

# Light v. Pub. Utils. Regul. Auth.

Superior Court of Connecticut, Judicial District of New Britain, Tax and Administrative Appeals Division At New Britain

October 2, 2024, Decided

DOCKET NO.: HHB-CV-23-6081727-S

## Reporter

2024 Conn. Super. LEXIS 2067 \*

THE CONNECTICUT LIGHT & POWER, CO., d/b/a  
EVERSOURCE ENERGY v. PUBLIC UTILITIES  
REGULATORY AUTHORITY

**Notice:** THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

**Judges:** [\*1] Budzik, J.

**Opinion by:** Budzik

## Opinion

---

### MEMORANDUM OF DECISION

The defendant, the Public Utilities Regulatory Authority (PURA), moves to dismiss this administrative appeal filed by the plaintiff, The Connecticut Light & Power Co., d/b/a Eversource Energy (Eversource). Eversource appeals PURA's August 9, 2023, decision (the decision)<sup>1</sup> stemming from an investigation of Eversource's response to an accident in which a car collided with an electric utility pole and, it was alleged, Eversource took too long to deenergize the damaged electrical wires. PURA moves to dismiss because the challenged decision resulted from an investigation and hearing that were conducted as an uncontested case. Eversource responds that PURA was statutorily required to conduct the investigation as a contested case and that PURA is seeking to avoid judicial review of its actions. Because the statutes and regulations cited by Eversource are either inapplicable, or merely permit - - but do not *require* -- PURA to hold a hearing on the instant investigation, the court grants the motion to dismiss. "If a hearing is not statutorily mandated, even if

one is gratuitously held, a contested case is not created[.]" (Internal quotation marks omitted.) [\*2] *High Watch Recovery Ctr., Inc. v. Dep't of Pub. Health*, 347 Conn. 317, 326, 297 A.3d 531 (2023) (hereinafter *High Watch*).

### FACTS

On January 17, 2023, at approximately 2 p.m., a car ran into an electric utility pole in Norfolk, Connecticut (the accident). ROR, at 3, 6. When members of the Norfolk Volunteer Fire Department arrived at the accident scene, they observed two seriously injured people trapped inside the car and that the car was smoking. ROR, at 3, 8. Because the accident caused electrical wires to fall on to the victims' car, emergency personnel were unable to immediately extract the injured persons from the car. At approximately 2:20 p.m., Eversource received a request to "deenergize," i.e., turn off the electricity to, the accident area. ROR, at 7. By approximately 3:30 p.m., Eversource personnel had confirmed that the accident area had been deenergized and, shortly thereafter, Norfolk Volunteer Fire Department personnel began to extract the two individuals from the car. ROR, at 8.

On January 18, 2023, the Norfolk Fire Chief sent a letter to Eversource complaining that it had taken one hour for Eversource to confirm that the accident area had been deenergized. ROR, at 8. In his letter to Eversource, the Norfolk Fire Chief stated that he found Eversource's response time "completely [\*3] unacceptable" and that Eversource's response time may have endangered the seriously injured persons trapped in the car. ROR, at 8, 9.

On January 20, 2023, Eversource filed an "immediate" accident report with PURA regarding the accident. ROR, at 3. On January 27, 2023, Eversource filed a "five-day" accident report with PURA regarding the accident. Id.

On January 30, 2023, PURA issued a Notice of

---

<sup>1</sup> See Return of Record (ROR), at 1-22.

Proceeding initiating an investigation (the investigation) of Eversource's conduct regarding the accident pursuant to Connecticut General Statutes §§ 16-9, 16-11, 16-14, 16-15, 16-16, 16-17, 16-18, 16-19e, 16-244, and 16-244i, and the regulations promulgated pursuant to those statutes. ROR, at 3. On February 28, 2023, Eversource submitted, at PURA's direction, a root cause analysis as part of the investigation. ROR, at 3-4. PURA issued interrogatories as part of the investigation. ROR, at 4. On April 6, 2023, PURA held a remote evidentiary hearing (the hearing) as part of the investigation. *Id.* Eversource participated in the hearing. *Id.*

On August 9, 2023, PURA issued a decision resulting from the investigation and hearing. See ROR, at 1-22. The decision concluded that Eversource's response to the accident was imprudent and may have violated Connecticut law.<sup>2</sup> ROR, at 20. PURA also [\*4] ordered Eversource to undertake several measures intended to reduce the time it takes Eversource to respond to incidents similar to the accident. *Id.*, at 20-21.

It is undisputed that PURA did not conduct the investigation or hearing as a contested case.

#### LEGAL STANDARD

"There is no absolute right of appeal to the courts from a decision of an administrative agency. . . . Appeals to the courts from administrative agencies exist only under statutory authority. . . . Appellate jurisdiction is derived from the . . . statutory provisions by which it is created, and can be acquired and exercised only in the manner prescribed. . . . Section § 4-183 (a) provides in relevant part that a person who has exhausted all administrative remedies available . . . and who is aggrieved by a final decision may appeal to the Superior Court. . . . Section 4-166 (5) (A) defines final decision as the agency determination in a contested case. . . . A contested case, in turn, is defined as a proceeding . . . in which the legal rights, duties or privileges of a party are required

by state statute or regulation to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held. . . . General Statutes § 4-166 (4). The test for determining contested [\*5] case status [is] . . . well established and requires an inquiry into three criteria, to wit: (1) whether a legal right, duty or privilege is at issue, (2) and is statutorily [or regulatorily] required to be determined by the agency, (3) through an opportunity for hearing or in which a hearing is in fact held. The legislature has the primary and continuing role in deciding which class of proceedings should enjoy the full panoply of procedural protections afforded by the UAPA to contested cases, including the right to appellate review by the judiciary. Deciding which class of cases qualifies for contested case status reflects an important matter of public policy and the primary responsibility for formulating public policy must remain with the legislature." (Citations omitted; internal quotation marks omitted.) *High Watch*, supra, 347 Conn. 328-29.

"[C]ontested case status is limited to proceedings in which an agency is *required by statute* to provide an opportunity for a hearing to determine a party's legal rights or privileges." (Emphasis in original.) *High Watch*, 347 Conn. 329; see also, *Ferguson Mechanical Co. v. Dept. of Public Works*, 282 Conn. 764, 772, 924 A.2d 846 (2007) ("We have determined that even in a case [in which] a hearing is in fact held, in order to constitute a contested case, a party to that hearing must have enjoyed [\*6] a statutory [or regulatory] right to have his legal rights, duties or privileges determined by that agency holding the hearing[.]") (Internal quotation marks omitted.) "To ascertain whether a statute requires an agency to determine the legal rights, privileges or duties of a party, [courts] need to examine all the statutory provisions that govern the activities of the particular agency or agencies in question." (Internal quotation marks omitted.) *High Watch*, 347 Conn. 329.

#### LEGAL ANALYSIS

In support of its claim that PURA was required to conduct the investigation and hearing as a contested case, Eversource points to General Statutes §§ 16-14 and 16-18, and Conn. Agencies Regs. §§ 16-1-116 and 16-1-117, and 16-1-106 through 16-1-109. As set forth below, the court finds that Eversource's cited authorities are either inapplicable to this case, or do not require that a contested case hearing be held.

---

<sup>2</sup>Under a separate proceeding, see PURA Docket No. 23-01-39RE01, PURA issued a Notice of Violation and Assessment of Civil Penalty to Eversource and assessed \$12,500 in civil penalties against Eversource for its failure to file timely accident reports as set forth in the investigation. See Docket Entry No. 113.00, attachment (January 10, 2024 PURA final decision in PURA Docket No. 23-01-39RE01) (hereinafter, the penalty decision). It is undisputed that the penalty decision was conducted as a contested case. It is also undisputed that Eversource did not appeal the penalty decision.

*a. General Statutes §§ 16-14 and 16-18*

By its plain terms, General Statutes § 16-14 applies to a "complaint in writing to the Public Utilities Regulatory Authority" by "any town, city or borough . . ." Here, it is undisputed that Norfolk wrote a letter of complaint to Eversource. There is no evidence that Norfolk ever filed a written complaint with PURA. Additionally, by its plain terms, General Statutes § 16-18 empowers PURA to require that Eversource "change the location of . . . poles [\*7] and wires in the public highways whenever public convenience or necessity requires such a change. . . ." It is undisputed that the decision does not require Eversource to move any electric utility poles or wires and the topic of the investigation was not the location of any poles or wires, but, instead, Eversource's response time to a request to deenergize electric wires. Thus, it is plain to the court, and the court does hold, that §§ 16-14 and 16-18 are inapplicable to the circumstances of this case, and therefore, do not require PURA to conduct the investigation or hearing as a contested case.

Finally, the court holds that PURA's reference to §§ 16-14 and 16-18 in the January 23, 2023 notice of proceedings, see ROR, at 3, is insufficient to create jurisdiction to hear this appeal. As set forth above, "[a]ppeals to the courts from administrative agencies exist only under statutory authority." (Internal quotation marks omitted.) *High Watch*, 347 Conn. 328. Eversource cannot create that necessary statutory authority<sup>3</sup> by seeking to invoke the requirements of statutes that do not apply to the circumstances at hand.

*b. Conn. Agencies Regs. §§ 16-1-116 and 16-1-117*

Section 16-1-116 states that "[PURA] may at any time institute investigations at the direction of the commissioners." (Emphasis added.) [\*8] Section 16-1-116 contains no requirement mandating that a hearing be held as part of the investigation. Section 16-1-117 states that "the rules of practice and procedure set forth in article 2 govern any hearing held for the purpose of such investigation." The parties agree that article 2 sets forth the procedures to be followed in contested cases. Thus, read together, § 16-1-116 authorizes PURA to institute investigations and § 16-1-117 requires that, if a hearing is indeed held, that such a hearing proceed according to contested case procedures. Nevertheless, neither § 16-1-116, nor § 16-1-117 require that a

hearing be held in the first instance. See *High Watch*, 347 Conn. 329. In other words, PURA has the discretion to hold a hearing as part of an investigation, but it is not required to hold such a hearing.<sup>4</sup> Statutory discretion to hold a hearing is not the same as a statutory requirement that a hearing shall or must be held.

*c. §§ 16-1-106 through 16-1-10*

Section 16-1-106 sets forth the "procedure to be followed by [PURA] in the enforcement of statutes, regulations, and orders concerning public utility companies." Section 16-1-107 states that "at such time as facts known to [PURA] shall indicate that a public service company . . . has violated or is violating any statute in title 16 . . . then the commissioners may order an investigation [\*9] of such facts. The purpose of said investigation shall be to determine whether or not such violation has, in fact, occurred." Section 16-1-108 requires that PURA "shall set a time and place for a hearing concerning the investigation of the violation" and Section 16-1-109 requires that the "hearing concerning such violation shall follow the rules of practice and procedure" applicable to contested cases.

Here, it is undisputed that when the decision concluded that "the record indicates that Eversource's reporting of

---

<sup>4</sup>The court observes that PURA's statutory discretion to investigate facts within its jurisdiction without the necessity of a hearing is in line with well settled law that an administrative agency has wide authority to investigate potential violations of the statutes that agency administers without "interference or delay." See *Heslin v. Connecticut L. Clinic of Trantolo & Trantolo*, 190 Conn. 510, 514-15, 461 A.2d 938 (1983) (When the legislature "endows an administrative body with responsibility for a statute's enforcement, [the legislature] may authorize that body . . . 'to determine the question of coverage in the preliminary investigation of possibly existing violations.' An administrative body so empowered may, by virtue of such authority, develop, without interference or delay, a factual basis for the determination of whether particular activities come within its regulatory authority."); see also *United Illuminating Co. v. Pub. Utilities Regul. Auth.*, No. HHB-CV-21-6066639-S, 2022 WL 14397716, at \*4 (Conn. Super. Ct. Oct. 17, 2022) ("The very essence of public utility regulation requires PURA to ensure that utility companies perform their responsibilities with economy, efficiency and care for public safety and energy security, and that the public utility is prudently and efficiently managed. The foregoing regulation is the quid pro quo for a monopoly over the utility business in particular geographies and is reflected in [General Statutes] § 16-19e.")

---

<sup>3</sup>Nor can PURA.

the accident violated certain statutes and regulations applicable thereto," ROR, at 20, PURA did institute a contested hearing to "determine whether or not such violation has, in fact, occurred." See Conn. Agencies Regs. § 16-1-107; PURA Docket No. 23-01-39RE01; Fn. 2 supra. Thus, the court concludes that PURA complied with §§ 16-1-106 through 16-1-10 by instituting a contested case for that portion of the decision that concluded Eversource violated statutory or regulatory duties.

Eversource nevertheless complains that the decision also found that Eversource's actions in response to the accident were "imprudent." ROR, at 20. Eversource contends that PURA is required to institute a contested case for this portion of the decision as well. Eversource cites to no specific statutory authority requiring that [\*10] a contested case be commenced based on a finding of imprudence. The court reaches the same conclusion regarding the decision's orders with respect to shortening Eversource's response time to incidents similar to the accident. See *id.* Our Supreme Court "has repeatedly held that PURA has broad authority to regulate electric utilities. . . ." *GenConn Energy, LLC v. Public Utilities Regulatory Authority*, 348 Conn. 532, 549 308 A.3d 1018 (2024). Eversource points to no statutory authority requiring that PURA institute a contested case before ordering a regulated electric utility to shorten the time it takes to respond to emergency calls from emergency first responders in order to protect public safety. See ROR, at 6, fn. 6; ROR at 14, 20. Indeed the statute that PURA depends on to require Eversource to shorten its response time, General Statutes § 16-11, includes no contested case requirement. See ROR, at 14 ("pursuant to Conn. Gen. Stat. § 16-11, the Authority orders the Company to adopt a 30-Minute Target for Blue-Sky Priority 1 Calls."); General Statutes § 16-11 ("The authority may order such reasonable improvements, repairs or alterations in such plant or equipment, or such changes in the manner of operation, as may be reasonably necessary in the public interest. The general purposes of this section . . . are to assure to the state of Connecticut its full [\*11] powers to regulate its public service companies, to increase the powers of the Public Utilities Regulatory Authority and to promote local control of the public service companies of this state, and said sections shall be so construed as to effectuate these purposes.")

granted. This matter is hereby dismissed.

/s/ Budzik

Budzik, J.

---

End of Document

## CONCLUSION

For all the foregoing reasons, the motion to dismiss is