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FOR IMMEDIATE RELEASE

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**PAGE COUNTY WIND ENERGY PETITIONERS REQUEST CASE BE REMANDED BACK TO
IOWA STATE COURT**

Petitioner's invoke "Pullman Abstention Doctrine" - note that the case is a "first impression" for Iowa courts in response to Respondent's attempt to move case to federal court - address intervention and standing claims by Shenandoah Hills Wind Project / Invenergy, LLC

Clarinda, Iowa - (November 17, 2022) - Petitioners in the ongoing Page County wind energy litigation filed two briefs in federal court on Wednesday, November 16, 2022. The first - requests that petitioner's case be remanded back to the Iowa District Court for Page County. Invoking what is known as the "Pullman Abstention Doctrine" lawyers for the plaintiffs argued that based on unique issues of Iowa law and the principle of "first impression" - their case should be heard in state court without federal intervention.

"This case falls into a category known as a "first impression" case for Iowa courts," Shawn Shearer, co-counsel for petitioners stated. "That is to say that Iowa state court is essentially looking at this exact matter for the first time. There is no current Iowa state court decision on the books that advises how to reconcile a conflict between a zoning ordinance and a non-zoning ordinance. Our clients are raising the issue that, simply put - the Page County Board of Supervisors is doing it wrong - and we wrote over 100 pages addressing *how* they are doing it wrong. Page County Ordinance 2019-2 does not give any entity the right to build wind turbines in Page County at this time. The ordinance fails to meet the standard of the Iowa Home Rule Statute. Petitioners requested review of this matter in what we contend is the correct venue - the Iowa District Court for Page County. Our clients are uncertain why some of their elected officials are hesitant to have this case heard in their own home county. In the "Pullman Abstention Doctrine" - the US Supreme Court decided long ago that cases of this type should be heard in state court *before* a federal court weighs in." Shearer said.

Among other arguments, petitioners rely on the "Pullman Abstention Doctrine", which co-counsel for the petitioners, Theodore Sporer, describes as "arising from the US Supreme Court decision in the 1941 case *Railroad Commission of Texas v. Pullman Co.* which held that matters - particularly issues of "first impression" - should be first interpreted by the state before federal courts rule on their constitutionality. *Pullman* also advises that federal courts should abstain from hearing tenuous or "weak" federal claims where substantial or "strong" state law claims are predominant in the litigation."

Mr. Sporer states - "Our clients are the first to argue wind energy in this manner in the State of Iowa. As I said previously, Mr. Shearer and I studied the litigation history of Invenergy, LLC and of other Iowa counties extensively prior to filing this 116 page petition. We knew very well from the beginning that this case, as plead, is a "first impression" for the Iowa state courts. *Pullman* is designed to preserve "comity" - the respect of one court for another's decisions and jurisdiction - between state and federal courts. The statutes and ordinances at issue in this Page County case are precisely the kinds of claims that *Pullman* is designed to address. Given that all of petitioners' claims arise out of state laws and only mention a federal question in the alternative and hypothetically, *Pullman* provides necessary guidance."

The federal judge assigned to the case appears to be giving these issues substantial immediate attention. Mr. Sporer said - "Upon receiving the parties initial filings, Judge Pratt took the step of mandating a second round of briefing from all parties. The parties opposing my clients have now used tens of thousands of words in their filings arguing that the case falls under federal jurisdiction due to the "void for vagueness" concept without ever once taking a position on whether the statute is actually unconstitutionally vague. At the same time, the parties are implying that the statute is not unconstitutionally vague. Both of those scenarios cannot be simultaneously true."

Mr. Shearer adds - "This request to remand meets both standards required in the *Pullman* decision - first impression and uniqueness. The pendant state law claims and remedies in this case are not typical court claims but are unique to Iowa state law and the distribution of governmental authority through the Iowa Home Rule Statute. On the face of the petition, the state claims predominate. We believe that the case should be remanded."

Petitioners are frustrated with the continued attempts by respondents and their counsel to create confusion on issues that they view as straightforward. Mr. Sporer elaborates - "Respondents in this case have sought to move this away from what appears to us to be a logical and proper venue. Their removal is based on hypotheticals that ignore the reality of the pleading itself. The "void for vagueness" argument that allegedly forms the basis for this removal is *contingent* - which means that it is argued in the alternative and its use depends on how respondents answer the petition. The petition has not been answered. Yet somehow, respondents want a hypothetical, potential future claim to be decided in a federal court prior to adjudication of the much more pressing and clearly predominant and unique state court issues. Such process is erroneous, and, in our filing, we make it clear that *Pullman* set the standard that advises the court on how to deal with attempts at erroneous removal. Respondents seek a federal determination of a hypothetical due process claim without ever addressing the factual predicates necessary to trigger the due process claim."

In their second filing, Petitioners continue to object to the intervention into this case by Shenandoah Hills Wind Project /Invenergy, LLC. "At this point, SHW and its counsel are on their third iteration of their reason why they should be allowed to intervene and each retelling appears to contradict the prior filing," said Mr. Shearer. "First, Invenergy told a state court that they have a permit to build wind turbines. They do not. Then, a month later, Invenergy told a federal court that they do not have a permit to build wind turbines. Invenergy has never proven to have a "property interest" in this case, as is necessary to have cause to intervene as a third party. The court can neither anticipate nor be expected to contemporaneously recognize that a party is making diametrically opposed representations to different courts, as our filings indicate. Such behavior does not make the process more efficient and ultimately undermines the purpose of allowing third party intervention."

The problem for petitioners does not end there. "Invenergy and its counsel - at that time a non-party to this claim - argued in October that petitioners do not have standing to bring these

claims. In their filing of November 16, in response to Judge Pratt's order for full briefing, Invenergy switched positions in a convoluted and hyper-technical manner to argue that petitioners *do* have standing. Such an approach inherently belabors the process and creates confusion for everyone involved," stated Mr. Sporer.

Mr Shearer concludes, "Likely, the next step will be a hearing on multiple issues including those of remand and federal jurisdiction. Given the number of impending holidays and end of year scheduling, it is difficult to say exactly when that hearing will take place."

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