If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

In re APPLICATION OF CONSUMERS ENERGY COMPANY FOR A FINANCING ORDER APPROVING THE SECURITIZATION OF QUALIFIED COSTS.

HEMLOCK SEMICONDUCTOR OPERATIONS, LLC,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION and CONSUMERS ENERGY COMPANY,

Appellees.

FOR PUBLICATION
November 18, 2021
9:10 a.m.

No. 356058
MPSC
LC No. 00-020889

Before: SWARTZLE, P.J., and SAWYER and LETICA, JJ.

PER CURIAM.

Appellant, Hemlock Semiconductor Operations, LLC ("HSC"), appeals as of right a financing order entered on December 17, 2020, by appellee the Michigan Public Service Commission ("the PSC") approving the request of appellee, Consumers Energy Company ("Consumers Energy"), for the securitization of qualified costs. On appeal, HSC argues that it was unlawful or unreasonable for the PSC to require HSC, an industrial customer of Consumers Energy, to pay a securitization charge related to the retirement of certain coal-fired power plants. According to HSC, it is not required to pay this securitization charge because HSC has a long-term industrial load retention rate (sometimes referred to as an "LTILRR") contract with Consumers Energy. HSC's argument is unavailing. We affirm.

I. BACKGROUND

On September 18, 2020, Consumers Energy filed in the PSC an application for a financing order approving the securitization of qualified costs. Consumers Energy noted that, as part of a

settlement agreement approved by the PSC in another case on June 7, 2019, Consumers Energy had agreed that two coal-fired power plants known as Karn Units 1 and 2 (sometimes referred to collectively as "Karn") would be retired in 2023.[1] Consumers Energy had also agreed to file an application in the PSC seeking recovery of the unrecovered book balance for Karn by no later than May 31, 2023. In conformance with that agreement, Consumers Energy was now filing the instant application for a financing order under 2000 PA 142 ("Act 142"), which sets forth legislative provisions governing securitization of qualified costs for electric utilities.

Consumers Energy argued that it satisfied the requirements set forth in MCL 460.10i for the approval of a financing order. MCL 460.10i(1) states,

> Upon the application of an electric utility, if the commission finds that the net present value of the revenues to be collected under the financing order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods and that the financing order is consistent with the standards in subsection (2), the commission shall issue a financing order to allow the utility to recover qualified costs.

MCL 460.10i(2) provides:

> In a financing order, the commission shall ensure all of the following:
>
> (a) That the proceeds of the securitization bonds are used solely for the purposes of the refinancing or retirement of debt or equity.
>
> (b) That securitization provides tangible and quantifiable benefits to customers of the electric utility.
>
> (c) That the expected structuring and expected pricing of the securitization bonds will result in the lowest securitization charges consistent with market conditions and the terms of the financing order.
>
> (d) That the amount securitized does not exceed the net present value of the revenue requirement over the life of the proposed securitization bonds associated with the qualified costs sought to be securitized.

MCL 460.10i(3) states, "The financing order shall detail the amount of qualified costs to be recovered and the period over which the securitization charges are to be recovered, not to exceed 15 years."

Consumers Energy asked for a financing order authorizing securitization of up to $702.8 million of qualified costs. Consumers Energy planned to create a special-purpose entity and to transfer certain securitization property to that entity in order to: minimize bankruptcy risks to

[1] In particular, that settlement agreement was approved by the PSC in PSC Case No. U-20165, in which Consumers Energy requested approval of what is called an Integrated Resource Plan.

securitization bondholders; minimize the interest rate paid on the securitization bonds; and maximize the ratings on the securitization bonds. The application also asked the PSC to approve securitization charges to be collected from Consumers Energy's customers as well as the use of a periodic true-up mechanism comparable to that used in an earlier case to ensure that customers were paying an appropriate amount.

On October 8, 2020, HSC filed a petition to intervene in this matter. HSC noted that it is a large industrial entity that purchases significant quantities of electricity from Consumers Energy; HSC said that it is Consumers Energy's largest single ratepayer.[2] HSC further noted that, in a separate application in PSC Case No. U-20697, Consumers Energy was seeking approval of a new LTILRR contract between Consumers Energy and HSC.[3] Hence, as a ratepayer, HSC had a direct interest in the instant case. At an October 13, 2020 prehearing conference, HSC's petition to intervene was granted without objection.

On November 13, 2020, an evidentiary hearing on Consumers Energy's instant application was held. The testimony of all witnesses had been prepared in writing and was bound into the record, and cross-examination was waived.

In order to understand some of the testimony presented at the evidentiary hearing, it is necessary to set forth relevant provisions of MCL 460.10gg, which is part of 2018 PA 348 ("Act 348"). Those provisions govern the LTILRR contract between Consumers Energy and HSC. MCL 460.10gg(1) states that the PSC "may establish long-term industrial load rates for industrial customers as provided in this section." A long-term industrial load rate is based on one or more specifically designated power supply resources. See MCL 460.10gg(1)(a), (e). MCL 460.10gg(1)(e) provides:

> If the resource designated in a contract executed under the long-term industrial load rate is a utility-owned resource, then the proposed long-term industrial load rate is based on all of the following:
>
> (*i*) The electric utility's levelized cost of capacity, including fixed operation and maintenance expense, associated with the designated power supply resource at the time the customer contract is executed.
>
> (*ii*) The electric utility's actual variable fuel and actual variable operation and maintenance expense based on the customer's actual energy consumption and associated with the designated power supply resource.

[2] In particular, according to HSC witness Amanda M. Alderson, "HSC is a manufacturer of semiconductor and solar grade polycrystalline silicon and related chemicals headquartered in Hemlock, Michigan. HSC is a very large consumer of electric energy, and is [Consumers Energy's] largest single site customer."

[3] This contract is sometimes referred to by witnesses and parties as "the HSC contract," "the LTILRR contract," and "the HSC LTILRR contract."

> (*iii*) The electric utility's actual energy and capacity market purchases, if any, based on the customer's actual consumption. The amount of capacity needed to serve a qualifying long-term industrial load is based on the capacity needed by the electric utility to comply with its regional transmission organization's load-serving resource requirement based on the amount of contractual firm and interruptible capacity supplied to the industrial customer.

Further, MCL 460.10gg(2) states, "A long-term industrial load rate may contain other terms and conditions proposed by the electric utility."

HSC witness Amanda M. Alderson testified that, under the proposed LTILRR contract between Consumers Energy and HSC, HSC's industrial load rate would be based on Consumers Energy's Zeeland generating plant for a period of 20 years beginning on January 1, 2021. Alderson testified that, in discovery in this case, Consumers Energy had made clear its position that the Karn securitization charge, which was to take effect in 2023, would be imposed on HSC. In Alderson's view, the Karn securitization charge should not apply to HSC while it is taking service under the LTILRR contract. Alderson held this view because, under the LTILRR contract, HSC's power supply costs were based on the Zeeland generating unit. Hence, securitization charges related to the Karn assets were not applicable. Alderson explained that Consumers Energy's "proposal to assess Karn-related costs to HSC under the LTILRR would not occur under conventional financing and cost recovery methods for Karn abandoned plant costs. Therefore, Karn securitization charges should not apply under the unconventional cost recovery method, i.e., securitization." HSC would incur an additional cost of approximately $42 million as a result of the Karn securitization charge. Unlike other customers of Consumers Energy, HSC would not receive a bill credit in its base rate to offset the Karn securitization charge, thereby shifting costs regarding Karn from other ratepayers to HSC.[4] Alderson encapsulated her position as follows:

> Because the rate development for power supply and capacity costs under the HSC LTILRR contract is specifically based on the Zeeland unit only, and given that Act 348 explicitly provides eligible large industrial customers with the ability to receive an electricity rate based on the cost of a designated power supply resource, any costs associated with the Karn units should not be charged to HSC under the HSC LTILRR contract.

Alderson acknowledged that "[s]ection 4.2.7 of the HSC LTILRR contract states that HSC shall pay 'applicable surcharges included in the Rate Book associated with the provision of electric service to the Customer.' " However, Alderson testified that the "Karn securitization charges are not associated with the provision of electric service to HSC." According to Alderson, Consumers Energy and HSC had agreed in the LTILRR contract that HSC would continue to pay a

[4] Alderson explained that, "[b]eginning with the advent of the securitization charges in 2023, certain ratepayers [other than HSC] will receive a bill credit to remove the costs of Karn from base rates. The bill credit will remain in effect until [Consumers Energy's] base rates are subsequently adjusted in a future base rate proceeding to remove the Karn costs."

securitization charge related to other retired facilities, but this agreement did not extend to the Karn securitization charge. In particular, Alderson explained:

> HSC and Consumers [Energy] have agreed under the bilaterally negotiated HSC contract that HSC would continue to pay the current securitization charge for the BC Cobb, Weadock, and Whiting units approved by the [PSC] in the December 6, 2013 Order in Case No. U-17473. That securitization charge . . . is currently paid by HSC, and was approved by the [PSC] prior to the time the LTILRR is expected to go into effect. In contrast, the Karn securitization charge will not go into effect until 2023, two years after HSC begins taking service under the LTILRR.

Alderson agreed that, under Act 142, securitization charges are "nonbypassable, meaning that the charge is paid regardless of the customer's electric generation supplier." Nonetheless, Alderson noted that, in a prior securitization case, the PSC had determined that certain types of customers were not required to pay a securitization charge.

Consumers Energy presented the testimony of its director of corporate strategy, Michael P. Kelly. Kelly disagreed with Alderson's position that the Karn securitization charge should not apply to HSC under the LTILRR contract. Kelly explained:

> The proposed Karn Units 1 and 2 securitization charge is a nonbypassable amount charged for the use or availability of electric service from [Consumers Energy] under [Act 142]. HSC is a full-service electric customer of [Consumers Energy] and will continue to be one under the HSC Contract. The LTILRR and HSC Contract require HSC to pay applicable surcharges, which include securitization charges.

Kelly acknowledged that, in PSC Case No. U-17473, the PSC had excluded so-called "choice customers," also known as Retail Open Access ("ROA") customers, i.e., customers served by alternative electric suppliers, from the obligation of paying a securitization charge. However, Kelly explained that, "[u]nder the LTILRR and the HSC Contract, HSC is a full-service customer of [Consumers Energy] and is not exempt from paying the securitization charges. As I stated above, both the LTILRR and HSC Contract require HSC to pay applicable surcharges, which include securitization charges."

Kelly further disagreed with Alderson's contention that, under conventional financing, HSC would not pay for costs related to the Karn assets. Kelly explained:

> The proposed LTILRR provides that HSC will remain a full-service customer and receive bundled electric service from [Consumers Energy] at a rate calculated using costs based on the Zeeland [unit]. HSC is not paying directly for this designated resource. HSC remains a full-service customer of [Consumers Energy] and like all bundled customers receives service from the entirety of [Consumers Energy's] electric supply portfolio. The revenue [Consumers Energy] will receive under the proposed HSC Contract contributes to [Consumers Energy's] total revenue requirement (including for Karn Units 1 and 2), as is the case with revenue that it receives from all other bundled service customers.

Kelly next expressed disagreement with Alderson's assertion that assessing the Karn securitization charge on HSC would violate Act 348. Kelly testified:

> The Karn securitization charge is not based on the designated power supply resource under MCL 460.10gg(1)(e). Applying the Karn securitization charge to HSC under the LTILRR is authorized by MCL 460.10gg(2), which provides [Consumers Energy] the ability to include additional terms and conditions in its proposed LTILRR, and contracts executed under that tariff. Under the LTILRR and the HSC Contract, HSC's rate is calculated based on the designated power supply resource, and that rate is analogous to the power supply rates and charges paid by other full-service customers under [PSC]-approved tariffs. The application of the Karn securitization surcharges to HSC under the HSC Contract is analogous to the application of those securitization charges to [Consumers Energy's] other bundled customers in addition to their power supply charges contained in base rates and power supply cost recovery charges.

Further, HSC's load retention rate under the proposed LTILRR contract was not to be based solely on the Zeeland unit. Kelly explained, "Under the proposed LTILRR, HSC is also provided with an Interruptible Credit, an Excess Capacity Charge, and an Excess Energy Charge, none of which are based on the Zeeland [unit]."

Next, Kelly noted his disagreement with Alderson's position that assessment of the Karn securitization charge on HSC would violate the LTILRR contract. Kelly elaborated:

> Section 4.2.7 of the HSC Contract states that HSC will pay "Applicable surcharges included in the Rate Book associated with the provision of electric service to the Customer, ..." The securitization charge proposed in this case is "applicable" because, pursuant to Act 142, it is required to be a nonbypassable charge, i.e., it is required to be applied to all full-service customers. Accordingly, [Consumers Energy] has requested [PSC] approval in this case to add it as a nonbypassable surcharge to the tariff sheets associated with service under LTILRR. Furthermore, HSC has already agreed, as part of the HSC Contract, that charges of this kind are "applicable" surcharges. Exhibit F of the HSC Contract is a sample invoice and shows the securitization surcharges for the "Classic 7" units (i.e., Consumers Energy's B.C. Cobb, J.C. Weadock, and J.R. Whiting units) apply to HSC's consumption under the HSC Contract. Similarly, the securitization charges for the Karn units approved in this case should apply to HSC's consumption. Ms. Alderson acknowledges that HSC has agreed to pay surcharges of this kind [in] her direct testimony, although she attempts to distinguish HSC's agreement to that charge by suggesting that the Classic 7 securitization charges were approved by the [PSC] before the LTILRR is expected to go into effect. But, nothing in Section 4.2.7 of the HSC Contract limits "applicable" surcharges to those that are approved before the LTILRR goes into effect. Even if it did, however, HSC overlooks the fact that the securitization surcharges in this case would also be approved by the [PSC] before the LTILRR goes into effect. In any case, as I already discussed, securitization surcharges are a kind of surcharge specifically contemplated as part

> of the HSC Contract to be included in HSC's bills and are clearly applicable surcharges because Act 142 requires them to be applied.

The PSC Staff ("the Staff") presented the testimony of Nicholas M. Revere, who works for the PSC as "the Manager of the Rates and Tariff Section of the Regulated Energy Division." Revere testified that the Staff neither agreed nor disagreed with Alderson's overall claim that HSC should not be subject to the Karn securitization charge; in the Staff's view, there were well-reasoned competing arguments on that issue. Nonetheless, the Staff disagreed with certain arguments that Alderson had made in support of her position.

The Staff did not agree with Alderson's contention that, because the LTILRR contract is based on the Zeeland unit, HSC should be excused from paying the Karn securitization charge. Revere noted that, although Act 348 provides for a rate to be calculated on the basis of one or more designated supply resources, Act 348 "also allows for other terms and conditions." One such condition in the LTILRR contract is § 4.2.7 of the contract, which requires HSC to pay "applicable surcharges included in the Rate Book associated with the provision of electric service to the Customer." Alderson was incorrect when she asserted that the Karn costs were not associated with the provision of electric service to HSC. Revere explained:

> HSC is not actually served by Zeeland, the costs on which the LTILRR is based are merely calculated based on Zeeland. Service to HSC under the LTILRR will still be provided by [Consumers Energy] utilizing all power supply resources used to serve any customer. Absent securitization, costs associated with retired plants that are no longer in use, such as Karn 1 & 2, effectively become general costs of power supply. As HSC will still be served by [Consumers Energy's] standard power supply, these costs will still be costs associated with providing service to HSC. Therefore, the [PSC] should not consider this argument as supporting HSC witness Alderson's requested relief.

Revere further testified that the Staff disagreed with Alderson's contention that HSC should be treated the same way that choice or ROA customers were treated in PSC Case No. U-17473. Revere explained that "HSC will still be served by [Consumers Energy] under the LTILRR, so the issues regarding migration under choice contemplated in U-17473 are not analogous to the LTILRR. Therefore, the [PSC] should not consider this argument as supporting HSC witness Alderson's requested relief."

Next, Revere expressed the Staff's disagreement with Alderson's contention that application of the Karn securitization charge to HSC would contravene the requirement for cost-based rates set forth in MCL 460.11. Revere elaborated:

> As discussed earlier, HSC will still be served by [Consumers Energy's] overall power supply resources, only the rates paid under the LTILRR will be based on Zeeland. Therefore, the LTILRR is not based on the power supply costs associated with serving HSC. In effect, Act 348 created an exception to the cost-based requirement under MCL 460.11. Therefore, HSC witness Alderson's argument regarding MCL 460.11 should not be considered as supporting HSC witness Alderson's requested relief.

Revere also noted that MCL 460.11(1)[5] requires only "that rates be cost-based by class. This does not apply to the granularity of individual rate elements."

After the evidentiary hearing, HSC, Consumers Energy, and the Staff provided briefing setting forth their respective arguments largely based on the testimony of their respective witnesses. On December 17, 2020, the PSC entered its order approving Consumers Energy's request for the securitization of qualified costs.[6] As relevant to this appeal, the PSC found that Consumers Energy's "proposed rate design for the securitization charges in this case should be approved, . . . with the charge applicable to the LTILRR and HSC pursuant to the HSC LTILRR contract . . . ." The PSC stated that it "rejects HSC's position that it should be excused from this nonbypassable charge. The [PSC] finds that the securitization charges in this case are applicable surcharges pursuant to Section 4.2.7 of the HSC LTILRR Contract."[7] This appeal ensued.

II. STANDARD OF REVIEW

With respect to the scope of appellate review of a PSC financing order, MCL 460.10i(8) provides as follows:

> Notwithstanding any other provision of law, a financing order may be reviewed by the court of appeals upon a filing by a party to the commission proceeding within 30 days after the financing order is issued. All appeals of a financing order shall be heard and determined as expeditiously as possible with lawful precedence over other matters. *Review on appeal* shall be based solely on the record before the commission and briefs to the court and *shall be limited to whether the financing order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this act*. [Emphasis added.]

---

[5] MCL 460.11(1) states, in relevant part, that the PSC "shall ensure the establishment of electric rates equal to the cost of providing service to each customer class. In establishing cost of service rates, the [PSC] shall ensure that each class, or sub-class, is assessed for its fair and equitable use of the electric grid."

[6] Although it is not relevant to the issue on appeal, we note that the PSC's approval of the request for securitization in regard to the Karn units was for an amount less than what was requested by Consumers Energy. As noted earlier, Consumers Energy asked for a financing order authorizing securitization of up to $702.8 million in qualified costs. In its December 17, 2020 financing order, the PSC authorized the securitization of up to $688.3 million in qualified costs. The PSC authorized the imposition of the Karn securitization charge on Consumers Energy's customers for a period not to exceed eight years.

[7] The PSC addressed other issues regarding the Karn securitization charge that are not pertinent to this appeal. Also, the PSC issued a separate order on December 17, 2020, in PSC Case No. U-20697, approving the LTILRR contract between HSC and Consumers Energy. HSC states that its LTILRR contract with Consumers Energy is the only LTILRR contract in existence so far.

Under MCL 460.10i(8), this Court's review of a PSC financing order is "extremely limited." *Attorney General v Pub Serv Comm*, 247 Mich App 35, 42; 634 NW2d 710 (2001).

This Court respectfully considers the PSC's construction of a statute that the PSC is empowered to execute, but the statutory text itself ultimately controls. *In re Implementing Section 6w of 2016 PA 341 for Cloverland Electric Coop*, 329 Mich App 163, 176; 942 NW2d 38 (2019). Issues of statutory interpretation are reviewed de novo, and "our primary obligation is to discern and give effect to the Legislature's intent." *Id*. at 176-177 (quotation marks and citation omitted).

> The language of a statute provides the most reliable evidence of the Legislature's intent. If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted. Statutory language is accorded its ordinary meaning within the context in which it is used and must be read harmoniously to give effect to the statute as a whole. [*Id*. at 177-178 (quotation marks and citations omitted).]

"Statutes that relate to the same subject matter or share a common purpose are *in pari materia* and must be read together as one law to effectuate the legislative purpose as found in harmonious statutes." *Id*. at 178 (quotation marks and citation omitted). Therefore, "[i]f two statutes lend themselves to a construction that avoids conflict, that construction should control." *Id*. (quotation marks and citation omitted).

III. ANALYSIS

On appeal, HSC presents arguments challenging the PSC's decision to apply the Karn securitization charge to HSC while HSC is taking electric service under the LTILRR contract. HSC's appellate arguments are unavailing.

As explained earlier, Act 142 contains provisions authorizing the PSC to enter a financing order imposing a securitization charge to recover the costs of refinancing qualified debt or equity. See MCL 460.10i. Further, MCL 460.10k(2) provides that "[a] financing order shall include terms ensuring that the imposition and collection of securitization charges authorized in the order are a nonbypassable charge." Under Act 142, the term "securitization charges" is defined as

> nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to fully recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order. [MCL 460.10h(i).]

A "[n]onbypassable charge" is defined as "a charge in a financing order payable by a customer to an electric utility or its assignees or successors regardless of the identity of the customer's electric generation supplier." MCL 460.10h(f).

The PSC's financing order in this case imposed a securitization charge related to the retirement of two coal-fired plants known as the Karn units. The securitization charge is to take effect in 2023. The PSC ruled that HSC would be subject to this charge while taking electric

service under its LTILRR contract with Consumers Energy. HSC contends that it should not have to pay the securitization charge because its rate under the LTILRR contract is to be based on the costs of Consumers Energy's Zeeland plant, not the Karn units. But HSC's argument is inconsistent with the unambiguous text of relevant statutory provisions and the LTILRR contract.

Act 348 governs the LTILRR contract between Consumers Energy and HSC. MCL 460.10gg(1) states that the PSC "may establish long-term industrial load rates for industrial customers as provided in this section." A long-term industrial load rate is based on one or more specifically designated power supply resources. See MCL 460.10gg(1)(a), (e). But MCL 460.10gg(2) is also relevant; it states, "A long-term industrial load rate may contain other terms and conditions proposed by the electric utility." No conflict exists between MCL 460.10gg(1) and (2). MCL 460.10gg(1) provides that the LTILRR is based on one or more power supply resources, and MCL 460.10gg(2) provides that the rate may contain other terms and conditions. The fact that MCL 460.10gg(1) provides that the rate is *based on* one or more power supply resources does not mean that it is *limited to* costs associated with those power supply resources. This is especially true given that MCL 460.10gg(2) expressly allows the imposition of other terms and conditions. For the same reason, there is no conflict between Act 142 and Act 348, given that the "other terms and conditions" language of MCL 460.10gg(2) allows the imposition of other applicable charges. No language in Act 348 precludes the imposition of securitization charges on LTILRR customers.

Section 4.2.7 of the LTILRR contract between Consumers Energy and HSC contains such a term or condition allowed by MCL 460.10gg(2); that contractual provision requires HSC to pay "applicable surcharges included in the Rate Book associated with the provision of electric service to the Customer." This point was explained at the evidentiary hearing during the testimony of the Staff's witness, Revere. He noted that, although Act 348 provides for a rate to be calculated on the basis of one or more designated supply resources, Act 348 "also allows for other terms and conditions." Revere explained that one such condition in the LTILRR contract is § 4.2.7 of the contract, which requires HSC to pay "applicable surcharges included in the Rate Book associated with the provision of electric service to the Customer."

Testimony at the evidentiary hearing supports the conclusion that the Karn securitization charge constitutes an applicable surcharge associated with the provision of electric service to HSC. As noted, a securitization charge is deemed under Act 142 to be "nonbypassable," meaning that it must be paid "regardless of the identity of the customer's electric generation supplier." MCL 460.10h(f). At the evidentiary hearing, Consumer Energy witness Kelly explained:

> The proposed Karn Units 1 and 2 securitization charge is a nonbypassable amount charged for the use or availability of electric service from [Consumers Energy] under [Act 142]. HSC is a full-service electric customer of [Consumers Energy] and will continue to be one under the HSC Contract. The LTILRR and HSC Contract require HSC to pay applicable surcharges, which include securitization charges.

Kelly further elaborated:

> Section 4.2.7 of the HSC Contract states that HSC will pay "Applicable surcharges included in the Rate Book associated with the provision of electric service to the

> Customer . . . ." The securitization charge proposed in this case is "applicable" because, pursuant to Act 142, it is required to be a nonbypassable charge, i.e., it is required to be applied to all full-service customers. Accordingly, [Consumers Energy] has requested [PSC] approval in this case to add it as a nonbypassable surcharge to the tariff sheets associated with service under LTILRR. Furthermore, HSC has already agreed, as part of the HSC Contract, that charges of this kind are "applicable" surcharges. Exhibit F of the HSC Contract is a sample invoice and shows the securitization surcharges for the "Classic 7" units (i.e., Consumers Energy's B.C. Cobb, J.C. Weadock, and J.R. Whiting units) apply to HSC's consumption under the HSC Contract. Similarly, the securitization charges for the Karn units approved in this case should apply to HSC's consumption. Ms. Alderson acknowledges that HSC has agreed to pay surcharges of this kind [in] her direct testimony, although she attempts to distinguish HSC's agreement to that charge by suggesting that the Classic 7 securitization charges were approved by the [PSC] before the LTILRR is expected to go into effect. But, nothing in Section 4.2.7 of the HSC Contract limits "applicable" surcharges to those that are approved before the LTILRR goes into effect. Even if it did, however, HSC overlooks the fact that the securitization surcharges in this case would also be approved by the [PSC] before the LTILRR goes into effect. In any case, as I already discussed, securitization surcharges are a kind of surcharge specifically contemplated as part of the HSC Contract to be included in HSC's bills and are clearly applicable surcharges because Act 142 requires them to be applied.

Further, although HSC witness Alderson contended that the Karn costs were not associated with the provision of electric service to HSC, Revere expressed a contrary view. Revere explained:

> HSC is not actually served by Zeeland, the costs on which the LTILRR is based are merely calculated based on Zeeland. Service to HSC under the LTILRR will still be provided by [Consumers Energy] utilizing all power supply resources used to serve any customer. Absent securitization, costs associated with retired plants that are no longer in use, such as Karn 1 & 2, effectively become general costs of power supply. As HSC will still be served by [Consumers Energy's] standard power supply, these costs will still be costs associated with providing service to HSC. Therefore, the [PSC] should not consider this argument as supporting HSC witness Alderson's requested relief.

HSC states that the Karn securitization charge was not included in the Rate Book when the LTILRR contract was executed, but HSC fails to explain why this is dispositive under the contractual language. That is, HSC identifies no language in the contract requiring the surcharge to be included in the Rate Book *when the contract was executed*, as opposed to when the surcharge is imposed later (beginning in 2023), in order to fall within HSC's contractual obligation to pay applicable surcharges associated with the provision of electric service to HSC. Nor does HSC establish that any alleged error in the PSC's interpretation of the contract would constitute a failure to conform to the law or a failure to act within the PSC's authority, such that the alleged error would fall within this Court's narrow review under MCL 460.10i(8) in regard to PSC financing orders. See *Attorney General*, 247 Mich App at 42-43 (concluding that certain alleged errors of the PSC were beyond the "extremely limited" scope of this Court's review under MCL 460.10i(8)).

The above-quoted analyses of Kelly and Revere are consistent with the unambiguous language of the statutory and contractual provisions at issue. HSC's contractual obligation to pay applicable surcharges associated with the provision of electric service to HSC constitutes a permissible term or condition of the rate in accordance with MCL 460.10gg(2). And the testimony supports the determination that the Karn securitization charge is an applicable surcharge associated with the provision of electric service to HSC. The PSC acted within its lawful authority when it decided to impose the Karn securitization charge on HSC while HSC is taking service under the LTILRR contract. HSC has not established that the PSC acted unlawfully or outside its authority.

HSC suggests that interpreting MCL 460.10gg(2) to allow the imposition of the Karn securitization charge on HSC would mean that there is no limit on the amount of costs that could be imposed on an LTILRR customer through a surcharge. However, the only charge at issue in this case is the Karn securitization charge; there are no other charges at issue. The imposition of any additional charges on HSC would require the approval of the PSC, and no basis exists to conclude that the PSC would allow Consumers Energy to place unlimited costs into a surcharge applicable to HSC. Indeed, in its brief on appeal, the PSC represents to this Court that it is highly unlikely that the PSC would allow Consumers Energy to place all of its costs into a surcharge.

We also find unconvincing HSC's appellate argument attempting to analogize itself to ROA customers who have been excused by the PSC from paying securitization charges. Unlike ROA customers, who are served by alternative electric suppliers, HSC is a full-service customer of Consumers Energy. HSC is seeking to avoid paying a securitization charge that all other full-service customers of Consumers Energy must pay. Kelly testified that, "[u]nder the LTILRR and the HSC Contract, HSC is a full-service customer of [Consumers Energy] and is not exempt from paying the securitization charges. As I stated above, both the LTILRR and HSC Contract require HSC to pay applicable surcharges, which include securitization charges." Revere similarly testified that the Staff disagreed with HSC's contention that it should be treated like ROA customers. Revere explained that "HSC will still be served by [Consumers Energy] under the LTILRR, so the issues regarding migration under choice contemplated in U-17473 are not analogous to the LTILRR. Therefore, the [PSC] should not consider this argument as supporting HSC witness Alderson's requested relief."

HSC's reliance on the cost-based requirement of MCL 460.11 is misplaced. MCL 460.11(1) states, in relevant part, that the PSC "shall ensure the establishment of electric rates equal to the cost of providing service to each customer class. In establishing cost of service rates, the [PSC] shall ensure that each class, or sub-class, is assessed for its fair and equitable use of the electric grid." During his testimony, Revere expressed the Staff's disagreement with HSC witness Alderson's contention that application of the Karn securitization charge to HSC would contravene the requirement for cost-based rates set forth in MCL 460.11(1). Revere elaborated:

> As discussed earlier, HSC will still be served by [Consumers Energy's] overall power supply resources, only the rates paid under the LTILRR will be based on Zeeland. Therefore, the LTILRR is not based on the power supply costs associated with serving HSC. In effect, Act 348 created an exception to the cost-based requirement under MCL 460.11. Therefore, HSC witness Alderson's argument regarding MCL 460.11 should not be considered as supporting HSC witness Alderson's requested relief.

Revere also noted that MCL 460.11(1) requires only "that rates be cost-based by class. This does not apply to the granularity of individual rate elements." HSC has failed to refute Revere's explanation for why imposition of the Karn securitization charge on HSC does not violate the cost-based requirement of MCL 460.11(1). As the Staff convincingly explained in the PSC, Act 348 did not change the cost of providing service to a customer such as HSC; rather, Act 348 only changed the amount paid by that customer. HSC's argument regarding costs is unavailing.

Overall, HSC's appellate arguments fail. HSC has not established that the PSC's financing order, including its imposition of the Karn securitization charge on HSC while HSC is taking electric service under the LTILRR contract, is unlawful or outside the PSC's authority.

Affirmed.

/s/ Brock A. Swartzle
/s/ David H. Sawyer
/s/ Anica Letica