

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CURT AND ANDREA BEANE v. MIDAMERICAN ENERGY COMPANY	DOCKET NO. FCU-2020-0003 (C-2019-0149)
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FINAL ORDER

PROCEDURAL BACKGROUND

On November 25, 2019, the Utilities Board (Board) received an informal complaint from Curt and Andrea Beane (Beanes), identified as Docket No. C-2019-0149. In their complaint, the Beanes alleged MidAmerican Energy Company (MidAmerican) violated the Beanes' rights regarding wind turbine construction and placement on their farm tenancy properties, violated their tenant lease rights, and that wind turbine construction resulted in crop damages. Specifically, the Beanes alleged that they are lessees under various farm leases and have a valid interest in the farm ground. MidAmerican requested the Beanes sign subordination agreements that would authorize MidAmerican to build wind turbines on the leasehold properties. The Beanes state that they declined to sign the subordination agreements but MidAmerican built the wind turbines anyway.

On January 2, 2020, MidAmerican responded to the Beanes' complaint, stating that MidAmerican had received signed easements from all landowners and, thus, the

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Beanes' dispute is with the landowners, not MidAmerican. MidAmerican also argued that this type of complaint is outside the Board's jurisdiction found in Iowa Code chapter 476.

On January 14, 2020, the Board's Customer Service staff (Staff) issued a proposed resolution, which included an explanation of the Board's oversight of wind farms, stating that utilities must seek a generating certificate from the Board when a facility has a total capacity of 25 megawatts (MW) or more attached to a gathering line. Staff stated that the Board had no oversight of wind projects impacting the Beanes' rented properties, as no generating certificate was required. Staff also stated that the Beanes' concerns regarding tenant rights and MidAmerican's easements should be reviewed by private legal counsel.

On March 4, 2020, Staff issued a revised proposed resolution.

On March 18, 2020, the Beanes sent an email to Staff, and Staff treated the email as a request for a formal complaint. In the email, the Beanes identified a document that was not provided to Staff in its investigation and raised new concerns about the timing of a MidAmerican payment for crop damages on one of the Beanes' rental properties, which allegedly resulted in tax issues. Staff discovered that not all parties were included in the Beanes' email and forwarded the Beanes' request for formal proceeding to the other parties on May 27, 2020.

On June 5, 2020, MidAmerican filed its response, again questioning the Board's jurisdiction regarding the Beanes' complaints about landlord-tenant issues that do not involve MidAmerican and a contract dispute over terms of a settlement agreement for damages on the rental farmland.

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On December 23, 2020, the Board issued an order granting the Beanes' request for formal proceeding. The order also requested additional information and the submission of briefs by the parties as well as any other interested person or organization with regard to the Board's jurisdiction to investigate and hear the Beanes' complaints pursuant to Iowa Code §§ 476.3 and 476.7, and the Board's general jurisdiction as it relates to different types of public utilities.

On February 8, 2021, the Beanes and MidAmerican provided the requested additional information, various exhibits, and written positions regarding the complaint. MidAmerican also filed a motion to dismiss and an application for confidential treatment for its easements filed with the Board. Additional briefs or comments were filed by MidAmerican, on behalf of the Iowa Utility Association (IUA), and by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Iowa Association of Electric Cooperatives (IAEC) with Iowa Association of Municipal Utilities (IAMU) joining its brief; Iowa Farm Bureau; Mike and Kari Schneider; and Justin Schneider. On April 9, 2021, the Board issued an order requesting additional information, denying MidAmerican's motion to dismiss, and finding that MidAmerican's application for confidential treatment was overbroad. The order required MidAmerican to refile public versions of its easements and required the Beanes to file their leases with landowners whose rental farmland is the subject of this dispute. The Board also directed the parties to state with specificity the legal basis for any requests for confidentiality.

A scheduling conference was held on April 13, 2021, with the parties agreeing to dates for filing prepared testimony and the hearing.

On April 19, 2021, the Beanes filed sample leases with and without redactions

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and an Application for Confidential Treatment. No actual leases were filed. On April 29, 2021, MidAmerican filed a motion for reconsideration of three components of the Board's April 9, 2021 order: (1) the confidentiality ruling; (2) the ruling denying MidAmerican's motion to dismiss based on procedural due process errors; and (3) the ruling denying MidAmerican's motion to dismiss based on jurisdictional errors. In its April 29, 2021 filing, MidAmerican also resisted the Beanes' April 19, 2021 request for confidentiality and requested the Board issue a stay so that the parties could wait to file the identified documentation containing confidential information until the Board ruled on its motion for reconsideration.

On May 7, 2021, the Board issued an order detailing the procedural schedule, denying MidAmerican's request for a stay, and directing the parties to follow Board rules that outline the filing requirements for confidential documents and applications for confidential treatment. On May 10, 2021, the Beanes and MidAmerican filed redacted and unredacted documents and applications for confidential treatment. On May 13, 2021, IAEC, IAMU, and IUA filed documents in support of MidAmerican's motion for reconsideration based upon alleged jurisdictional errors.

On June 1, 2021, the Board issued an order denying MidAmerican's motion for reconsideration.

On June 25, 2021, the Beanes filed direct testimony of Curt Beane, direct testimony of Debra Sanborn Eidam, and 13 exhibits as follows: a summary of the Beanes' leased properties affected by MidAmerican, four farm leases between the Beanes and different landowners, five easement agreements between MidAmerican and different landowners, a tenant subordination agreement proffered to the Beanes by

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MidAmerican, a 2018 crop damages agreement, and documents relating to tax issues with the Beanes' 2020 crop damages claim.

On July 23, 2021, OCA filed a statement in lieu of testimony. On July 23 and July 26, 2021, MidAmerican filed rebuttal testimony of Adam Jablonski and one exhibit, an agreement between MidAmerican and Mr. Beane that was signed in 2019, recognizing Mr. Beane's expectations for damage payments related to one turbine.

On August 6, 2021, the Beanes filed reply testimony of Curt Beane and two exhibits; a letter from MidAmerican to Welker Farms LLC (Welker Farms), a landowner from whom Mr. Beane rents farmland; and a letter from Vern Welker and Mr. Beane, sent in response to MidAmerican's letter to Welker Farms.

On August 6, 2021, OCA filed a statement in lieu of reply testimony.

On September 1, 2021, the Board held a hearing. At hearing, the Board took official notice of all documents filed in Docket No. FCU-2020-0003, which included documents that were not prefiled exhibits¹; the parties did not object. (Hearing Transcript (HT), pp. 45-46.)

The Beanes and MidAmerican filed post-hearing briefs on September 28, 2021.

BOARD DISCUSSION

A. Scope of this Formal Complaint Docket

In its initial order opening this docket, the Board posed several questions to the parties and other interested groups as to the Board's jurisdiction to receive and investigate complaints against utilities related to property interests and contract disputes

¹At hearing, there was confusion about which filings were being referenced because the entire docket was admitted into evidence. As such, documents will be identified by date of filing, name of document in the Board's electronic filing system (EFS), and corresponding page(s).

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pursuant to Iowa Code § 476.3(1) and (7) as well as the Board's general jurisdiction regarding service and regulation of utilities.

In orders issued on April 9 and June 1, 2021, the Board concluded it had jurisdictional authority to investigate the Beanes' formal complaint under the broad statutory and regulatory authority outlined in Iowa Code chapter 476 (§§ 476.1(1), 476.2(1) and (4), 476.3, 476.7, and 476.15), specifically as it relates to MidAmerican's management and business practices. Iowa Code § 476.2(4). The arguments relating to the Board's jurisdictional authority and MidAmerican's management and business practices pursuant to Iowa Code § 476.2(4) will be discussed initially followed by an analysis of the specific claims raised and addressed by the parties in this docket.

a. Jurisdictional Authority

i. Beanes

The Beanes' November 25, 2019 complaint alleged that MidAmerican violated Iowa's lease laws when it built wind turbines on the Beanes' rental lands. (Complete File (CF),² pp. 2-3.) In their March 18, 2020 request for a formal proceeding, the Beanes identified new information regarding language from MidAmerican's proposed tenant subordination agreement about the relationship between easements and signed subordination agreements as well as claimed tax issues that arose when MidAmerican issued a damage check in a year different from the tax year it reported to the IRS. (CF, pp. 39-40.)

In response to the Board's request for input on its authority to receive and investigate complaints against utilities related to property interests and contract

² The complete file contains all documentation filed in the corresponding informal file, C-2019-0149, and is included in the formal complaint in Docket No. FCU-2020-0003. See December 23, 2020 filing "Complete File."

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disputes, Mr. Beane stated in his filing on February 19, 2021 (February 4, 2021 Request for Clarification and Comments, p. 4), that he believed the Board has jurisdiction to: (1) ensure that claims are paid; (2) ensure that the laws, codes, and regulations are followed; and (3) “keep a check and make sure regulations are being followed by utilities” (*Id.*, p. 4).

ii. MidAmerican

In MidAmerican’s initial brief regarding jurisdiction (filed on behalf of the IUA), its motion to dismiss, its request for reconsideration of motion to dismiss, and its post-hearing brief, MidAmerican made several arguments to support its position that the Board should not have granted the Beanes’ request for a formal complaint proceeding, including: (1) a formal complaint is not an appropriate docket to explore jurisdictional questions; (2) the Board lacks subject matter jurisdiction as Iowa Code § 476.3 permits an investigation into customer complaints about violations of Iowa Code chapter 476 or the Board’s rules, not landlord-tenant issues, property interests, and general contract disputes; (3) the Beanes are not MidAmerican customers; and (4) a specific violation of Iowa Code chapter 476 has not been alleged. (February 8, 2021 –Brief Addressing Jurisdiction Questions, pp. 1-9; February 8, 2021 – Motion to Dismiss, pp. 1-6; April 29, 2021 – Motion for Reconsideration of Procedural Order Filed on April 9, 2021, pp. 1-7; September 29, 2021 – Post-Hearing Brief, p. 9.)

iii. Other Commenters

1. OCA

In its response to the Board’s questions, OCA stated that the Board’s jurisdiction, when not explicitly or implicitly granted by chapter 476, can be determined through application of the doctrine of primary jurisdiction. Pursuant to Iowa Code § 476.7, the

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Board has the jurisdiction to initiate a proceeding, akin to a rate proceeding under Iowa Code § 476.6, to “determine the reasonableness of the utility’s rates, charges, schedules, service or regulations.” OCA argued that the Board does not have jurisdiction over the issues raised in the Beanes’ complaint. (February 8, 2021 Brief, pp. 1-10.)

2. IUA

In addition to MidAmerican’s February 8, 2021 brief filed on behalf of IUA, IUA filed a brief supporting MidAmerican’s motion for reconsideration. IUA states that although Iowa Code § 476.3(1) provides the Board authority to review complaints regarding utility service or anything done or omitted to be done in contravention of chapter 476, the Beanes’ complaint should be dismissed because it does not allege any violation of chapter 476, the Beanes are not MidAmerican customers, and the statutory framework for utility service complaints does not provide the Board with authority to review complaints related to landlord-tenant disputes, property interests, and general contract disputes. IUA also argues that an agency has only that authority delegated to it by law and shall not expand or enlarge its authority. IUA argues that in this case, Iowa Code chapters 562 (landlord tenant issues) and 476A (generation) do not have statutory mandates for public utilities or private third-party developers to obtain a generating certificate prior to constructing an electric generating facility of less than 25 MW. (May 13, 2021 – Support for Motion for Reconsideration, pp. 1-5.)

3. IAEC

IAEC states in its initial brief (joined by IAMU) that the Beanes’ complaint is one that asserts property rights claims stemming from legal arguments about landlord-tenant contracts, property easements, rights of possession, and the use of land. These claims

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are beyond the statutory nature of the Board's jurisdictional grant from the Legislature.
(February 8, 2021 Brief, pp. 1-13.)

In its amicus brief supporting MidAmerican's request for reconsideration, IAEC further argues that although § 476.2(1) is the Board's "general powers" provision, this statutory provision is not limitless and does not confer jurisdiction. With regard to §§ 476.3 and 476.7, IAEC argues that these statutes are procedural complaint/application review statutes and do not confer jurisdiction as a substantive matter or offer a sufficient basis for jurisdiction in this case. IAEC argues that § 476.15 is the "long-arm" provision for the Board's jurisdiction, and it does not confer jurisdiction as it merely says jurisdiction is maximized to the extent that it is already granted.
(May 13, 2021 Amicus Curiae Brief in Support of Motion to Reconsideration, pp. 1-5.)

4. IAMU

In its letter responding to MidAmerican's request for reconsideration, IAMU states the case is a property rights/landlord-tenant matter and the Board provided no analysis over how Iowa Code chapter 476 grants the Board any jurisdiction. (February 5, 2021 Statement in Lieu of Brief, pp. 1-2.)

5. Iowa Farm Bureau

Iowa Farm Bureau states that the Board has jurisdiction under Iowa Code §§ 476.3 and 476.7 to consider the Beanes' complaint and to determine if any public utility's rates, charges, schedules, service, or regulations are unjust, unreasonable, insufficient, discriminatory, or otherwise in violation of any provision of law.
(February 8, 2021 – Brief, pp. 1-13.)

6. Other Commenters

Justin Schneider agreed with the Beanes' concerns about how MidAmerican interprets Iowa law. (February 8, 2021 – Comments, pp. 1-2.) Mike and Kari Schneider recommended that the Board hold a formal hearing to assess the merits and jurisdictional questions raised by the Beanes' complaint. (February 8, 2021 – Comments, p. 1.)

iv. Discussion

The Board determined in its June 1, 2021 order addressing reconsideration that the Beanes' formal complaint would proceed pursuant to the Board's powers and obligations detailed in Iowa Code §§ 476.1(1), 476.2(1) and (4), 476.3, 476.7, and 476.15. The Board stated that these sections collectively support the Board's broad statutory authority to investigate the reasonableness of the rates, charges, schedules, service, regulations, or anything done or omitted from being done by a rate-regulated public utility. The Board rejected MidAmerican and the utility organizations' arguments that an Iowa Code § 476.3(1) complaint that requests the Board to determine "the reasonableness of the rates, charges, schedules, service, regulations, or anything done or omitted to be done by a public utility subject to this chapter in contravention of this chapter...." should be construed narrowly. The Board held that the Beanes' complaint required it to examine MidAmerican's management and business practices.

An Iowa Code § 476.3(1) complaint does not contain a limitation on who can file a complaint; in fact, "any person or body politic" or the Board itself can file a written complaint against a public utility. There is no requirement that the complainant be a customer of the utility. The Board's powers identified in chapter 476, including Iowa Code §§ 476.1(1), 476.2(1) and (4), 476.3, 476.7, and 476.15 support its decision that

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the Board has the authority to investigate any complaint to determine if a utility is appropriately conducting business in Iowa.

In its April 9, 2021 order, the Board included a brief discussion about how the statutory provisions found in Iowa Code chapter 476 that allow the Board to review MidAmerican's management and business practices differ from Iowa Code chapter 476A that addresses siting requirements for electric generation facilities. As IUA correctly noted, Iowa Code chapter 476A does not include a statutory mandate for public utilities or private third-party developers to obtain a generating certificate prior to constructing an electric generating facility of less than 25 MW. The Board has previously interpreted Iowa Code chapter 476A as not requiring a generating certificate for a wind generating facility that has capacity of less than 25 MW for each gathering line. See *Zond Dev. Corp.*, Docket Nos. DRU-97-5, DRU-97-6, at 6 (November 6, 1997); *Mathis v. Iowa Utilities Board*, 934 N.W.2d 423, 425 (Iowa 2019).

The Board highlights the Beanes' complaint as an example of one of several unintended consequences that has and will continue to occur due to the combination of: (1) the significant wind project expansion in Iowa; (2) the lack of statutory mandate in Iowa Code chapter 476A for public utilities or private third-party developers to obtain a generating certificate prior to constructing an electric generating facility of less than 25 MW; and (3) the Board's interpretation of Iowa Code chapter 476A as not requiring a generating certificate for a wind generating facility that has capacity of less than 25 MW for each gathering line.

The Beanes are not the only Iowans with issues pertaining to chapter 476A without a clear, viable venue to address their concerns. See February 8 and

May 4, 2021 comments filed by Mike and Kari Schneider; February 8 and May 5, 2021 comments filed by Justin Schneider. Iowans need direction to be able to protect themselves and their land when these issues arise. By interpreting Iowa Code chapter 476 complaint authority broadly, the Board ensures that Iowans have a venue to bring a complaint to review a rate-regulated utility's business management practices regarding these issues.

b. MidAmerican Business Practices

i. Beanes

The Beanes submitted testimony that documented several issues with MidAmerican's business practices, including MidAmerican's approach to tenant rights, communication, and damage payment processes. Although the Beanes acknowledged that the Board cannot provide a monetary judgment, the Beanes requested the formal complaint as they viewed MidAmerican's dealings with them as unfair. (June 25, 2021 – Beane Direct Testimony, pp. 16-17.)

ii. MidAmerican

In its motion for reconsideration, MidAmerican agreed that Iowa Code § 476.2(4) permits the Board to request information relating to MidAmerican's business practices for the Board's review; however, MidAmerican argued that the statute does not operate as authority to conduct a contested case proceeding. MidAmerican argued that the Beanes' complaint did not satisfy the requirements of Iowa Code § 476.3(1) permitting the initiation of a contested case and Iowa Code § 476.2(4) could not be used as a basis to continue this contested case proceeding. (April 29, 2021 – Motion for Reconsideration of Procedural Order Filed on April 9, 2021, pp. 6-7.)

iii. Other Commenters

IAEC stated that Iowa Code § 476.2(4) provides oversight of managerial actions but not broad powers to second guess the generally unregulated business judgment of public utilities. (May 13, 2021 – Amicus Curiae Brief in Support of Motion to Reconsideration, pp 1-5.)

IAMU stated that the Board’s statutory and regulatory authority as to a question of public utility management and business practices does not extend to unregulated business decisions, and any authority to hear complaints must be specifically provided by statute. (May 13, 2021 – Letter in Support of Motion to Dismiss, p. 1.)

IUA stated that it agrees with MidAmerican’s argument that a formal complaint process is not the appropriate forum to investigate MidAmerican’s management and business practices in relation to the Beanes’ complaint and that the complaint should be dismissed. (May 13, 2021 – Support for Motion for Reconsideration, pp. 1-5.)

iv. Discussion

Iowa Code § 476.2(4) provides the Board authority to examine the management and utility business practices of all public utilities by reviewing the manner and method of the utility business operations and by obtaining all necessary information to enable the Board to perform its duties found in Iowa Code chapter 476. In its June 1, 2021 order, the Board stated that a potential law violation by a rate-regulated utility while doing utility business in Iowa must come within the Board’s investigative powers to ensure that a rate-regulated public utility, which is considered a monopoly by state law, does not engage in unfair and illegal business practices. The Board concluded that it has authority to review those practices and to require the rate-regulated utility to correct its behavior or face possible civil penalties.

The Board reaffirms this conclusion. In order to enable the Board to perform its duties found in Iowa Code chapter 476, the broad statutory and regulatory authority outlined in Iowa Code §§ 476.1(1), 476.2(1) and (4), 476.3, 476.7, and 476.15 provides the Board sufficient jurisdiction to investigate a rate-regulated utility's business practices in response to a complaint filed pursuant to Iowa Code § 476.3. The Board addresses the specific issues and positions of the parties below.

B. Specific Claims Raised and Addressed by Parties

a. Trespass

i. Beanes

Mr. Beane testified that he had an exclusive possessory interest in his landlords' farmland, and, therefore, Mr. Beane's landlords did not have the legal power to convey possessory interest to MidAmerican when the easements were signed. (June 25, 2021 – Beane-Beane Direct Testimony, pp. 7, 9.) Mr. Beane offered several exhibits regarding his corresponding lease agreements. (June 25, 2021 – Beane-Beane Direct Exhibits 1-5.)

Mr. Beane testified that his landlords did not have final say regarding the possessory rights of their property and MidAmerican knew about Mr. Beane's possessory interests but ignored them. (August 6, 2021 – Beane Reply Testimony, p. 4.) Mr. Beane testified that, according to MidAmerican, he had no rights. (*Id.*, p. 5.)

In response to MidAmerican's questioning, Mr. Beane testified at hearing that he believes he has exclusive possession of the property despite the word "exclusive" not found in his leases. (HT, pp. 65-68.) Mr. Beane also testified at hearing that MidAmerican trespassed on the land. (*Id.*, pp. 102-103.) In response to Board questions, Mr. Beane testified that he did not receive a document of termination to end

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the farm tenancy, which was required by September 1 of any year before work could be done to his leased property without his permission. Mr. Beane testified that he did not receive such a document for 2017, 2018, and 2019, and MidAmerican entered Mr. Beanes' five leased properties, causing crop damage. (HT, pp. 93-95.)

ii. MidAmerican

On May 10, 2021, MidAmerican filed a log identified as "Beane Conversation History." The log reflects that MidAmerican knew the Beanes were tenants and knew that the Beanes had not signed the proffered tenant subordination agreement.

Mr. Jablonski testified that the property interests that Mr. Beane accused MidAmerican of violating were granted to MidAmerican by Mr. Beane's landlords. (July 23, 2021 – Jablonski Rebuttal Testimony, p. 10.) Mr. Jablonski also testified that MidAmerican believes landowners have the right to decide how their property is used and landowners understand how to make that decision. (*Id.*, p. 8.)

MidAmerican also questioned Mr. Beane about the lease language found in Mr. Beane's Exhibit 5 filed on June 25, 2021, specifically the language of, "Landlord may enter upon the real estate at any reasonable time for the purpose of viewing or seeding or making repairs, or for other reasonable purposes." (HT, pp. 66-68; June 25, 2021 – Beane-Beane Direct Exhibit 5, p. 3 § 11.) MidAmerican's questions inquired about the absence of the word "exclusive" in the Beanes' leases. (HT, pp. 65-66.)

Mr. Jablonski testified that his definition of trespass would be entering a property where you don't have the rights of the owner. (HT, p. 137.) At hearing, there was extensive testimony regarding ownership interests and tenancy interests. (*Id.*, pp. 147-178.) Mr. Jablonski testified that MidAmerican believes an easement is not effective

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unless signed by those with ownership interests; however, he does not believe the authorization is necessary from a tenant in order to convey real property possessory interests. (*Id.*, pp. 177-178.)

In its post-hearing brief, MidAmerican states that it is re-evaluating whether turbines and associated facilities should be constructed on properties where the tenant has not signed a tenant subordination agreement.

Although MidAmerican is confident that its easement agreements legally permit construction without the subordination agreements, which only happens in exceptionally rare circumstances, MidAmerican believes that taking additional steps to avoid the issue in the future will best protect MidAmerican's interest in ensuring the quiet use and enjoyment of the easement rights it obtains and foster stronger partnerships with landowners and tenants.

(September 28, 2021 – Post-Hearing Brief, pp. 12-13.) MidAmerican also stated it “will revisit its internal process of exercising easement options for physical equipment if tenant subordination agreements have not been obtained.” (*Id.*, p. 17.)

iii. OCA

OCA identified the following language in MidAmerican's tenant subordination agreement: “[e]ffectiveness of the Easement Agreement is conditioned on receipt by Developer [(MidAmerican)] of all subordination and non-disturbance agreements from tenants, lenders and holder of other liens and encumbrances, necessary to assure Developer's undisturbed use and enjoyment of the Property according to the terms of the Easement Agreement.” (August 6, 2021 – OCA Statement in Lieu of Testimony 1, (quoting June 25, 2021 – Beane-Beane Direct Exhibit 11, pg. 1.)

OCA testified that this language seems to imply that obtaining a signed tenant subordination agreement is a necessary prerequisite to MidAmerican beginning turbine construction. (*Id.*, p. 2.) Despite this, OCA believes MidAmerican's acquisition of tenant

subordination agreements prior to construction is merely prudent business practice, and not something MidAmerican is required to do by law. (*Id.*, p. 3.)

iv. Discussion

Although the Board does not have jurisdiction to award any sort of damages regarding the alleged trespass, the Board does have the ability to evaluate if a trespass occurred and, if it did, whether such an act would constitute an inappropriate business practice.

Black's Law Dictionary, Fifth Edition, defines "trespass" as follows: "An unlawful interference with one's person, property, or rights." Additionally, Iowa law states that "a tenant has an interest in premises and has exclusive legal possession of it. This exclusive legal possession means tenant, not landlord, is in control of premises." *Bernet v. Rogers Eyeglasses*, 519 N.W.2d 808, 811 (Iowa 1994); *see also Slach v. Heick*, 864 N.W.2d 553 (2015) unpublished opinion (Table) (holding landlord acknowledged tenant had a right to possess the property under the lease); *Clark v. Strohbeen*, 190 Iowa 989, 181 N.W. 430, 433 (Iowa 1921) (holding landlord can become trespasser if he enters upon leased premises without the consent of the tenant and appropriates possession to himself before the expiration of the lease).

The Board has reviewed the Beaness' contracts and finds that the sections referred to by MidAmerican and the lack of the word "exclusive" do not negate the Beaness' right to possession of both the land and the crops being grown on the land that were secured by him as the tenant of the contract. MidAmerican admits that it knew the Beaness were tenants, knew that the Beaness had not signed the proffered tenant subordination agreement, and that MidAmerican had not received permission from the Beaness to enter their rental properties. Based upon the evidence in the record, the

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Board determines that MidAmerican trespassed on the Beanes' leased property when it began constructing wind turbines without obtaining the Beanes' permission to do so.

With its easement and subordination and non-disturbance agreement, MidAmerican has established proper documentation and procedures to obtain consent and permission of all parties with a valid interest in land on which MidAmerican seeks to construct a wind turbine and related facilities. Yet, in spite of the subordination agreement stating the easement is not effective unless the subordination agreement is signed, MidAmerican ignored and failed to follow its own procedures and constructed one or more turbines anyway. The Board finds that the failure of MidAmerican to obtain permission from the Beanes before construction of the wind turbines is an inappropriate business practice. MidAmerican has identified it is re-evaluating its business practices with regard to tenant subordination agreements as they relate to commencement of construction. The Board will require MidAmerican to file in this docket a document that explains the changes it is making to its business practices to address this issue.

b. Acquiring Easements and Confidentiality

i. Beanes

Mr. Beane testified that his landlords did not understand the terms of the easements they signed and they did not understand how Mr. Beane's possessory interests would be affected. (June 25, 2021 – Beane-Beane Direct Testimony, p. 8.) Mr. Beane stated that the terms of MidAmerican's easements forced landlords to revoke a possessory interest from Mr. Beane. (*Id.*, p. 4.) Mr. Beane stated that he does not believe a contract that he's not a party to should be able to affect his rights. (*Id.*, p. 4.)

An email was entered into the record by the Beanes that included a statement made by a MidAmerican representative, a land agent, that Ms. Eidam needed to get a

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different tenant because Mr. Beane would not sign the tenant subordination agreement. (February 8, 2021 – Beane Exhibit 8, pp. 1-2.) Mr. Beane testified that MidAmerican informed Ms. Eidam she should be worried about Mr. Beane bringing litigation that would involve her. (June 25, 2021 – Beane-Beane Direct Testimony, p. 12.)

Mr. Beane's witness, Ms. Eidam, stated she did not review the easement terms with an attorney and did not understand the entirety of what she was signing. (June 25, 2021 – Beane-Eidam Direct Testimony, p. 3.) Ms. Eidam verified that a MidAmerican representative advised her to find a new tenant. (*Id.*)

Ms. Eidam testified that she was not instructed to obtain her own legal counsel to review the easement and the MidAmerican representative did not walk through the content of the easement agreement with her. (HT, p. 27.) Ms. Eidam testified that the email stating that she needed to get a different tenant than Mr. Beane was upsetting because he is such a good tenant. (*Id.*, pp. 28-29.) Ms. Eidam testified that the agent did not clarify that the confidentiality clause restricts the owner from sharing details of the agreement. (*Id.*, p. 35.) Additionally, Ms. Eidam testified several times that there were many different people from MidAmerican calling at different times and she received many different items in the mail. (*Id.* pp. 25, 28, 40.)

Mr. Beane's reply testimony stated that MidAmerican's method of obtaining easement rights pits tenants against landlords. (August 26, 2021 – Beane-Beane Reply Testimony, p. 6.)

Mr. Beane requested the Board require MidAmerican to provide full disclosure of all documents to both landlords and tenants, giving them full opportunity to discuss them before MidAmerican obtains any signatures and make all efforts and attempts to negotiate with farm tenants. Additionally, Mr. Beane requested that contemporaneous

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negotiations take place with both tenants and landlords (a three-way negotiation, rather than a two-way negotiation) so MidAmerican does not disregard the interests of tenants when procuring easement rights. (June 25, 2021 – Beane-Beane Direct Testimony, p. 19.) Mr. Beane also requested the Board penalize MidAmerican in regard to MidAmerican encouraging Ms. Eidam to terminate the Beane farm lease and when it communicated to Ms. Eidam that she should expect litigation from Mr. Beane. (*Id.*, p. 19.)

ii. MidAmerican

Mr. Jablonski testified that when MidAmerican provides easement documents to landowners, the landowners are given time to consult with an attorney or another trusted person and to ask questions before signing. (July 23, 2021 – Jablonski Rebuttal Testimony, p. 5.) Mr. Jablonski testified that Ms. Eidam was given the agreement with time allocated to review the easement and to take it to an attorney; Ms. Eidam's decision not to consult with an attorney or other trusted person was entirely her own decision. (*Id.*, p. 17.)

Mr. Jablonski stated that MidAmerican obtains voluntary easements from interested landowners and pays those landowners a reasonable amount for those rights. (*Id.*, p. 5.) In regard to the Beanes' allegations that MidAmerican's strategy is to put landowners and tenants at odds, Mr. Jablonski stated that the landowner has final say as to whether to permit MidAmerican on their property and any disagreement between a landlord and tenant about MidAmerican's presence on a property is between the landlord and tenant. (*Id.*, pp. 5-6.)

Mr. Jablonski testified that it is not MidAmerican's practice to encourage a landowner to terminate any tenant lease on a property, noting that after a MidAmerican

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representative suggested Ms. Eidam terminate her lease with Mr. Beane, MidAmerican reached out to both parties to correct the miscommunication. (*Id.*, p. 17.) MidAmerican also presented an exhibit at hearing regarding MidAmerican's actions to address the issue. (September 3, 2021 – MEC Hearing Exhibit 1) MidAmerican filed several easement agreements in the docket. (May 10, 2021 – AH334 Sanborn Windpark Easement Agreement; AH361 Sanborn Windpark Easement Agreement; AH353 Lonsdale Windpark Easement Agreement; AH191 Bluestem Windpark Easement Agreement.)³ All easement agreements contain a confidentiality section that states the owner shall maintain in the strictest confidence the terms of the agreement and shall not disclose the confidential information to others, except for the owner's personal advisors, prospective purchaser of property, or a court proceeding. (*Id.*, p. 14.)

MidAmerican wrote in its post-hearing brief,

.... Although the easement language does not state it could be shared with tenants, MidAmerican testified that it permits landowners to share the information when requested. Nevertheless, MidAmerican recognizes that some landowners may interpret the easement as prohibiting the landowner from sharing the terms with their tenants. MidAmerican will revise the terms of its confidentiality provision to make clear that the landowner may share with a tenant or other interest-holder those non-financial terms that the tenant is asked to subordinate. This modification will permit tenants a fuller understanding of the rights MidAmerican is seeking, while protecting the rights of MidAmerican and the landowner to confidentially negotiate the financial terms of an easement....

(I) t is clear that the Board believes additional materials should be available for tenants and landowners discussing their rights, including the right to consult with advisors, family members, business members or attorneys before signing any easement. MidAmerican's current process permits landowners to consult with these types of advisors, but only does so implicitly. MidAmerican believes additional resources that more clearly explain the process and each party's rights, along with the revised confidentiality provisions, would permit landowners and tenants to be more fairly and meaningfully (sic) informed in their decision-making process.

³ Mr. Beane also submitted these easement agreements on June 25, 2021, as Beane-Beane Direct Exhibits 6-10.

(September 28, 2021 – Post-Hearing Brief, p. 11-12.)

MidAmerican also wrote:

The Board should also refrain from accepting Mr. Beane's invitation to question the competency or capacity for landowners to grant easement rights to MidAmerican. Mr. Beane argues that landowners are not capable of understanding what it means to convey interests in property to MidAmerican and that the Board should create a process by which MidAmerican must assume landowners are not capable of contracting. MidAmerican strongly disagrees with this conclusory premise. The argument is contrary to the basic principles of contract law implicit in arms-length transactions; if accepted, it would draw into question landowner's competency to convey the very tenancies Mr. Beane maintains. It would be untenable for landowners to be considered competent stewards of their property in some situations, but not others, based on the status of the acquirer or the use of the rights sought.

(*Id.*, p. 14.)

iii. Discussion

The Board finds Mr. Beane's and Ms. Eidam's testimony troubling. Landowners must be able to discuss easement agreement terms with trusted persons to make an informed decision. By its terms, the easement prohibits a landowner from disclosing the terms of the easement to anyone, including the tenant. Yet, the tenant is requested to subordinate his or her interest in the property to the terms of the easement that the tenant is not permitted to see. Landlords must be able to discuss easement details with their tenants. Tenants must be informed of easement details in order to make an informed decision on whether to sign a tenant subordination agreement.

MidAmerican, in its post-hearing brief, acknowledged that its confidentiality clause needs to be revised to give landowners a greater understanding of who and what information they can discuss with others. MidAmerican states that it will revise its confidentiality clause.

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The Board finds that revising MidAmerican's easement agreement, specifically the confidentiality section, is a reasonable step toward addressing the issues raised by the Beanes. The Board will require MidAmerican to file the updated confidentiality language in the docket.

Additionally, MidAmerican acknowledges that additional resources would more clearly explain the process and each party's rights and would permit landowners and tenants to be more informed in their decision-making process. As such, the Board will require MidAmerican to produce and file in this docket additional resource documentation. This additional resource documentation is to be provided to a landowner at the time the landowner is presented with the proposed easement agreement. If MidAmerican requires a tenant subordination agreement, MidAmerican is to provide the tenant with its additional resource documentation when it proposes the subordination agreement. The additional resource documentation will contain an overview of the landowner's rights, including the landowners' authority to discuss confidential information and non-confidential information, the landowners' obligations with regard to existing property interests, and an explanation of the easement MidAmerican is requesting.

Mr. Beane requests that the Board require MidAmerican to include the tenant in the initial negotiations so MidAmerican does not disregard the interests of tenants when procuring easement rights. The Board will not adopt this requirement. The Board has outlined items above that MidAmerican will need to create and provide in the docket for review. When MidAmerican addresses these issues, landowners will be more informed, which should lead to tenant rights being adequately protected. The Board does not

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consider it necessary or reasonable to require that MidAmerican negotiate with both the landowner and tenant together.

With regard to MidAmerican's land agent advising Ms. Eidam to terminate Mr. Beane's lease, such conduct could be construed by a District Court to be tortious interference with contractual rights. Nevertheless, the Board finds that MidAmerican took appropriate steps to address the communication.

It is apparent from the record of this case and confirmed by statements made in MidAmerican's brief that changes to its business practices are needed to address the issues raised by the Beanes in this complaint. Based upon the corrective action MidAmerican indicates it will undertake and the requirement that the additional resource documentation be filed in this docket, the Board finds this issue has been addressed.

c. Tenant Subordination Agreement

i. Beanes

Mr. Beane provided the proffered tenant subordination agreement and testified that MidAmerican did not provide or allow Mr. Beane to read the referenced landowner's easement agreement despite Mr. Beane requesting it multiple times. (June 25, 2021 – Beane-Beane Direct Exhibit 11; June 25, 2021 – Beane-Beane Direct Testimony, p. 14.) Mr. Beane testified that despite his not signing the tenant subordination agreement, MidAmerican constructed its wind turbines on his leased farmland anyway. (June 25, 2021 – Beane-Beane Direct Testimony, p. 9.) The tenant subordination agreement states that the effectiveness of the easement agreement is conditioned on MidAmerican's receipt of all subordination and non-disturbance agreements from tenants, lenders, lienholders, and encumbrances. (June 25, 2021 – Beane-Beane Direct Exhibit 11, pg. 1.)

Mr. Beane requested that the Board require MidAmerican's form be revised to prevent MidAmerican from compelling landlords to force tenants into signing a tenant subordination agreement and require MidAmerican to provide full disclosure of all documents to both landlords and tenants in order to allow informative discussions. (*Id.*, p. 19).

ii. MidAmerican

Mr. Jablonski testified that the purpose of this language is to avoid legal proceedings and other formal complaints as MidAmerican pays landowners for its easement rights. By requiring a landowner to assist MidAmerican in obtaining tenant subordination or cooperation agreements, Mr. Jablonski stated that it ensures that the landowner has taken proper steps with any tenants so their rights and the rights MidAmerican is seeking do not conflict. Additionally, Mr. Jablonski stated that any landowner who wishes to have a tenant and to allow the placement of a wind turbine should bear some responsibility for ensuring all users of the property can do so without conflict. (July 23, 2021 – Jablonski Rebuttal Testimony, p. 6.)

At hearing, Mr. Jablonski acknowledged that the language utilized in MidAmerican's tenant subordination agreements, namely that the easement would become effective when all subordination agreements were received, indicates that a tenant's signature was required prior to an easement becoming effective. (HT, p. 144). Mr. Jablonski testified that he believed that when tenants requested to see the easement agreements previously, MidAmerican would ask for the landowner's consent to provide the document and MidAmerican would not just give the tenant a copy of the easement agreement without the tenant asking for it. (*Id.*, pp. 146-147.)

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In its post-hearing brief, MidAmerican wrote that the easement agreement is effective on its own terms at the time of signature and MidAmerican will revise the tenant subordination agreement to further clarify that the tenant subordination agreement is not necessary to make the easement effective. MidAmerican identified that it will also revise the tenant subordination agreement to clarify which rights MidAmerican would be asking the tenant subordinate to MidAmerican's easement. (September 28, 2021 – Post-Hearing Brief, pp. 11, 16-17.)

iii. OCA

In both its statement in lieu of testimony and its post-hearing brief, OCA suggests that the language in MidAmerican's tenant subordination agreement causes unneeded confusion regarding whether a signed tenant subordination agreement is required for the easement to become effective. OCA recommends MidAmerican change the language in the tenant subordination agreement to reflect MidAmerican's belief that the tenant subordination agreement is not necessary to make the easement agreement effective between MidAmerican and a landowner. (August 6, 2021 – OCA Statement in Lieu of Testimony, pp. 1-3; September 28, 2021 – Post-Hearing Brief, pp. 1-2.) OCA also recommends in its post-hearing brief that MidAmerican make it a business practice to provide a redacted copy of the easement agreement to the tenant at the time the tenant subordination agreement is presented to the tenant. (September 28, 2021 – Post-Hearing Brief, pp. 2-3.)

OCA questioned Mr. Beane at hearing on what his understanding was of this language. Mr. Beane responded that he believed the developer was required to obtain his signature on the tenant subordination agreement in order to make the landowner's easement agreement effective. (HT, p. 91.)

iv. Discussion

In its post-hearing brief, MidAmerican stated that it has not traditionally offered tenants the opportunity to review the terms of the easement agreement before requesting the tenant sign a tenant subordination agreement. Mr. Beane and OCA both expressed concerns about the language used in the tenant subordination agreement and the tenant not being able to review the easement prior to or at the time the subordination agreement is presented to the tenant.

MidAmerican stated that it would clarify that a signed tenant subordination agreement is not required for the easement to become effective and would clarify which rights MidAmerican is asking the tenant to subordinate to MidAmerican's easement.

The Board will require these modifications; however, MidAmerican's remedy does not address the main problem, that being that tenants are not provided any information on the easement for which MidAmerican is asking them to subordinate their rights.

MidAmerican will be required to include in its additional resource documentation an explanation of MidAmerican's consent procedures to allow tenants to receive a redacted copy of the easement agreement if a tenant subordination agreement is required.

The Board finds that the business of not providing the tenant a copy or information about the landlord's easement is not a good business practice. The Board finds that MidAmerican's changes to its practices and the Board's requirement to add consent procedures into its additional resource documentation should address this problem.

d. Enforcement and Utilization of Easements

i. Beanes

Mr. Beane testified to several concerns with the terms of MidAmerican's easement agreements that require: (1) modification of long-time farm leases; (2) relinquishment of tenant possession rights to MidAmerican; and (3) inclusion of the entire farm in the easement rather than just the land where the turbines will be constructed. (June 25, 2021 – Beane-Beane Direct Testimony, p. 10-11.)

Mr. Beane requested that the Board require MidAmerican to limit the legal description of its properties to only the areas affected, rather than the entire farm. (*Id.*, pp. 19-20.)

Mr. Beane provided information about an additional property where the owner, his landlord, signed an easement with MidAmerican in which the property was not used but MidAmerican “made the property operational.” (August 6, 2021 – Beane Reply, p. 7; Beane Reply Exhibits 14 and 15.)

At hearing, Mr. Beane testified that he has not been asked to modify any leases by the landowners with regard to MidAmerican's wind turbine construction. (HT, p. 93.) Ms. Eidam testified that she did not require any changes to Mr. Beane's rental agreement as she did not believe that MidAmerican's easement affected the rental agreement. (HT, p. 26.)

ii. MidAmerican

MidAmerican filed several leases on May 10, 2021. (*See also* June 25, 2021 – Beane-Beane Direct Exhibits 6-10.) Within the leases, paragraph 6.1.2 entitled “Liens and Easements” states that the owner agrees to cooperate with MidAmerican to obtain

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non-disturbance, subordination, and other title curative agreements from identified tenants. (May 10, 2021 – AH334 Sanborn Windpark Easement Agreement, p. 7.)

Mr. Jablonski testified that MidAmerican's easements generally include a description of the entire property instead of the specific locations of future wind turbines because it often does not know precisely where facilities will be located until several easements are obtained from other landowners in the area. (July 23, 2021 – Jablonski Rebuttal Testimony, p. 6.) Mr. Jablonski testified that although the easement MidAmerican negotiates covers the entire property, MidAmerican would have a survey of what easement rights it has and what facilities are placed on the property. (HT, pp. 158-159.)

Regarding the Beanes' reply testimony about making the "property operational," Mr. Jablonski testified that MidAmerican makes assessments as to whether it should reconfirm its easement rights for a property that may impact the existing wind turbines not on that parcel (for instance, to make sure there is unobstructed wind flow) or release an easement if the property's proximity does not impact the wind turbines, and thus MidAmerican's rights are no longer necessary. (HT, pp. 108-109.)

MidAmerican detailed in its post-hearing brief several reasons that the Board should not require MidAmerican to modify its process of acquiring easement rights applicable to the landowner's entire property. To be effective, a wind easement must secure more than just the right to construct and maintain the access road, turbines, and collector lines. It must secure the right to obtain and maintain the benefit of an operating wind turbine, which requires the easement to apply across the parcel and beyond the footprint of the physical facilities to assure a continued right to wind and the

absence of interfering structures or activities. (September 28, 2021 – Post-Hearing Brief, pp. 4, 14.)

iii. Discussion

MidAmerican stated that its easement agreements generally cover the entire property, due to the unknown location of the turbine placement, until other easements are obtained. Ultimately, the final easement terms are determined by MidAmerican and the landowner. The Board's requirement that MidAmerican include an explanation of the easement and an explanation of the landowner's obligations in its additional resource documentation should adequately address this issue.

e. Payments, Communication, Issuance of Form 1099, Interest, and Releases

i. Beanes

1. Payments

Mr. Beane provided testimony that on the lease with Ms. Eidam, there is a 50/50 crop share, and despite having knowledge of the arrangement as well as signed documentation from Ms. Eidam (contained in an email) as to the crop share, MidAmerican paid the entire amount of crop damages to Ms. Eidam. (June 25, 2021 – Beane-Beane Direct Testimony, pp. 16-17; June 25, 2021 – Beane-Beane Direct Exhibit 13, pp.1-7.)

Mr. Beane provided documentation that shows MidAmerican issuing some checks directly to Mr. Beane and Lyle Beane, due to an assignment. (February 8, 2021 – Beane Exhibit 7; Beane Exhibit 14, p. 7.)

2. Communication

Mr. Beane stated that MidAmerican inaccurately communicated its attempts to resolve 2020 crop damages in correspondence MidAmerican sent to Ms. Eidam dated November 6, 2020. (February 8, 2021 – Beane Exhibit 19.) Mr. Beane testified as to his frustration regarding MidAmerican’s approach to damage claims, which he asserted is a practice of no communication, just silence. (June 25, 2021 – Beane-Beane Direct Testimony, pp. 16-17; HT, p. 193.)

3. Form 1099, Interest, and Releases

Mr. Beane testified regarding the specifics of the releases and 1099s. (June 25, 2021 – Beane-Beane Direct Testimony, pp. 15-17; HT, pp. 68-89.) Mr. Beane testified he did not sign a release from MidAmerican because MidAmerican modified the terms of the releases he drafted in 2019. Mr. Beane also provided the modified releases. (HT, p. 74-76; February 8, 2021 – Beane Exhibit 17.)

Mr. Beane provided Exhibits 9, 10, 13, and 14 on February 8, 2021, containing the information that he planned to charge MidAmerican interest on unpaid damages beyond a date of October 31, 2019. Exhibit 14 includes correspondence spanning from December 4, 2019, to February 10, 2020, that references scanned copies of damage checks, 1099 information, interest, and a proposed release. (February 8, 2021 – Beane Exhibit 14, p. 1-15.) The correspondence reflects that MidAmerican offered Mr. Beane the opportunity to sign the same release that he drafted in 2019. (*Id.*, pp. 6, 8-9, 11.) Mr. Beane responded on January 31, 2021, stating that he refused to sign any release because he wasn’t legally obligated to sign a release. (*Id.*, p. 10.)

Mr. Beane testified at hearing that: (1) MidAmerican retained his 2019 crop damage checks until January 2020, when Mr. Beane contacted them upon receiving a

Form 1099; (2) MidAmerican demanded that before he would receive these checks, Mr. Beane had to sign something; (3) after 2018, he refused to sign anything for crop damages as he indicated that MidAmerican damaged his crop and should pay for it; (4) although checks were issued, the checks were not delivered to Mr. Beane due to the release issue; and (5) he asked to see the rule or law that required him to sign a release, but MidAmerican did not provide anything. (HT, p. 84.)

Mr. Beane requested the Board penalize MidAmerican for issuing the 2019 Form 1099 document for checks provided to Mr. Beane in 2020 and not allow MidAmerican, when presented with damage claims, to compel farm operators to sign anything other than a receipt for such payment and a cursory description of the payment. (June 25, 2021 – Beane-Beane Direct Testimony, p. 19.)

ii. MidAmerican

1. Payments

Mr. Jablonski testified at hearing that the only payments Mr. Beane would receive is if the landowner directed crop damage payments to the tenant on the property. (HT, p. 170.)

In its post-hearing brief, MidAmerican stated that it usually works with the landowner on damage claims, unless otherwise directed by the landowner, and relies on the landowner to convey the appropriate damages to the tenant based on the tenancy agreement. (September 28, 2021 – Post-Hearing Brief, pp. 4-5.)

2. Communication

Exhibit 13 contains correspondence from MidAmerican to Ms. Eidam identifying that MidAmerican has unsuccessfully attempted to resolve 2020 crop loss damages with Mr. Beane directly. (June 25, 2021 – Beane-Beane Exhibit 13, pp. 3-4.) In its post-

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hearing brief, MidAmerican wrote that it worked diligently to address each of Mr. Beane's concerns and, despite offering reasonable solutions to the issues, Mr. Beane was unwilling to accept either reasonable or extraordinary attempts to resolve his concerns. (September 28, 2021 – Post-Hearing Brief, p. 5.)

3. Form 1099, Interest, and Releases

Mr. Jablonski testified that MidAmerican reports checks to the IRS the year they are issued, not the year the recipient cashes them. (July 23, 2021 – Jablonski Rebuttal Testimony, p. 13.) Mr. Jablonski detailed MidAmerican's attempts to resolve Mr. Beane's tax concerns with his 2019 crop damage checks and testified that MidAmerican was willing to reissue his crop damage checks in 2020 to be recognized on Mr. Beane's 2020 Form 1099, provided Mr. Beane returned the original 2019 checks to be voided. Mr. Beane refused to return the 2019 checks. (*Id.*, p. 14.)

In response to questions of how MidAmerican issued a 2019 Form 1099 without Mr. Beane receiving payment, Mr. Jablonski replied that the 2019 checks should not have been sent out and sending the checks was MidAmerican's error. He further testified that MidAmerican should have destroyed those 2019 checks and reissued 2020 checks because that was the year the checks were mailed. (HT, pp. 163-164.) Mr. Jablonski testified that the checks issued in 2019 had been cashed and, without those 2019 checks being returned and reissued in 2020, a 2020 Form 1099 could not be issued. (HT, pp. 166-167.)

MidAmerican documented that it received Mr. Beane's requests for interest. (May 10, 2021 – Beane Conversation History, pp. 4-6.)

With regard to releases, Mr. Jablonski stated that once MidAmerican and a claimant have negotiated a mutually acceptable payment, MidAmerican issues the checks and provides the checks upon the claimant signing a settlement release. (July 23, 2021 – Jablonski Rebuttal Testimony, pp. 15-16.) Although Mr. Jablonski acknowledges that MidAmerican is not required to ask Mr. Beane to sign a release form before issuing checks for damages, asking for a signed release of damage claims when paying said claims is a near universal business practice. (*Id.*, p. 15.)

With regard to its Form 1099 process, MidAmerican stated that it is modifying its damage payment process to void uncollected checks if not collected in the issuance year and to modify Form 1099s at the time the original checks are voided. Although this process could delay payments to some claimants, MidAmerican recognized that the issue raised by Mr. Beane was an error in MidAmerican's current accounting practice that has been corrected. (September 28, 2021 – Post-Hearing Brief, p. 9.)

iii. Discussion

1. Payments

The record contains information that payees for damages described in this docket appear to be inconsistent. On one occasion, MidAmerican paid damages directly to the Beanes due to Ms. Eidam assigning her rights. On another occasion, MidAmerican paid all damages to Ms. Eidam, who was to distribute to the tenants despite an email from Ms. Eidam in which she stated she had signed an authorization to allow payments to be distributed differently than how MidAmerican issued payment. Additionally, MidAmerican stated that the easement agreements contain language that damages will be made to the landowner; however, with tenants not receiving a copy of

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the easement agreement, tenants are not provided sufficient information regarding payment options.

In order to address this issue, MidAmerican is to include in its additional resource documentation an explanation regarding options for alternative payees for damage payments.

2. Communication

Mr. Beane's complaints that MidAmerican has provided inaccurate information to Ms. Eidam and that MidAmerican does not communicate with him are supported in the record. The Board will require both MidAmerican and Mr. Beane to clearly communicate with one another in the future as they work toward resolving the remaining issues set forth below.

3. Form 1099, Interest, and Releases

MidAmerican admitted that its business practice with regard to issuing a Form 1099 in 2019 to the Beanes without providing the checks to the Beanes in the same year was improper. MidAmerican identifies that it will modify its damage payment and accounting process. The Board will require a confirmation to be filed in the docket that this business practice has been corrected.

The evidence shows that Mr. Beane did not return the checks and in fact cashed the checks. MidAmerican identified that, because Mr. Beane did not return the checks issued in 2019, MidAmerican could not issue a 2020 Form 1099. The Board finds that Mr. Beane's decision to cash the checks eliminated the most appropriate remedy of issuing a revised 2020 Form 1099.

As for Mr. Beane's attempt to collect interest, there is not sufficient evidence in the record that MidAmerican agreed to pay interest on late payment of damages beyond

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the document found in the June 25, 2021 Beane-Beane Exhibit 12, which appears to be for damage payments related to one turbine. This issue is not within the Board's jurisdiction because the problem is not with MidAmerican's business practices, but with a demand for payment made by the Beanes.

As for releases, MidAmerican claims it is near universal practice to obtain a release upon issuing a check. The Board questions the propriety of requiring a release in exchange for a payment MidAmerican is obligated to make. A receipt would seem to be sufficient. The Board will require MidAmerican to file in the docket its approach to handling damage claims in instances where payees refuse to sign a corresponding release.

The Board concludes that MidAmerican's action of issuing a Form 1099 in a tax year other than when payment was made constitutes an inappropriate business practice. MidAmerican has indicated it will address this issue by making changes to its business practices and that such change should address the Board's concerns.

f. Outstanding Damages

i. Beanes

Mr. Beane identified outstanding claims for damage to fences, damage from water draining onto property, and damage to other crops in 2020. (June 25, 2021 – Beane-Beane Direct Testimony, p. 16.) The Beanes filed exhibits reflecting emails regarding the 2020 crop damages and photos of the fence and damaged crops. (February 8, 2021 – Beane Exhibits 15-16.)

Mr. Beane also filed an exhibit that contains portions of an easement agreement that read, "MidAmerican agrees to pay such amount within thirty (30) days after Owner provides MidAmerican with reasonable evidence of the cause and extent of such

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damage or destruction” and “(i)f MidAmerican and the Owner cannot agree on the amount of crop damage, the parties agree to have the area and extent of damages assessed by an impartial party mutually agreed upon by the Parties.” (February 8, 2021 – Beane Exhibit 3, p. 3.) Exhibit 15 contains an email from a MidAmerican representative who states that MidAmerican requires yield maps, or similar information, to determine if and to what extent a landowner or tenant suffered a reduced yield on the acres due to MidAmerican’s construction of its wind turbines. (February 8, 2021 – Beane Exhibit 15, pg. 3.)

ii. MidAmerican

Mr. Jablonski testified that damage to property may impact crop production and cause other damage, and that MidAmerican works diligently to survey the damaged area and works with landowners to identify compensable damages and negotiate a settlement that fairly compensates for the damage, but also protects its customers. (July 23, 2021 – Jablonski Rebuttal, pp. 4-5.)

At hearing, Mr. Jablonski testified that MidAmerican does not always require yield maps or similar information to determine if and to what extent a landowner or tenant suffered a reduced yield on the acres due to MidAmerican’s construction of wind turbines. Mr. Jablonski testified that the easement agreements contain a crop damage section that varies between projects due to different easement forms; these crop damage sections determine how MidAmerican will settle crop losses. (HT, pp. 160-162).

In its post-hearing brief, MidAmerican stated that MidAmerican works to repair the damage or compensate the landowner for the damages, as required by the easement. (September 28, 2021 – Post-Hearing Brief, pp. 4-5.)

iii. Discussion

Regarding outstanding damages that have not been addressed, the Board expects MidAmerican and the Beanes to work in good faith to resolve these matters.

Regarding damages in general, MidAmerican provided testimony that easement agreements contain a crop damage section, and the crop damage sections vary between projects due to the use of different easement forms. MidAmerican also identified that it does not provide tenants copies of the easement agreements. MidAmerican did not identify how a tenant would have access to the crop damage section given that the confidentiality provisions are included in the easement agreements.

The record in this docket contains sufficient evidence to conclude that this is not a good business practice. The Board will require MidAmerican to provide an explanation in its additional resource documentation of its process for resolving damage claims.

C. Discussion of MidAmerican's Business and Management Practices

MidAmerican claimed that the incidents with the Beanes are not reflective of MidAmerican's other relationships with tenants and landlords, stating that MidAmerican has made beyond-reasonable efforts to address the Beanes' concerns. MidAmerican claimed that Mr. Beane has raised a number of issues about his interactions with MidAmerican and these are isolated incidents that are unique to Mr. Beane as one of the limited tenants in the state of Iowa who has refused to sign a tenant subordination agreement with MidAmerican. (September 28, 2021 – Post-Hearing Brief, p. 10.)

The Board declined to open an investigation (INU docket) in this matter as it concluded that the specific complaint could and should be handled as a formal

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complaint; however, the Board acknowledges that other commenters in this docket have identified similar concerns with MidAmerican's approach to resolving their complaints, including one other damage complaint. The Board acknowledges that although some issues are difficult and may not be quickly resolved, the Board does expect all rate-regulated utilities to be able to adequately document that they have actively attempted to resolve the complaint in good faith, regardless of whether it has been resolved. If documentation does not reflect an ongoing, good-faith effort at resolving disputes, then the Board will consider its good faith efforts, or lack thereof, when it reviews management efficiency in a rate case or when the Board considers granting a formal complaint proceeding.

The Board concludes that MidAmerican's business practices were inappropriate regarding the failure to obtain a signed tenant subordination agreement or permission prior to beginning construction, the issuance of a Form 1099 for a tax year in which the payment had not been provided, asking tenants to subordinate their rights without providing any information about the easement, and not adequately addressing damages. Although the Board is requiring MidAmerican to make several changes in its business practices beyond these items — some suggested by both MidAmerican and the Board — the Board finds that some of the business practices only need to be reviewed and modified to improve the process.

D. Summary of Requirements

The Board will require MidAmerican to address and make necessary follow-up filings in this docket, within 90 days of this order, for those items detailed in this order

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that MidAmerican committed to improving in its business practices and those items that the Board is requiring. The follow-up items are as follows:

1. MidAmerican is to re-evaluate its business practices involving tenant subordination agreements and the commencement of construction and file a document that explains its changes.
2. MidAmerican is to revise and file its confidentiality clause to give landowners a greater understanding of who and what information they can discuss with others.
3. MidAmerican is to produce and file additional resource documentation to be presented to the landowner, along with the proposed easement agreement, that provides an overview of the following:
 - a. landowners' rights,
 - b. landowners' authority to discuss confidential information and non-confidential information,
 - c. landowners' obligations with regard to existing property interests, including but not limited to existing tenants,
 - d. an explanation of the easement MidAmerican is requesting,
 - e. an explanation of consent procedures required to allow tenants to receive a redacted copy of the easement agreement,
 - f. an explanation of options for alternative payees for damage payments, and
 - g. an explanation of the damage section(s) in an easement agreement.

If a tenant subordination agreement is required, MidAmerican is to provide the tenant with the additional resource documentation at the time MidAmerican presents the subordination agreement to the tenant.

4. MidAmerican is to revise and file the language of its tenant subordination agreement to explicitly state that a signed tenant subordination agreement is not necessary to make the easement agreement effective between MidAmerican and a landowner.
5. MidAmerican is to revise and file the language of its tenant subordination agreement to clarify which rights MidAmerican would be asking the tenant to subordinate to MidAmerican's easement.
6. MidAmerican is to file a confirmation that its Form 1099 business practice has been corrected.
7. MidAmerican is to detail its process and approach to handling damage claims in instances where payees refuse to sign a corresponding release.

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Within 45 days of this order, MidAmerican and the Beanes shall each file in this docket an update informing the Board of their progress to conclude these remaining issues:

1. The Beanes' claims of damage to fences, damage from water draining onto property, and damage to other crops in 2020 as detailed on June 25, 2021, and as described in this order on pages 39-42. Both parties are to work together in good faith to address these issues with a focus on clear communication.
2. If required, an appropriate release for these damages. MidAmerican will work in good faith with the Beanes and the Beanes will work in good faith with MidAmerican to draft a mutually agreeable release/receipt in order to facilitate prompt payment.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. MidAmerican Energy Company shall file updated documents with the Utilities Board, within 90 days of the date of this order, regarding the changes in MidAmerican Energy Company's business practices as required by this order.
2. MidAmerican Energy Company and Curt and Andrea Beane shall file an update with the Utilities Board, within 45 days of the date of this order, addressing the outstanding damage issues described in this order.

UTILITIES BOARD

Geri Huser Date: 2022.03.14
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Richard Lozier Date: 2022.03.14
09:47:41 -05'00'

ATTEST:

Louis Vander Streek
Louis Vander Streek
2022.03.14 15:42:18
-05'00'

Josh Byrnes Date: 2022.03.11
09:22:01 -06'00'

Dated at Des Moines, Iowa, this 14th day of March, 2022.