack of jurisdiction. The ALJ concluded that respondent is not required to provide a Disclosure Form as a condition for payment by the Board, because the tariff under which respondent supplies gas to the Board is not a contract subject to the PSCL. Accordingly, the ALJ denied the Board’s motion for summary decision and granted respondent’s motion for summary decision as to the issue of the Disclosure Form; however, the portion of respondent’s motion dealing with the payment of amounts due was denied, as the ALJ concluded that jurisdiction over such issues lies with the BPU and not the Commissioner.

Upon a comprehensive review of this matter, the Commissioner agreed with the ALJ’s findings and conclusions. Accordingly – finding petitioner’s exceptions to be unpersuasive – respondent’s motion for summary decision was granted to the extent that the Commissioner found that respondent is not required to provide a Disclosure Form to the Board; however, respondent’s motion for summary decision was denied with regard to its request to require the Board to pay its outstanding balance, on the basis of jurisdiction.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

291-21

OAL Dkt. No. EDU 03720-21

Agency Dkt. No. 17-2/21

New Jersey Commissioner of Education

Final Decision

Board of Education of the Township of
Brick, Ocean County,

Petitioner,

v.

New Jersey Natural Gas Company,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the Board pursuant to *N.J.A.C. 1:1-18.4*, and respondent's reply thereto, have been reviewed and considered.

This matter involves a provision of the Public School Contracts Law (PSCL) that prohibits boards of education from contracting with companies doing certain business in Iran. Pursuant to *N.J.S.A. 18A:18A-49.4*, an entity bidding on or entering into a contract with a board of education must certify that the entity is not on the State Department of the Treasury's list of entities engaged in investment activities in Iran (Disclosure Form). *See also N.J.S.A. 52:-32.58*. Here, the Board filed a motion for summary decision, seeking a ruling that respondent, which supplies gas to the Board, must provide a Disclosure Form as a condition for payment. Respondent filed a cross-motion for summary decision, seeking a ruling that it is not required to provide a Disclosure Form, and ordering the Board to pay amounts due for gas already supplied

by respondent.¹ The Administrative Law Judge (ALJ) concluded that respondent is not required to provide a Disclosure Form as a condition for payment by the Board, because the tariff under which respondent supplies gas to the Board is not a contract subject to the PSCL. Accordingly, the ALJ denied the Board's motion for summary decision, and granted respondent's motion for summary decision as to the issue of the Disclosure Form. However, the ALJ denied the portion of respondent's motion for summary decision regarding payment of amounts due, concluding that jurisdiction over such issues lies with the Board of Public Utilities (BPU).

In its exceptions, which reiterate arguments made below, the Board contends that the definition of contract in the PSCL includes purchase orders, which is the mechanism by which the Board pays respondent. Therefore, according to the Board, respondent is required to complete a Disclosure Form as a condition for payment.

In reply, respondent argues that the ALJ properly found that the PSCL does not apply to respondent because it is a public utility that provides services pursuant to a tariff, not a contract with the Board. Respondent also contends that purchase orders unilaterally issued by the Board do not create an agreement between the parties or a legally binding relationship enforceable by law, such that the purchase orders are not contracts governed by the PSCL.

Upon review, the Commissioner concurs with the ALJ that the question of whether respondent is required to provide a disclosure form arises from the PSCL and is therefore within the Commissioner's jurisdiction. The Commission further agrees with the ALJ that respondent is not required to provide a Disclosure Form as a condition for payment by the Board, because the tariff under which respondent supplies gas to the Board is not a contract subject to the

¹ The Board has withheld payments since July 2018, totaling approximately \$1.3 million as of August 2021.

PSCL. As the New Jersey Supreme Court explained in *Application of Saddle River*, 71 N.J. 14 (1976), a tariff is a schedule of rates that applies equally to all customers, rather than a contract that is individually negotiated between parties.

The Commissioner does not find the Board's exceptions persuasive. The PSCL defines a contract as "any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a board of education which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement." *N.J.S.A. 18A:18A-2(n)*. However, the "purchase orders" generated by the Board as part of its payment processing system do not represent an agreement between the Board and respondent regarding terms for the provision of and payment for natural gas. Those terms are set by – and enforceable based upon – the tariff. The Commissioner also concurs with the ALJ that the Commissioner lacks jurisdiction to require the Board to pay its outstanding balance to respondent, as the BPU has jurisdiction over billing. *N.J.S.A. 48:2-13*.

Accordingly, the Initial Decision is adopted as the final decision in this matter.

IT IS SO ORDERED.²



ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 18, 2021
Date of Mailing: November 18, 2021

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 03720-21

AGENCY DKT. NO. 17-2/21

**BRICK TOWNSHIP BOARD
OF EDUCATION,**

Petitioner,

v.

**NEW JERSEY NATURAL GAS
COMPANY,**

Respondent.

Ryan Amberger, Esquire, for petitioner (Montenegro, Thompson, Montenegro & Genz, P.C., attorneys)

Teresa L. Moore, Esquire, for respondent (Riker, Danzig, Scherer, Hyland & Perretti, attorneys)

Record Closed: August 31, 2021

Decided: October 5, 2021

BEFORE DEAN J. BUONO, ALJ:

STATEMENT OF THE CASE

In this matter, petitioner Brick Township Board of Education (Brick) seeks an order finding that respondent New Jersey Natural Gas Co. (NJNG), which is a public utility that supplies gas to Brick, must, as a condition for payment, provide Brick with a signed Disclosure of Investment Activities in Iran Form (Disclosure Form) pursuant to N.J.S.A. 18A:18A-49.4. Under that provision, which is part of the Public School Contracts Law (PSCL), N.J.S.A. 18A:18A-1 to -68, a board of education "shall implement and comply with [N.J.S.A. 52:32-55 to -61]," which "require[s] a person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract [with a state or local agency] to certify, prior to the time a contract is awarded and at the time the contract is renewed, that the person or entity is not identified on a list" maintained by the Department of the Treasury "as a person or entity engaging in investment activities in Iran[.]" N.J.S.A. 52:32-58(a).

As part of this matter, the parties have filed cross-motions for summary decision regarding their respective obligations under N.J.S.A. 18A:18A-49.4. For the following reasons, I deny Brick's motion and grant in part NJNG's motion by finding that NJNG is not obligated by law to provide Brick with a signed Disclosure Form.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

NJNG is a public utility that provides natural gas services in several counties in New Jersey in accordance with a tariff approved by the New Jersey Board of Public Utilities (BPU). Petition for Declaratory Ruling, ¶ 9; Answer, ¶ 9, First Affirmative Defense.¹ NJNG, a wholly owned subsidiary of New Jersey Resources Company, is the sole provider of natural gas services in Brick Township and has supplied natural gas to Brick since 1995. Certification of Suzanne Bostwick, ¶¶ 2-3. According to Brick, "[l]ike all payments for the receipt of services by the District, payments are made to NJNG pursuant to a purchase order[.]" Petition, ¶ 20.

¹ NJNG's tariff is available at [Microsoft Word - Tariff 9-1-21 monthly BGSS.docx \(njng.com\)](#).

In 2012, Governor Christie signed into law a bill amending the PSCL to specifically prohibit boards of education from contracting with companies doing certain business with Iran. L. 2012, c. 25, § 8 (eff. July 30, 2012). As a result, any person or entity that contracts with a board of education must certify through a Disclosure Form that the person or entity is not on the Department of the Treasury's list of companies engaged in business in Iran.²

In 2018, Brick asked NJNG to sign the Disclosure Form. NJNG declined to do so. In response, Brick has withheld payments from NJNG since August 2018. NJNG has continuously supplied Brick with natural gas despite Brick's nonpayment of its monthly bills. As of August 15, 2021, Brick's outstanding balance with NJNG was \$1,307,330.25.³ Bostwick Cert., ¶ 5.

On February 5, 2021, Brick filed with the Commissioner of Education (Commissioner) a petition for a declaratory ruling, "pray[ing] that the Commissioner shall construe the provisions of N.J.S.A. 18A:18A:49.4 and N.J.S.A. 52:32-55 et seq. and determine and declare whether [NJNG] is required to or exempt from providing the [Disclosure Form], and, if not exempt, declare when and how often the form must be provided to [Brick] for continued receipt of services." Petition. According to Brick, the arrangement between the school board and NJNG for the provision of natural gas services is governed by N.J.S.A. 18A:18A-49.4 and N.J.S.A. 52:32-55 et al., such that NJNG must sign the Disclosure Form "before the Board can finalize a purchase order and relinquish payment to NJNG for services." Petition, ¶ 21.

On March 30, 2021, NJNG filed an answer with the Commissioner. In its answer, the company set forth several affirmative defenses, including (1) the tariff under which NJNG supplies gas to its customers "governs all terms and conditions" of its services, and since the tariff does not require NJNG to provide Brick with the Disclosure Form, NJNG has no duty to provide it; (2) a tariff is not a public contract that is subject to the

² Available at [DisclosureofInvestmentActivitiesinIran.pdf \(state.nj.us\)](#).

³ According to Brick, "[t]he funds to make payment in full have at all times been encumbered and available for payment." Motion, Statement of Facts, ¶ 11.

law requiring the Disclosure Form or the PSCL; (3) Brick is in violation of N.J.A.C. 14:3-7.6(a), which requires gas service customers to “pay all undisputed charges,” and should be ordered to pay its outstanding balance for services received; (4) the matter should be dismissed because the BPU, and not the Commissioner of Education, has jurisdiction over public utilities like NJNG, and the Department of the Treasury, and not the Commissioner of Education, has jurisdiction over N.J.S.A. 52:32-55 et seq.

On April 16, 2021, the Acting Commissioner, Angelica Allen-McMillan, notified the parties that she had declined Brick’s request for a declaratory ruling pursuant to N.J.S.A. 52:14-B-8 and N.J.A.C. 6A:3-2.1, and that the matter would proceed instead as a petition of appeal pursuant to N.J.A.C. 6A:3. The same day, the Department of Education, Office of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL) as a contested case. The transmittal sheet states that “[p]etitioner seeks an order declaring whether respondent is required to file the [Disclosure Form], but that “[j]urisdiction is a threshold inquiry.”

In August 2021, the parties filed cross-motions for summary decision. According to Brick, NJNG is required by the PSCL, through the law prohibiting public contracts with companies doing business with Iran, to sign the Disclosure Form “as a prerequisite to formalizing a purchase order/payment of public funds.”

On the contrary, NJNG submits, as also reflected in its affirmative defenses, that BPU has approved a tariff that governs the provision and payment for services provided by NJNG, and Brick is obligated under the tariff and public utilities law to pay for the services it has received from NJNG; Brick has no legal basis for its stance that payment may be withheld absent NJNG’s certification regarding any investment activities it conducts with Iran; NJNG’s tariff governs the terms and conditions of its relationship with Brick and other customers, and the tariff is not a contract that is subject to the law prohibiting public contracts with companies doing business in Iran or the PSCL; it is undisputed that NJNG is not on the Department of the Treasury’s list of companies with

investment activities in Iran, another reason NJNG should not have to sign the Disclosure Form as a prerequisite to payment by Brick for outstanding charges.

LEGAL DISCUSSION

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). Such motion “shall be served with briefs and with or without supporting affidavits” and “[t]he decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). When the motion “is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid.

In this dispute, there are no genuine issues of material fact and, for the reasons that follow, NJNG is entitled to partial summary decision as a matter of law.

As a threshold matter, it is necessary to address the Commissioner’s jurisdiction over the dispute between the parties. NJNG raised jurisdictional issues in its affirmative defenses and in transmitting the matter to the OAL, the Commissioner advised that “[j]urisdiction is a threshold inquiry.”

By its petition and motion for summary decision, Brick requests that the Commissioner “construe the provisions of N.J.S.A. 18A:18A-49.4 and N.J.S.A. 52:32-55 et seq. and determine and declare whether [NJNG] is required to or exempt from providing the Disclosure of Investment Activities in Iran form, and, if not exempt, declare when and how often the form must be provided to [Brick] for continued receipt of services.”

In its affirmative defenses and cross-motion, NJNG argues that “[t]he Commissioner should dismiss the Petition for lack of jurisdiction because New Jersey public utilities are regulated by the [BPU], not the Department of Education,” and “because N.J.S.A. 52:32-55 et seq., the law on which the Petition is based, is enforced by the Department of the Treasury and not the Department of Education.” NJNG also argues that Brick is in violation of N.J.A.C. 14:3-7.6(a), which requires gas service customers to “pay all undisputed charges,” and by cross-motion seeks an order requiring Brick to pay its outstanding balance for services rendered by NJNG.

To the extent that Brick's appeal arises under the PSCL, the Commissioner has jurisdiction over this matter. Pursuant to N.J.S.A. 18A:6-9, the Commissioner generally has “jurisdiction to hear and determine . . . all controversies and disputes arising under the school laws[.]” It is clear that this dispute arises under a school law—the PSCL, which at N.J.S.A. 18A:18A-49.4 mandates that a school board like Brick comply with N.J.S.A. 52:32-55 to -61 and require “a person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract [with the school board] to certify” that it is not on the Department of the Treasury's list of companies doing business with Iran. Thus, to resolve this dispute, it is necessary to interpret whether N.J.S.A. 18A:18A-49.4 applies to NJNG, such that the public utility must submit the Disclosure Form as argued by Brick. This question is squarely within the Commissioner's jurisdiction to decide disputes arising under the school laws, and not within the BPU or the Department of the Treasury's jurisdiction.

However, to the extent that NJNG seeks by way of its cross-motion for summary decision an order “requiring [Brick] to immediately pay the amounts admittedly due for gas service,” the Commissioner does not have jurisdiction. Under the Department of Public Utilities Act, N.J.S.A. 48:2-1 to -91, the BPU “shall have general supervision and regulation of and jurisdiction and control over all public utilities, and more specifically “all services necessary for the transmission and distribution of . . . gas, including but not limited to safety, reliability, metering, meter reading and *billing*, [are within] the jurisdiction of the Board of Public Utilities.” N.J.S.A. 48:2-13(a) and (d) (emphasis added). Since the Commissioner's jurisdiction in this matter extends only to deciding

the parties' respective obligations under N.J.S.A. 18A:18A-49.4, any remaining dispute the parties have over nonpayment for service is properly governed by public utilities law and subject to the jurisdiction of the BPU.

NJNG does not have to sign the Disclosure Form for Brick because the tariff under which NJNG supplies gas to Brick is not a contract subject to the PSCL or the law prohibiting government agencies from contracting with companies that support Iran.

As noted above, in 2012, Governor Christie signed into law a bill prohibiting state and local agencies from awarding public contracts to companies with investments in the energy or finance sectors of Iran. For purposes of that law, a "public contract" is defined as "any contract or agreement entered into by a state or any instrumentality of that state to purchase goods, services or both." N.J.S.A. 52:32-1.3.

Under the law, the Legislature recognized that "[t]here are moral and reputational reasons for state and local governments to not engage in business with foreign companies that have business activities benefiting foreign states, such as Iran, that pursue illegal nuclear programs, support acts of terrorism and commit violations of human rights." N.J.S.A. 52:32-55(f).

The law covers any person or entity that "provides goods or services of \$20,000,000 or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran" and any "financial institution that extends \$20,000,000 or more in credit" to anyone who "will use the credit to provide goods or services in the energy sector in Iran." N.J.S.A. 52:32-56(f). The law mandates that "the Department of the Treasury shall, using credible information available to the public, develop a list of persons or entities it determines engage in investment activities in Iran," such that "[a] person or entity that, at the time of bid or proposal for a new contract or renewal of an existing contract, is identified on" the list "shall be ineligible to, and shall not, bid on, submit a proposal for, or enter into or renew,

a contract with a State agency for goods or services.” N.J.S.A. 52:32-57(a) and (b) (emphasis added).

Relevant to this matter, the Legislature, through the act, amended the PSCL to specifically prohibit boards of education from contracting with companies that do business with Iran. L. 2012, c. 25, § 8. Thus, under N.J.S.A. 18A:18A-49.4, a board of education “shall implement and comply with the provisions of P.L.2012, c.25 (C.52:32-55 et al.), except that the board shall rely on the list developed by the State Department of the Treasury pursuant to section 3 of P.L.2012, c.25 (C.52:32-57).” N.J.S.A. 18A:18A-49.4(a).

And “[i]f the board determines that a person or entity has submitted a false certification concerning its engagement in investment activities in Iran under section 4 of P.L.2012, c.25 (C.52:32-58), the board shall report to the New Jersey Attorney General the name of that person or entity, and the Attorney General shall determine whether to bring a civil action against the person[.]” N.J.S.A. 18A:18A-49.4(b).

The PSCL “establishes specific requirements with which public schools must abide when contracting for services and goods” in order to “protect [] the public interest by keeping costs at a minimum and preventing fraud.” Williams Scotsman, Inc. v. Garfield Bd. of Educ., 379 N.J. Super. 51, 56 (App.Div.2005); Bd. of Educ. of the City of Asbury v. Hook, 38 N.J. 213, 231 (1962). Thus, “[e]very contract for the provision or performance of any goods or services, the cost of which in the aggregate exceeds the bid threshold [set by N.J.S.A. 18A:18A-3], shall be awarded only by resolution of the board of education to the lowest responsible bidder after public advertising for bids and bidding therefor, except as is provided otherwise in this chapter or specifically by any other law.” N.J.S.A. 18A:18A-4(a).

As otherwise provided by N.J.S.A. 18A:18A-5, “[a]ny contract, the amount of which exceeds the bid threshold, shall be negotiated and awarded by the board of education by resolution at a public meeting without public advertising for bids and

bidding therefor if the subject matter thereof consists of . . . [t]he supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities, in accordance with the tariffs and schedules of charges made, charged and exacted, filed with said board." N.J.S.A. 18A:18A-5(a)(7).

The P&CL defines a "contract" as "any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a board of education which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement." N.J.S.A. 18A:18A-2(n). The act further defines "purchase order" as "a document issued by the purchasing agent authorizing a purchase transaction with a vendor to provide or perform goods or services to the board of education, which, when fulfilled in accordance with the terms and conditions of a request of a purchasing agent and other provisions and procedures that may be established by the board of education, will result in payment by the board of education." N.J.S.A. 18A:18A-2(v). Finally, the P&CL allows "competitive contracting," which "means the method . . . of contracting for specialized goods and services in which formal proposals are solicited from vendors; formal proposals are evaluated by the purchasing agent or counsel or school business administrator; and the board of education awards a contract to a vendor or vendors from among the formal proposals received." N.J.S.A. 18A:18A-2(p).

The BFU is vested with the "general supervision and regulation of and jurisdiction and control over all public utilities[.]" N.J.S.A. 48:2-13(a). In relevant part, "[t]he term 'public utility' shall include every . . . corporation . . . that now or hereafter may own, operate, manage or control within this State any . . . pipeline, gas . . . system, plant or equipment for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof." Ibid.

Under the rules governing public utilities, N.J.A.C. 14:1-1.1 to -31-1.18, "[e]ach public utility shall, prior to offering a utility service to the public, submit a tariff or tariff amendments to the Board for approval." N.J.A.C. 14:3-1.3(a). The tariff must include such information as "the public utility's service area;" "all services that the utility offers, and all terms and conditions regarding the services;" and, "all of the public utility's rates and charges for all services that the utility offers." N.J.A.C. 14:3-1.3(b).

The rules recognize, however, that a public utility may enter into a contract or agreement separate from the tariff. N.J.A.C. 14:3-1.3(e). Thus, for example, "[i]f a gas . . . utility plans to enter into a contract or agreement with a particular customer or group of customers, for service at rates different from those authorized under the utility's Board-approved tariff, the utility shall file a petition for approval[.]" Ibid.

In Application of Saddle River, 71 N.J. 14 (1976), on which NJNG relies in support of its notion, the Court discussed the difference between a tariff and a contract. First, the Court recognized that "many public utilities . . . are required to publish tariffs which apply equally to all customers and hence preclude the negotiation of individual agreements," while others "conduct many of their operations pursuant to contract. Id. at 22. Second, the Court explained "the distinction between the terms 'tariff' and 'contract' as applied to public utilities." Id. at 29.

According to the Court, "[a] tariff is a published schedule of rates, filed by a public utility, and thereafter, in the absence of successful challenge, applicable equally to all customers," and "such a tariff is not a mere contract[;]" instead, "[i]t is the law, and its provisions are binding on a customer whether he knows of them or not." Ibid (citing Essex Cnty. Welfare Bd. v. New Jersey Bell Tel. Co., 126 N.J. Super. 417, 421-22 (App.Div.1974). By contrast, "[a] contract . . . is an agreement individually negotiated between a utility and a particular customer, with rates that may differ according to circumstances." Ibid.

Importantly, the Court pointed out that “[w]here a public utility has been granted a franchise to serve a designated area, whether it sets its rates by tariff or by negotiated contract, advertising for competitive bids is of little avail since generally only one possible supplier of the service exists.” Id. at 31. The PSCL and other public bidding statutes “dispense[] with public bidding where a public utility is involved . . . because the legislative purpose behind public bidding—that is, to obtain a benefit for the taxpayers by securing competition and guarding against favoritism, improvidence, extravagance and corruption—becomes an impractical objective.” Capasso v. L. Pucillo & Sons, Inc., 132 N.J. Super. 542, 550 (Ch. and Law Divs. 1974), aff’d, 132 N.J. Super. 473 (App.Div.1974).

Since “it is necessary and desirable in our society that there be certain services rendered on a continuous basis without cutthroat competition, we have the notion of public utilities” Id. at 550-51. Thus, “[i]n order to guard against abuses by the publicly sanctioned monopoly it is required that the rates to be charged by the public utility be regulated,” and “[t]hat is the protection afforded to the public” and “that is the same kind of protection which the general bidding statutes seek to achieve for the taxpaying public.” Id. at 551. As such, “[t]he Legislature had in mind that it would be impractical if not impossible, as a general proposition, to require a public utility to bid for services a municipality [or school board] needed.” Ibid.

As Brick notes, under the PSCL, a school board “shall implement and comply with the provisions of P.L.2012, c.25 (C.52:32-55 et al.),” which requires “a person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract to certify, prior to the time a contract is awarded and at the time the contract is renewed, that the person or entity is not” on the Department of the Treasury’s list of companies engaged in business in Iran. N.J.S.A. 18A:18A-49.4(a); N.J.S.A. 52:32-58(a). However, it is clear from this language that the Disclosure Form needs to be signed only when a statute requires the submission of competitive bids or proposals by a company in order to contract with a public entity. And because the PSCL exempts NJNG, as a public utility regulated by the BPU, from public bidding and because NJNG supplies gas to Brick, and its many other customers, by tariff and not by contract, NJNG

does not have to fill out the Disclosure Form as urged by Brick. The relevant laws— N.J.S.A. 52:2-58 and N.J.S.A. 18A:18A-49.4—simply do not apply to NJNG's relationship with Brick.

As the Court explained in Saddle River, “[a] tariff is a published schedule of rates . . . applicable equally to all customers,” and “such a tariff is not a mere contract,” which “is an agreement individually negotiated between a utility and a particular customer, with rates that may differ according to circumstances.” The fact that Brick may submit a purchase order, which generally falls under the definition of contract under N.J.S.A. 18A:18A-2, for NJNG's services does not mean Brick “contracts” with NJNG in a sense governed by the PSCL or the law prohibiting public contracts with companies engaged in business in Iran. Instead, as discussed, the PSCL exempts NJNG from its requirements such as public bidding and certifying that it does not do business in Iran because NJNG supplies its product to Brick through a tariff subject to the jurisdiction of the BPU.⁴

I **CONCLUDE** that based on the foregoing, Brick's motion for summary decision should be **DENIED** and NJNG's cross-motion for summary decision **GRANTED** in part by finding that N.J.S.A. 18A:18A-49.4 (through N.J.S.A. 52:32-55 to -61) does not apply to NJNG's relationship with Brick. Likewise, NJNG's cross-motion is **DENIED** in part by finding that any remaining dispute over payment by Brick for NJNG's services is subject to the jurisdiction of the BPU, and not the Commissioner.

⁴ The Department of the Treasury's Iran list is available at [Chapter25List.pdf \(state.nj.us\)](#). Clearly, NJNG is not on the list. However, because NJNG is not required to sign the Disclosure Form attesting that the company is not on the list, it is unnecessary to reach NJNG's argument that the company does not have to sign the Disclosure Form because N.J.S.A. 18A:18A-49.4 provides that a board of education such as Brick can simply check the list instead of having a company sign the form certifying that the company is not on the list.

ORDER

It is hereby **ORDERED** that Brick's motion for summary decision should be **DENIED**. It is further **ORDERED** that NJNG's cross-motion for summary decision is **GRANTED** in part by finding that N.J.S.A. 18A:18A-49.4 (through N.J.S.A. 52:32-55 to -61) does not apply to NJNG's relationship with Brick. It is further **ORDERED** that NJNG's cross-motion is **DENIED** in part by finding that any remaining dispute over payment by Brick for NJNG's services is subject to the jurisdiction of the BPU, and not the Commissioner

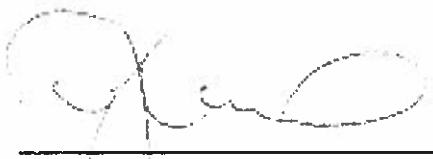
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 5, 2021

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

10/5/2021

Date Mailed to Parties:

10/5/2021

mph