



Governor Kim Reynolds
Lt. Governor Adam Gregg

Geri D. Huser, Chair
Nick Wagner, Board Member
Richard W. Lozier, Jr., Board Member

January 14, 2020
File No. C-2019-0149
PROPOSED RESOLUTION

Curt and Andrea Beane
1246 Riverside Avenue
Stuart, IA 50250

Dear Mr. and Mrs. Beane:

On November 25, 2019, the Iowa Utilities Board (Board) received your complaint regarding your concerns about wind turbine construction and placement without your consent on rental lands you farm, violation of tenant lease rights, and crop damages with MidAmerican Energy Company (MidAmerican).

On December 31, 2019, MidAmerican filed its response with the Board and copied you and the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice. Below is a summary of your complaint and your email of December 10, 2019, responding to a request for additional information, MidAmerican's response, and Board staff's (Staff) findings and proposed resolution.

Summary of Complaint and Response

Mr. and Mrs. Beane, in your complaint, you noted concerns about the impacts of MidAmerican's Arbor Hill Wind Project on your farming operations at multiple locations. Specifically, you stated that you rent from landowners that enrolled in this project. You stated that in mid-2018, right-of-way agents came to your home and presented Tenant Subordination and Non-Disturbance and Consent agreements for your signature, which you declined. You referenced Iowa Code chapter 562 regarding lease laws for crop land, specifically Tenants Right of Possession, which you contend MidAmerican violated. You identified that since you did not sign a tenant consent agreement, you believed MidAmerican could choose not to build on the affected properties, negotiate a tenant agreement that was agreeable to all parties, or delay construction and have landowners legally terminate your leases. You wrote that MidAmerican ignored your tenant rights and proceeded with wind turbine construction that damaged your crops. You stated you have written leases on the properties and did not sign addendums to any leases sought by right-of-way agents after construction commenced. You noted that MidAmerican did pay you for crop damages in 2018 pursuant to a release you drew up for crops damaged without your consent.

On December 10, 2019, you provided the following additional information, including the affected land tracts and related wind turbine numbers for the 2018 calendar year:

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- Approximately 80 acres tract in Section 23-77-30 of Lincoln Township, Adair County Iowa, buried lines and turbine number 141.
- Approximately 80 acres tract in Section 15-77-31 of Jefferson Township, Adair County, Iowa, buried lines and turbine number 84.
- Approximately 80 acres tract in Section 22-77-30 of Lincoln Township, Adair County, buried lines.
- Approximately 160 acres tract in Section 22-77-31 of Jefferson Township, Adair County, Iowa, buried lines and turbine number 91.
- Approximately 80 acres tract in Section 36-77-31 of Jefferson Township, Adair County, Iowa, buried lines and turbine number 214. You noted this location recently had crop damages and you wish to avoid further crop damages on this farm.

You asked Board Staff to pay special attention to these dates that you identify MidAmerican entered these properties without your consent.

On December 19, 2019, Staff requested that MidAmerican provide siting plans, including information related to whether the project required a certificate under Iowa Code chapter 476A. If a certificate under Iowa Code chapter 476A was not required, Staff asked MidAmerican to confirm a certificate was not necessary by providing documentation showing that each gathering line was under the 25 megawatt (MW) threshold.

In its response, MidAmerican provided ownership information for the four properties you cited in your complaint correspondence and noted it has buried underground collection lines under other farmland you lease. MidAmerican stated that all landowners have signed easements with MidAmerican. MidAmerican provided the following summary of activity and communications regarding the tenant subordination agreement it presented to you:

- *May 17, 2018* – A land agent from A&R Land Services met with you on behalf of MidAmerican and provided a proposed tenant subordination agreement for the wind project. Tenant agreements are not mandatory, but are provided in an effort to acknowledge all persons with an interest in the parcel and set certain expectations for all the involved entities.
- *May 22, 2018* – The land agent spoke with you. You advised you were concerned you would not be sufficiently compensated for crop damage. The land agent discussed the crop damage process and you said you would think about it and further review the document before calling back.
- *May 31, 2018* – The land agent spoke with you and you said you had three requests you wanted to add to the tenant agreements. You wanted to be contacted directly about crop damages rather than the owner, you wanted the tiles repaired if they were damaged, and you wanted all crops that were disturbed to be measured. The land agent placed contact with you on hold while discussing your requests with MidAmerican. MidAmerican does not have record of receiving documentation from the contracted land agent indicating you requested to make

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changes to the proposed tenant agreements. MidAmerican only has record of your request to be contacted directly regarding crop damages.

- *July 2, 2018* – The land agent informed you that MidAmerican was not willing to change the tenant agreement. It was explained that the tenant agreement would help facilitate the crop damage payment process. You advised you were not interested in signing a tenant agreement.
- *January 16, 2019* – An agent with A & R Land Services sent an email to the landowner related to Turbine 214 that was not consistent with MidAmerican's communications standards and was sent without MidAmerican's authorization. The communication asked the landowner to end or modify the lease with you.
- *January 31, 2019* – MidAmerican was informed of the emailed communication to the landowner for turbine 214. MidAmerican contacted A & R Land Services and requested MidAmerican's communication standards be followed on all future communications.
- *February 8, 2019* – A project developer with MidAmerican called you and the landowner for turbine 214 and apologized for the emailed communication sent by A & R Land Services on January 16, 2019. A project developer with MidAmerican sent an email to you that contained a map of the proposed road to turbine 214. The project developer asked you to reply if you had any suggested changes or questions. The email also communicated that a construction manager was checking into tile repairs.
- *February 27, 2019* – A project developer for MidAmerican sent a follow-up email to you regarding the proposed road route to turbine 214.
- *March 21, 2019* – A project developer for MidAmerican sent an email to you that contained tile repair maps.
- *May 21, 2019* – Your attorney sent a letter to MidAmerican regarding the leased property on which turbine 214 is located. The letter stated you were the tenant and had not waived any of your rights or signed the tenant non-disturbance and consent agreement or any addendum to any lease that has been offered to you.
- *September 6, 2019* – You signed a modified tenant agreement for the location of Turbine 214.

MidAmerican acknowledged there was damage to your crops as the result of construction. You provided MidAmerican's right-of-way agent with payment receipts for beans and corn from Heartland Co-op on December 12, 2018, so payment could be calculated. You signed a crop release on December 20, 2018, and payment was made to you on the following day.

MidAmerican stated it settled crop damages with you on October 31, 2019, for the tract of land where turbine 214 is located, in accordance with the modified tenant agreement. MidAmerican noted it had recently agreed to your requested crop damage settlement and was awaiting a signed release form from you prior to sending the crop damage settlement.

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MidAmerican stated that the turbines in question were constructed in accordance with the signed easements MidAmerican received from the property owners. Since the turbines have been constructed and placed into service, landowners have received both the easement payments and the ongoing payments for the turbines. In response to your concern regarding your rights under Iowa Code chapter 562, MidAmerican stated it believes this is a civil matter between you and the property owners. MidAmerican stated that, to the extent you have a concern with the use of the property, it is a landlord-tenant dispute.

MidAmerican cited frequent communication with you on many issues. MidAmerican stated it has made reasonable attempts to identify and respond to each item of concern. MidAmerican outlined the communications related to your complaint:

- *January 17, 2019* – A landowner contacted MidAmerican in writing and included you, discussing concerns regarding topsoil which was removed during turbine installation. MidAmerican was working with both you and the landowner to replace the topsoil.
- *October 29, 2019* – A project developer with MidAmerican received an email from you regarding a permanent fence that needed to be reconstructed in its original location.
- *November 1, 2019* – The fencing contractor installed a temporary fence until the radius was able to be removed and a permanent fence constructed.
- *November 15, 2019* – The permanent fence was constructed.

MidAmerican stated that the State of Iowa encourages energy production from renewable resources as stated in Iowa Code sections 476.41, 476.53(1), and 476.53A. MidAmerican noted that Iowa Code chapter 476A addresses siting requirements for electric generation facilities, which are defined as having 25 megawatts of generation at a single site. MidAmerican asserted the Board has repeatedly stated that when considering the facility threshold for wind turbines, the standard is whether 25 MW of generation is attached to a single gathering line. This interpretation was affirmed by the Iowa Supreme Court in *Mathis v. Iowa Utilities Board*, 934 N.W.2d 423 (Iowa 2019). Pursuant to Staff's request, MidAmerican attached siting plans for the Arbor Hill Wind Project, which appears to reflect an electric generating capacity of less than 25 megawatts on each gathering line. MidAmerican requested that the Board not make the line diagrams available to the public without providing MidAmerican an opportunity to request confidential treatment of the diagrams.

MidAmerican stated that in 2018, the Adair County Board of Supervisors considered amendments to its ordinances to address wind turbines. On October 3, 2018, the Board of Supervisors amended a county ordinance to require a wind turbine setback of 2,000 feet from a non-participating landowner's residence and 800 feet from a non-participating landowner's property line. The amendment is effective for all wind turbines for any wind energy conversion property which is contracted after publication of the amended ordinance, including easements between the participating landowner and the owner or operator of wind energy conversion property. MidAmerican stated that this effectively exempts any wind turbine or turbine easement obtained prior to the ordinance. MidAmerican stated that because it had signed easements with landowners for turbines that are to be part of the Orient and Arbor Hill wind projects in Adair County prior to the date of the amendment, the

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setbacks in the amended ordinance do not apply to turbines constructed under these easements. MidAmerican stated that all of the turbines were sited in accordance with applicable laws, including the local county ordinance.

MidAmerican also stated Iowa Code section 476.3 deals with complaints against public utilities, but only where the written complaint 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...” MidAmerican concluded that this type of complaint is outside the Board’s jurisdiction because there is no allegation that MidAmerican has failed or is in non-compliance with Iowa Code chapter 476.

MidAmerican stated it has built its turbines in accordance with all applicable laws and pursuant to the terms and conditions of the signed easements. MidAmerican stated it does not believe the Board is the correct venue to adjudicate landlord-tenant disputes.

Staff Analysis and Proposed Resolution

Board Staff has reviewed the information provided by you and MidAmerican. MidAmerican has acknowledged the damages to your crops as the result of wind turbine-related construction. You presented MidAmerican’s right-of-way agent your payment receipts for beans and corn from Heartland Co-op on December 12, 2018, in order for payment of your requested 2018 crop damages to be calculated. You then signed a crop release on December 20, 2018, with MidAmerican providing payment to you the following day. As of the date of its complaint response, MidAmerican had also agreed to your requested 2019 crop damage settlement for the property where Turbine 214 is located, which you stated was currently your most pressing concern regarding crop damages. MidAmerican identified that it was awaiting a signed release form from you prior to sending the outstanding crop damage settlement.

MidAmerican has responded to your concerns, including tile repairs and fence and topsoil replacement. You signed a modified tenant agreement for the location of turbine 214 on September 6, 2019. MidAmerican apologized to you and a landowner that an A & R Land Services agent improperly sent an email related to turbine 214 to the landowner without MidAmerican’s authorization. MidAmerican then worked with you regarding the proposed road to turbine 214 and your concerns about tile damage and repairs.

The Board generally has limited oversight of wind turbine siting and construction related issues, which does not include oversight of tenant concerns that you noted are associated with Iowa Code chapter 562. Additionally, chapter 476A of the Iowa Code only requires utilities to seek a generating certificate from the Board when a facility has a capacity of 25 megawatts or more. With respect to wind farms, the Board has determined that this requirement applies when a gathering line collects 25 megawatts or more of generating capacity from wind turbines. This interpretation was recently affirmed by the Iowa Supreme Court in *Mathis v. Iowa Utilities Board*. Consequently, the Iowa Code allows electric utilities such as MidAmerican to construct wind turbines in Iowa without siting oversight of the Board when the total generation to a single gathering line does not exceed 25 megawatts. MidAmerican has provided the siting plans and information necessary to confirm that the Board does have siting oversight of the wind turbines associated with your complaint.

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Staff notes that the placement of wind turbines is typically determined by approvals of local government officials, including County Boards of Supervisors and Planning and Zoning Commissions. MidAmerican claimed that, as part of the Orient and Arbor Hill wind projects, the owners of the identified properties signed easements prior to Adair County's amendment, so the setbacks in the amended ordinance do not apply to turbines constructed under those easements.

Staff also concludes that the Board is not the proper venue for the tenant issues raised in your complaint since the Board does not have oversight pertaining to Iowa Code chapter 562. Staff recommends that you may want to seek personal legal counsel regarding such concerns.

Please call MidAmerican Customer Service at 1-888-427-5632 or Ms. Bergthold at 1-800-567-2801, extension 8326, if you have additional questions or concerns.

Conclusion

At this time no further action is required of our office. If any party disagrees with this proposed resolution, that party may request a formal proceeding with the Board within 14 days of the date of this letter of proposed resolution. If you request a formal proceeding, you should provide reasons why you believe further investigation is needed. Please email or mail copies of the request to all parties, including our office, to MidAmerican, and to the OCA and refer to the C-file number listed at the top of this letter. If nothing is received from any of the parties relating to this complaint within 14 days, this case will be closed.

If any party should have additional questions or concerns regarding this matter, please contact me at 1-877-565-4450.

Sincerely,

/s/
Rob Hillesland
Customer Service Utility Analyst

cc: MidAmerican
Office of Consumer Advocate