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THE CONNECTICUT LIGHT AND POWER COMPANY *v.* PUBLIC UTILITIES REGULATORY AUTHORITY
(AC 45899)

Suarez, Clark and Seeley, Js.

Syllabus

The plaintiff, E Co., appealed to this court from the trial court's judgment dismissing in part and remanding in part its administrative appeal from a final decision of the defendant, the Public Utilities Regulatory Authority (PURA). In 2017, E Co. filed an application with PURA that sought approval of a multiyear plan to amend its rates. While the rate case was pending, E Co.'s service territory suffered significant damage as a result of five storms. In 2018, PURA approved a settlement agreement with E Co. that resolved the rate case and created a new mechanism to allow E Co. to recover the costs of certain infrastructure investments, including core capital projects, through the base rates charged to its customers. Under this rate mechanism, if E Co. spent more than a specified amount on certain infrastructure investments in a given year, those excess costs could be recovered through a separate charge billed to its customers. The agreement also expressly provided that E Co. could seek review and recovery of all storm costs incurred after December 31, 2016, either during the next rate case or by initiating a separate, contested case. E Co. subsequently initiated a contested case to recover certain expenses it incurred in responding to the five storms, which PURA approved. However, E Co. did not seek to have PURA review and approve certain storm related capital projects but, instead, sought to recover them in its base distribution rates when it filed its annual rate adjustment mechanism application in March, 2021. In its final decision, PURA determined that E Co.'s storm related capital costs did not constitute core capital projects under the 2018 rate settlement and directed E Co. to remove those costs from its core capital program. PURA also ordered that the carrying charges that E Co. accrued on outstanding customer balances be calculated using the prime interest rate rather than the higher weighted average cost of capital. E Co. appealed PURA's decision to the trial court, claiming that PURA violated the terms of the 2018 rate settlement by precluding E Co. from recovering, through base distribution rates, its storm related capital investments, that PURA had no legal basis for directing it to remove the storm related capital investments from its rate recovery, and that PURA erred in retroactively adjusting the rate at which carrying charges are calculated. Following briefing and oral argument, the trial court determined that, as to counts one and two of E Co.'s complaint, PURA had the discretion to resolve the matter as it had done, there was substantial evidence to sustain PURA's decision regarding E Co.'s storm related capital investments, and that portion of PURA's decision was reasonable. As to count three, the court determined that the issue of the appropriate interest rate to be applied to carrying charges was not fully discussed in PURA's decision because it did not set forth the position of E Co. and the rebuttal by PURA. Accordingly, the court dismissed counts one and two of the complaint and remanded the case to PURA with direction to render a supplemental decision regarding the issue raised in count three. After E Co. appealed the trial court's decision, this court ordered supplemental briefing on the issue of whether E Co.'s appeal should be dismissed for lack of a final judgment because the trial court's decision did not dispose of all counts of E Co.'s complaint. E Co. argued that the trial court's remand order as to count three was a final determination of the issues raised because it constituted an order sustaining its administrative appeal pursuant to statute (§ 4-183 (j)) because PURA's decision failed to comply with the statute (§ 4-180 (c)) governing PURA's final decision. PURA argued that the trial court's remand was a remand for an articulation and that the decision was therefore not a final judgment for purposes of appeal. *Held* that the trial court's decision dismissing in part and remanding in part E Co.'s administrative appeal was not a final judgment for purposes of

appeal to this court, and, accordingly, E Co.'s appeal was dismissed for lack of subject matter jurisdiction: on the basis of its review of the record, this court concluded that the remand order constituted a remand for an articulation and not an order sustaining the administrative appeal pursuant to § 4-183 (j) because the court's decision conspicuously lacked any finding that E Co.'s substantial rights were prejudiced as a result of one or more of the errors enumerated in § 4-183 (j); moreover, there was no language in the court's remand order supporting E Co.'s contention that the court sustained its administrative appeal with respect to count three because the court concluded that the decision failed to comply with the requirements of § 4-180 (c); furthermore, the court's remand order, by its own terms, required PURA to clarify the bases for its decision as to count three of E Co.'s complaint by including a discussion of the parties' respective positions on that issue during the course of the administrative proceedings.

Argued November 9—officially released December 26, 2023

Procedural History

Appeal from the decision of the defendant requiring the plaintiff to, inter alia, remove certain catastrophic storm costs from its base distribution rates, brought to the Superior Court in the judicial district of New Britain, where the court, *Cordani*, *J.*, granted the motion to intervene as a defendant filed by the Office of Consumer Counsel; thereafter, the court, *Hon. Henry S. Cohn*, judge trial referee, dismissed in part and remanded in part the plaintiff's appeal, from which the plaintiff appealed to this court. *Appeal dismissed.*

Vincent P. Pace, with whom were *Damian K. Gunningsmith*, and, on the brief, *David S. Hardy*, for the appellant (plaintiff).

Seth A. Hollander, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellee (defendant).

James M. Talbert-Slagle, with whom, on the brief, were *Claire E. Coleman* and *William E. Dornbos*, for the appellee (intervenor).

Opinion

CLARK, J. The plaintiff, The Connecticut Light and Power Company, doing business as Eversource Energy (Eversource), appeals from the Superior Court's judgment dismissing in part and remanding in part its administrative appeal from a decision of the defendant, Public Utilities Regulatory Authority (PURA).[1] The heart of this dispute stems from a 2021 decision by PURA that required Eversource to remove $17.188 million of catastrophic storm costs from its base distribution rates. Eversource claims that PURA's decision was improper because it was predicated on a misinterpretation of a 2018 settlement agreement between the parties that established a multiyear electric distribution rate plan for Eversource. On appeal, Eversource claims that the Superior Court erred in (1) reviewing PURA's decision under a deferential standard of review, (2) affirming PURA's determination that certain storm related capital plant additions were not properly included in Eversource's "core" capital program under the terms of the parties' settlement agreement, and (3) affirming PURA's decision on the basis of an argument not proffered by PURA in the administrative proceedings. We conclude that the Superior Court's judgment is not an appealable final judgment. Consequently, because we lack subject matter jurisdiction, we dismiss Eversource's appeal.

We begin with the relevant facts and procedural history of the case. Eversource is a public service company that distributes electricity in Connecticut. PURA is the entity responsible for reviewing and regulating the rates that public utility companies, like Eversource, charge their customers. In 2017, Eversource filed an application with PURA that sought approval of a multiyear plan to amend its rates (rate case). While the rate case was pending, Eversource's service territory suffered significant damage as a result of five storms. In 2018, PURA approved a settlement agreement with Eversource that resolved the rate case. The agreement created a new mechanism to allow Eversource to recover, through the base rates charged to its customers, the costs of certain infrastructure investments (plant additions), which included "core" capital projects. Under this rate mechanism, if Eversource spent more than a specified amount on certain plant additions in a given year, those excess costs could be "reconciled" or recovered through an "Electric System Improvement" (ESI) charge billed to its customers. The agreement also expressly provided Eversource with two options for seeking review and recovery of all "storm costs" incurred after December 31, 2016: either during the next rate case or by initiating a separate, contested case sooner.

Later in 2018, Eversource initiated a contested case to recover the "incremental restoration expenses" it incurred in responding to the five storms, such as pay-

ments to privately contracted line crews and logistical expenses. In a final decision issued in 2019, PURA approved recovery of $141.026 million of such costs. Eversource did not, however, seek to have PURA review and approve the $17.188 million in capital costs that Eversource incurred in replacing its storm damaged infrastructure. Instead, Eversource categorized these storm related capital costs as core capital plant additions and sought to recover them in its base distribution rates when it filed its annual rate adjustment mechanism (RAM) application in March, 2021.

On September 15, 2021, PURA issued its final decision on Eversource's RAM application. PURA determined that Eversource's storm related capital costs did not constitute core capital additions under the 2018 rate settlement and directed Eversource to remove those costs from its core capital program. Additionally, PURA ordered the "carrying charges" that Eversource accrued on outstanding customer balances to be calculated using the prime interest rate rather than the higher "weighted average cost of capital."

On October 29, 2021, Eversource appealed PURA's decision to the Superior Court pursuant to General Statutes § 4-183. In count one of its complaint, Eversource claimed that PURA violated the terms of the 2018 rate settlement by precluding it from recovering, through base distribution rates, its storm related capital investments. In count two, Eversource claimed that PURA had no legal basis for directing it to remove the storm related capital investments from its rate recovery. In count three, Eversource claimed that PURA erred in retroactively adjusting the rate at which carrying charges are calculated.

On September 23, 2022, following briefing and oral argument, the Superior Court, *Hon. Henry S. Cohn*, judge trial referee, issued a memorandum of decision dismissing in part and remanding in part Eversource's appeal. With respect to counts one and two, the court determined that PURA had "the discretion under [General Statutes] § 16-19e to resolve this matter as it has done" and concluded that there was substantial evidence to sustain PURA's decision regarding Eversource's storm related capital investments and that this portion of the decision was reasonable. As to count three, the court determined that PURA's decision was "lacking," in that the issue of the appropriate interest rate to be applied to carrying charges was "not fully discussed, as [the decision did] not set forth the position of [Eversource] and the rebuttal by PURA." Accordingly, the court concluded that a supplemental decision on this issue was necessary. The court therefore dismissed counts one and two of Eversource's complaint but remanded the case to PURA with direction to render a supplemental decision regarding the issue raised in count three. Eversource appealed to this court from

the Superior Court's decision.[2]

After Eversource and PURA filed their appellate briefs in this court, but before oral arguments were held, this court ordered supplemental briefing on the issue of whether Eversource's appeal should be dismissed for lack of a final judgment because the Superior Court's decision from which Eversource appealed did not dispose of all counts of Eversource's complaint, specifically count three, which the court remanded to PURA for a supplemental decision. The parties addressed this jurisdictional issue during oral argument before this court.

Although the parties agree that the court's September 23, 2022 decision fully disposed of counts one and two of Eversource's complaint and that the Superior Court remanded count three to PURA, they disagree with respect to whether the court's order remanding the matter to PURA as to count three constituted a final judgment for purposes of appeal. Eversource contends that the remand order was a final determination of the issues raised in count three because it constituted an order sustaining its appeal pursuant to § 4-183 (j). Specifically, it argues that the court's determination that PURA's decision as to count three was "lacking," failed to fully discuss the issues, and failed to set forth the position of Eversource and PURA's response constituted an order sustaining its appeal under § 4-183 (j) for failure to comply with General Statutes § 4-180 (c), which requires agencies to include in any final decision the agency's findings of fact and conclusions of law necessary to its decision.[3]

PURA and the intervenor-appellee, the Office of Consumer Counsel (OCC), interpret the Superior Court's remand order differently.[4] They argue that the court's remand as to count three is a remand for an articulation and that, pursuant to *Commission on Human Rights & Opportunities* v. *Hartford*, 138 Conn. App. 141, 50 A.3d 917, cert. denied, 307 Conn. 929, 55 A.3d 570 (2012), the court's September 23, 2022 decision was not a final judgment for purposes of appeal. They argue that the Superior Court resolved only two of Eversource's three counts and that Eversource improperly attempts to appeal the court's decision before the court has disposed of all the counts of Eversource's complaint. We agree with PURA and OCC.

General Statutes § 4-184 provides that "[a]n aggrieved party may obtain a review of any final judgment of the Superior Court under this chapter. The appeal shall be taken in accordance with section 51-197b."[5] It is well established that "[t]he lack of a final judgment implicates the subject matter jurisdiction of an appellate court to hear an appeal. A determination regarding . . . subject matter jurisdiction is a question of law . . . [and, therefore] our review is plenary." (Internal quotation marks omitted.) *Khan* v. *Hillyer*, 306 Conn. 205,

209, 49 A.3d 996 (2012). To the extent our analysis requires us to interpret the Superior Court's memorandum of decision in this case, it is similarly well established that the construction of a court's order or judgment is also a question of law. See, e.g., *Deutsche Bank National Trust Co.* v. *Gabriele*, 141 Conn. App. 547, 550, 61 A.3d 603 (2013) (construction of order or judgment is question of law).

We begin with the legal principles at play. Section 4-183, which governs appeals under the Uniform Administrative Procedure Act, contains two subsections, (h) and (j), that authorize remands. "Subsection (h) permits the trial court, prior to a hearing on the merits and upon request of a party, to order that . . . additional evidence be taken before the agency, which in turn allows the agency to modify its findings or decision."[6] (Internal quotation marks omitted.) *Hogan* v. *Dept. of Children & Families*, 290 Conn. 545, 558, 964 A.2d 1213 (2009). Remand orders issued under subsection (h) are not final judgments. See *Commission on Human Rights & Opportunities* v. *Hartford*, supra, 138 Conn. App. 151.

Remand orders issued pursuant to subsection (j), on the other hand, are final judgments because they are issued in connection with orders sustaining an administrative appeal following a determination that a party's substantial rights have been prejudiced because the agency's "findings, inferences, conclusions, or decisions" suffer from at least one of six different defects enumerated in that subsection. General Statutes § 4-183 (j). Section 4-183 (j) provides: "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k)[7] of this section or remand the case for further proceedings. For purposes of this section, a remand is a final judgment." (Footnote added.)

Subsections (h) and (j), however, are not the only bases for remands to an administrative agency. See *Commission on Human Rights & Opportunities* v. *Hartford*, supra, 138 Conn. App. 153–54; see also *Hogan* v. *Dept. of Children & Families*, supra, 290 Conn. 558

n.7. In *Hartford*, this court explained that, "[a]lthough the plain text of § 4-183 expressly refers to remands only in subsection (j) and implicitly refers to remands in subsection (h), it does not state that the types of remands addressed in § 4-183 constitute an exhaustive list despite the legislature's knowledge of how to express such an intent." (Footnote omitted.) *Commission on Human Rights & Opportunities* v. *Hartford*, supra, 153. We made clear that "[r]eviewing courts typically have the ability to obtain articulations from the tribunals whose decisions they review." Id., 153–54. A remand for an articulation is not a final judgment. Id., 154.

In the present case, the Superior Court's memorandum of decision as to count three provided as follows: "With regard to the issue of the appropriate interest rate that [Eversource] may employ on carrying charges, as indicated at this court's hearing of September 22, 2022, the final decision is lacking. The issue is not fully discussed, as [the decision] does not set forth the position of [Eversource] and the rebuttal by PURA. This portion of the administrative appeal must be remanded to PURA for a supplemental decision." The court's rescript states: "Counts 1 and 2 of the administrative appeal are dismissed and count 3 is remanded."

On the basis of our review, we conclude that the remand order in this case constituted a remand for an articulation and not an order sustaining the appeal pursuant to § 4-183 (j). This court's decision in *Commission on Human Rights & Opportunities* v. *Hartford*, supra, 138 Conn. App. 141, is instructive. In that case, the Superior Court sua sponte raised issues regarding the clarity of the referee's underlying decision. Id., 150. The court ultimately issued an order remanding the matter to the referee " 'to issue a clarification.' " Id. The defendant subsequently filed a motion requesting that the court issue a clarification of its May 4, 2010 remand order. Id. On May 17, 2010, the court issued a clarification that specified three points for the referee to clarify. Id., 150–51.

Thereafter, the referee filed with the court a response to the remand order that addressed the three points for which the court had asked for clarification. Id., 151. The defendant subsequently moved to dismiss the administrative appeal for lack of subject matter jurisdiction, claiming that the remand order of May 4, 2010, was a final judgment pursuant to § 4-183 (j) and that the court's jurisdiction over the administrative appeal had therefore terminated. Id. The Superior Court denied the motion on the basis that the prior remand order was solely for clarification and not an order sustaining the appeal pursuant to § 4-183 (j). Id.

On appeal to this court, this court concluded that the May 4, 2010 remand order was not issued under subsection (j) of § 4-183. Id., 153. We observed that,

"[i]n the clarification of its remand order, the court did not find that the 'substantial rights of the person appealing' had been prejudiced as a result of one or more of the errors enumerated in § 4-183 (j), nor [did] the remand functionally affect substantial rights." Id. This court concluded that "the May 4, 2010 remand order [was] not within the scope of § 4-183, can properly be characterized as a request for an articulation and, therefore, was not a final judgment." Id., 154.

The same is true in the present case. Although Eversource argues that the court's remand order was an order sustaining its appeal pursuant to § 4-183 (j), the court's decision conspicuously lacks any finding that Eversource's substantial rights were prejudiced as a result of one or more of the errors enumerated in § 4-183 (j). See General Statutes § 4-183 (j) ("The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced . . . . If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings."). Further, there is no language in the court's remand order supporting Eversource's contention that the court sustained its appeal with respect to count three because the court concluded that the decision failed to comply with the requirements of § 4-180 (c). Rather, the Superior Court's remand order, by its own terms, required PURA to clarify the bases for its decision as to count three of Eversource's complaint by including a discussion of the parties' respective positions on that issue during the course of the administrative proceedings.[8] We therefore conclude that the remand order in this case is properly characterized as a remand for an articulation.[9]

Having concluded that the court's remand order as to count three was a remand for an articulation and not a remand order pursuant to § 4-183 (j) sustaining Eversource's appeal with respect to that count, we also conclude that the Superior Court's decision did not fully dispose of all counts of Eversource's underlying complaint. As our case law and rules of practice make clear, "[a] judgment that disposes of only a part of a complaint is not a final judgment." (Internal quotation marks omitted.) *Krausman* v. *Liberty Mutual Ins. Co.*, 195 Conn. App. 682, 687, 227 A.3d 91 (2020). Indeed, "[t]he policy concerns underlying the final judgment rule are to discourage piecemeal appeals and to facilitate the speedy and orderly disposition of cases at the trial court level." (Internal quotation marks omitted.) *Heyward* v. *Judicial Dept.*, 159 Conn. App. 794, 799, 124 A.3d 920 (2015).

There are, of course, exceptions to this rule. In particular, a party may appeal if the partial judgment disposes of all causes of action against a particular party or

parties; see Practice Book § 61-3; or if the trial court makes a written determination regarding the significance of the issues resolved by the judgment and the chief justice or chief judge of the court having appellate jurisdiction concurs. See Practice Book § 61-4 (a). Neither of these exceptions applies here.

In sum, Connecticut law makes clear that appellate review must wait until there is a final judgment in the underlying action as to all counts of a complaint. Because the present appeal was taken prior to the Superior Court rendering a final judgment on all counts of Eversource's complaint, this court lacks jurisdiction over Eversource's appeal.

The appeal is dismissed.

In this opinion the other judges concurred.

[1] On November 9, 2021, the Office of Consumer Counsel (OCC) filed in the Superior Court a motion to intervene in the administrative appeal pursuant to General Statutes § 52-102 and Practice Book § 9-6. Pursuant to General Statutes § 16-2a, OCC is the statutory advocate for all Connecticut ratepayers in utility matters. On November 19, 2021, the Superior Court granted OCC's motion and added OCC as a party defendant. For ease of discussion, we refer to the defendants in this opinion individually by name.

[2] After this appeal was filed, PURA issued a supplemental decision on March 22, 2023, pursuant to Judge Cohn's remand order. On March 27, 2023, PURA filed a notice of its supplemental decision in the Superior Court. The same day, the Superior Court issued an order stating that "[t]he supplemental decision has been entered in the record. In light of the pending appeal, neither the court nor the parties need proceed further at this time."

[3] General Statutes § 4-180 (c) provides: "A final decision in a contested case shall be in writing or orally stated on the record and, if adverse to a party, shall include the agency's findings of fact and conclusions of law necessary to its decision, including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its decision. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed. The agency shall state in the final decision the name of each party and the most recent mailing address, provided to the agency, of the party or his authorized representative. The final decision shall be delivered promptly to each party or his authorized representative, personally or by United States mail, certified or registered, postage prepaid, return receipt requested. The final decision shall be effective when personally delivered or mailed or on a later date specified by the agency."

[4] See footnote 1 of this opinion. OCC did not file a principal brief in this appeal. It did, however, file a supplemental brief in response to this court's supplemental briefing order issued on September 15, 2023, that requested briefing on the finality of the Superior Court's decision.

[5] General Statutes § 51-197b (e) provides in relevant part: "The procedure on such appeal to the Appellate Court shall be in accordance with the procedure provided by rule or law for the appeal of judgments rendered by the Superior Court unless modified by rule of the judges of the Appellate Court. . . ."

[6] General Statutes 4-183 (h) provides: "If, before the date set for hearing on the merits of an appeal, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court."

[7] General Statutes § 4-183 (k) provides: "If a particular agency action is required by law, the court, on sustaining the appeal, may render a judgment that modifies the agency decision, orders the particular agency action, or orders the agency to take such action as may be necessary to effect the particular action."

[8] It is worth noting that the "supplemental decision" subsequently filed by PURA is consistent with an articulation and not a new decision following an order sustaining an appeal pursuant to § 4-183 (j). Indeed, the supplemental decision makes clear that, in accordance with the court's order, the supplemental decision "provides further explanation with respect to the calculation of carrying charges in the final decision" and that "[i]t does not modify, in any way, the conclusions of [PURA] or the orders in the final decision."

[9] Eversource also appears to argue that judges of the Superior Court lack the authority to order articulations of an administrative agency's decision. Although Eversource acknowledges this court's decision in *Hartford*, which held that a Superior Court, sitting as a reviewing court, has the authority to remand to an agency for an articulation of an agency's decision; *Commission on Human Rights & Opportunities* v. *Hartford*, supra, 138 Conn. App. 153–54; it argues that *Hartford* was wrongly decided and invites us to overrule it. It is well established, however, "that one panel of this court cannot overrule the precedent established by a previous panel's holding." *Staurovsky* v. *Milford Police Dept.*, 164 Conn. App. 182, 202, 134 A.3d 1263 (2016), appeal dismissed, 324 Conn. 693, 154 A.3d 525 (2017).