

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
	)	Chapter 11
PES HOLDINGS, LLC, <i>et al.</i> , ¹)	
	)	Case No. 19-11626 (___)
Debtors.	)	(Joint Administration Requested)
)	

**DEBTORS’ APPLICATION FOR ENTRY OF AN
ORDER (I) AUTHORIZING AND APPROVING THE
APPOINTMENT OF OMNI MANAGEMENT GROUP, INC. AS
CLAIMS AND NOTICING AGENT AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)² respectfully state the following in support of this application (this “Application”).

Relief Requested

1. The Debtors seek entry of an order (the “Order”), substantially in the form attached hereto as **Exhibit A**: (a) appointing Omni Management Group, Inc. (“Omni”) as claims and noticing agent (“Claims and Noticing Agent”) for the Debtors and their chapter 11 cases, effective *nunc pro tunc* to the Petition Date, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtors’ chapter 11 cases, and (b) granting related relief. In support of this Application, the Debtors submit

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors’ service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Jeffrey S. Stein, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on July 21, 2019 (the “Petition Date”).

the *Declaration of Paul H. Deutch in Support of the Debtors' Application for Entry of an Order (I) Authorizing and Approving the Appointment of Omni Management Group, Inc. as Claims and Noticing Agent and (II) Granting Related Relief* (the "Deutch Declaration"), attached hereto as **Exhibit B**. The Debtors' selection of Omni to act as the Claims and Noticing Agent has satisfied the Claims Agent Protocol (as defined below), in that the Debtors have obtained and reviewed engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that Omni's rates are competitive and reasonable given Omni's quality of services and expertise. The terms of Omni's retention are set forth in the Engagement Agreement attached hereto as **Exhibit C** (the "Engagement Agreement"); *provided* that Omni is seeking approval solely of the terms and provisions as set forth in this Application and the Order.

2. By separate application, the Debtors will seek authorization to retain and employ Omni as administrative advisor in these chapter 11 cases pursuant to section 327(a) of the Bankruptcy Code because the administration of these chapter 11 cases will require Omni to perform duties outside the scope of 28 U.S.C. § 156(c).

Jurisdiction and Venue

3. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (the "Amended Standing Order"). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court,

absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are section 156(c) of title 28 of the United States Code, section 105(a) of the Bankruptcy Code, Local Rules 2002-1(f) and 9013-1(m), and the Court's *Protocol for the Employment of Claims and Noticing Agents Under 28 U.S.C. § 156(c)*, instituted by the Clerk on February 1, 2012 (the "Claims Agent Protocol").

Background

6. Headquartered in Philadelphia, Pennsylvania, the Debtors are owners and operators of the largest oil refining complex on the United States Eastern seaboard and have been continuously operating in some form for over 150 years. The refining complex sits on an approximately 1,300 acre industrial site roughly 2.5 miles from downtown Philadelphia. It is comprised of two separate refineries that have a combined distillation and refining capacity of 335,000 barrels of crude oil per day. The refining complex produces a full range of transportation fuels, such as gasoline and ultra-low sulfur diesel, as well as other refined products, including home heating oil, jet fuel, kerosene, fuel oil, propane, propylene, butane, cumene, and sulfur. The Debtors market and distribute these products by truck, rail, pipeline, and waterborne vessels throughout population centers in the northeastern United States and by waterborne vessels to international markets.

7. On the Petition Date, each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Application, the Debtors have requested

procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

Omni's Qualifications

8. Omni is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Omni's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. Omni's professionals have acted as debtors' administrative advisor and/or official claims and noticing agent in many large bankruptcy cases in this district and in other districts nationwide, including: *In re FTD Cos., Inc.*, No. 19-11240 (LLS) (Bankr. D. Del. Jun. 4, 2019); *In re L.K. Bennett U.S.A. Inc.*, No. 19-10760 (KG) (Bankr. D. Del. May 7, 2019); *In re Hexion Holdings LLC*, No. 19-10684 (KG) (Bankr. D. Del. Apr. 2, 2019); *In re 1515-GEENERGY Holding Co. LLC*, No. 19-10303 (KJC) (Bankr. D. Del. Feb. 19, 2019); *In re Consol. Infrastructure Grp., Inc.*, No. 19-10165 (Bankr. D. Del. Jan. 31, 2019); *In re NSC Wholesale Holdings LLC*, No. 18-12394 (KJC) (Bankr. D. Del. Oct. 26, 2018); *In re Brookstone Holdings Corp.*, No. 18-11780 (BLS) (Bankr. D. Del. Aug. 3, 2018); *In re Arecont Vision Holdings, LLC*, No. 18-11142 (CSS) (Bankr. D. Del. May 15, 2018); *In re Videology, Inc.*, No. 18-11120 (BLS) (Bankr. D. Del. May 11, 2018); *In re PES Holdings, LLC*, No. 18-10122 (KG) (Bankr. D. Del. Jan. 23, 2018); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 13, 2017); *In re Answers Holdings, Inc.*, No. 17-10496 (SMB) (Bankr. S.D.N.Y. Mar. 10, 2017); *In re Memorial Prod. Partners LP*, No. 17-30262 (MI) (Bankr. S.D. Tex. Jan. 16, 2017). Omni will follow procedures

that conform to applicable guidelines promulgated by the Clerk of the Court and the Judicial Conference, and as may be entered by the Court's order.³

9. By appointing Omni as the Claims and Noticing Agent in these chapter 11 cases, the distribution of notices and the processing of claims will be expedited, and the Office of the Clerk of the United States Bankruptcy Court for the District of Delaware (the "Clerk's Office") will be relieved of the administrative burden of processing proofs of claims, if any.

Services to Be Provided

10. This Application pertains only to the work to be performed by Omni under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f), and any work to be performed by Omni outside of this scope is not covered by this Application or by any order granting approval hereof. Specifically, Omni will perform the following tasks in its role as Claims and Noticing Agent, as well as all quality control relating thereto:

- a. prepare and serve required notices and documents in these chapter 11 cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of these chapter 11 cases and the initial meeting of creditors, if any, under section 341(a) of the Bankruptcy Code, (ii) notice of any claims bar date, if necessary, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement or confirmation of the Debtors' chapter 11 plan, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan, and (vii) all other notices, orders, pleadings, publications, and other documents as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these chapter 11 cases;
- b. maintain an official copy of the Debtors' schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory contracts and unexpired leases, and statements of financial affairs, schedules of current income and expenditures, schedules of executory contracts and unexpired leases (collectively, the "Schedules"), to the extent

³ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Application. Copies of these orders are available upon request to the Debtors' proposed counsel.

the filing of the Schedules is necessary in these chapter 11 cases, listing the Debtors' known creditors and the amounts owed thereto, if the requirement to file such Schedules is not waived by the Court;

- c. maintain (i) a list of all potential creditors, equity holders, and other parties in interest, and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j), and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; and update and make said lists available upon request by a party in interest or the Clerk's Office;
- d. furnish a notice to all potential creditors of the last date for filing proofs of claim, if necessary, and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- e. maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- f. for *all* notices, applications, orders, or other pleadings or documents served, prepare and file or cause to be filed with the Clerk's Office an affidavit or certificate of service within seven business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- g. process all proofs of claim received, if any, including those received by the Clerk's Office, confirm processing for accuracy, and maintain the original proofs of claim in a secure area;
- h. provide an electronic interface for filing proofs of claim;
- i. (i) maintain the official claims register for each Debtor (collectively, the "Claims Registers") on behalf of the Clerk's Office on a case specific website; (ii) upon the Clerk's Office's request, provide the Clerk's Office with certified, duplicate unofficial Claims Registers; and (iii) specify in the Claims Registers the following information for each claim docketed: (A) the claim number assigned, (B) the date received, (C) the name and address of the claimant and agent, if applicable, who filed the claim, (D) the amount asserted, (E) the asserted classification(s) of the claim (e.g., secured, unsecured, priority, etc.), (F) the applicable Debtor, and (G) any disposition of the claim;

- j. provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge;
- k. implement necessary security measures to ensure the completeness and integrity of the Claims Registers, if any, and the safekeeping of the original claims;
- l. record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- m. relocate, by messenger or overnight delivery, all of the proofs of claim filed directly with the court to Omni's offices, not less than weekly;
- n. upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk's Office copies of the Claims Registers for the Clerk's Office's review (upon the Clerk's Office's request);
- o. monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the Claims Registers and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- p. identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- q. assist in the dissemination of information to the public and respond to requests for administrative information regarding these chapter 11 cases as directed by the Debtors or the Court, including through the use of a case website, and/or call center;
- r. if these chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's Office within three days of notice to Omni of entry of the order converting these chapter 11 cases;
- s. 30 days prior to the close of these chapter 11 cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing Omni and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases;
- t. within seven days of notice to Omni of entry of an order closing these chapter 11 cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of these chapter 11 cases; and
- u. at the close of these chapter 11 cases, box and transport all original documents, in proper format, as provided by the Clerk's Office, to (i) the Federal Archives Record Administration, located at Central Plains

Region, 200 Space Center Drive, Lee's Summit, Missouri 64064 or (ii) any other location requested by the Clerk's Office.

11. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by Omni.

Professional Compensation

12. The Debtors respectfully request that the undisputed fees and expenses incurred by Omni in the performance of the above services be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business without further application to or order of the Court. Omni agrees to maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

13. Prior to the Petition Date, the Debtors provided Omni a retainer in the amount of \$20,000. Omni seeks to hold the retainer under the Engagement Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

Disinterestedness

14. Although the Debtors do not propose to employ Omni under section 327 of the Bankruptcy Code pursuant to this Application (such retention will be sought by separate application), Omni has nonetheless reviewed its electronic database to determine whether it has

any relationships with the creditors and parties in interest provided by the Debtors, and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Deutch Declaration, Omni has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

15. Moreover, in connection with its retention as Claims and Noticing Agent, Omni represents in the Deutch Declaration, among other things, that:

- a. Omni is not a creditor of the Debtors;
- b. Omni will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;
- c. by accepting employment in these chapter 11 cases, Omni waives any rights to receive compensation from the United States government in connection with these chapter 11 cases;
- d. in its capacity as the Claims and Noticing Agent in these chapter 11 cases, Omni will not be an agent of the United States and will not act on behalf of the United States;
- e. Omni will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;
- f. Omni is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- g. in its capacity as Claims and Noticing Agent in these chapter 11 cases, Omni will not intentionally misrepresent any fact to any person;
- h. Omni shall be under the supervision and control of the Clerk's Office with respect to the receipt and recordation of claims and claim transfers;
- i. Omni will comply with all requests of the Clerk's Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- j. none of the services provided by Omni as Claims and Noticing Agent in these chapter 11 cases shall be at the expense of the Clerk's Office.

16. Omni will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

Compliance with Claims and Noticing Agent Protocol

17. This Application complies with the Claims Agent Protocol and substantially conforms to the standard application in use in this Court. To the extent that there is any inconsistency between this Application, the Order and the Engagement Agreement, the Order shall govern.

Basis for Relief

18. Section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of bankruptcy courts, authorizes the Court to use “facilities” or “services” other than the Clerk’s Office for administration of bankruptcy cases. It states:

Any court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

19. In addition, Local Rule 2002-1(f) provides:

Upon motion of the debtor or trustee, at any time without notice or hearing, the Court may authorize the retention of a notice and/or claims clerk under 28 U.S.C. § 156(c). In all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file such motion on the first day of the case or within seven (7) days thereafter. The notice and/or claims clerk shall comply with the Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c) (which can be found on the Court’s website) and shall perform the [Claims and Noticing Services].

20. In accordance with the Claims Agent Protocol, prior to the selection of Omni, the Debtors reviewed and compared engagement proposals from three court-approved claims and

noticing agents, including Omni, to ensure selection through a competitive process. The Debtors submit, based on the engagement proposals obtained and reviewed, that Omni's rates are competitive and reasonable given Omni's quality of services and expertise. The terms of Omni's retention are set forth in the Engagement Agreement; *provided* that Omni is seeking by this Application approval solely of the terms and provisions as set forth in this Application and the Order as set forth in **Exhibit A**.

21. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be thousands of persons and entities to be noticed, many of which are expected to file proofs of claim. Given the number of creditors and other parties in interest involved in these chapter 11 cases, the Debtors seek an order appointing Omni as the Claims and Noticing Agent in these chapter 11 cases pursuant to 28 U.S.C. § 156(c) and Local Rule 2002-1(f) to relieve this Court and the Clerk's Office of administrative burdens.

Notice

22. The Debtors will provide notice of this Application to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent under the Debtors' prepetition first lien term loan facility and counsel thereto; (d) the lenders under the Debtors' prepetition first lien term loan facility and counsel thereto; (e) Merrill Lynch Commodities, Inc. and counsel thereto; (f) NGL Energy Partners LP and counsel thereto; (g) the lenders under the Debtors' prepetition promissory note and counsel thereto; (h) counsel to ICBC Standard Bank Plc; (i) the Internal Revenue Service; (j) all parties known by the Debtors to hold or assert a lien on any asset of any Debtor; (k) all relevant state taxing authorities; (l) all of the Debtors' landlords, and owners and/or operators of premises at which any of the Debtors' inventory and/or equipment is located; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this

Application is seeking “first day” relief, within two business days of the hearing on this Application, the Debtors will serve copies of this Application and any order entered in respect to this Application as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

23. No prior application for the relief requested herein has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: July 22, 2019
Wilmington, Delaware

/s/ Jeffrey S. Stein
Jeffrey S. Stein
Chief Restructuring Officer
PES Holdings, LLC

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
	)	Chapter 11
PES HOLDINGS, LLC, <i>et al.</i> , ¹)	
	)	Case No. 19-11626 (___)
Debtors.	)	(Joint Administration Requested)
)	
	)	Re: Docket No. ___

**ORDER (I) AUTHORIZING AND APPROVING THE
APPOINTMENT OF OMNI MANAGEMENT GROUP, INC. AS
CLAIMS AND NOTICING AGENT AND (II) GRANTING RELATED RELIEF**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order (this “Order”), (a) appointing Omni as Claims and Noticing Agent to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Debtors’ chapter 11 cases, and (iii) provide such other administrative services – as required by the Debtors – that would fall within the purview of services to be provided by the Clerk’s Office, and (b) granting related relief, all as more fully set forth in the Application; and the Debtors having estimated that there are thousands of potential creditors in these cases, many of which are expected to file proofs of claim; and it appearing that the receiving, docketing, and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and this Court being

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors’ service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Application.

authorized under 28 U.S.C. §156(c) to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy, and transmit proofs of claim; and this Court being satisfied that Omni has the capability and experience to provide such services and that Omni does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and upon the First Day Declaration; and upon the Deutch Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that notice of and opportunity for a hearing on the Application were appropriate and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. Notwithstanding the terms of the Engagement Agreement attached as **Exhibit C** to the Application, the Application is granted as set forth herein.

2. The Debtors are authorized to retain Omni as Claims and Noticing Agent, *nunc pro tunc* to the Petition Date, under the terms of the Engagement Agreement, and Omni is authorized

and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these chapter 11 cases, and all related tasks, all as described in the Application.

3. Omni shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and directed to maintain official claims registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. Omni is authorized and directed to obtain a post office box or address for the receipt of proofs of claim.

5. Omni is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate Omni in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Omni and the rates charged for each, and to reimburse Omni for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Omni to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. Omni shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Debtors, the Office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party in interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices; *provided* that the parties may seek resolution of the matter from this Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Omni under this Order shall be an administrative expense of the Debtors' estates.

10. Omni may hold its retainer under the Engagement Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

11. To the extent applicable in the Engagement Agreement, all requests by Omni for the payment of indemnification shall be made by means of an application to the Court and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Agreement and is reasonable under the circumstances of the litigation or settlement in respect of which indemnity is sought; *provided* that in no event shall Omni be indemnified in the case for its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

12. In the event that Omni seeks reimbursement from the Debtors for attorneys' fees in connection with the payment of an indemnity claim, the invoices and supporting time records for the attorneys' fees and expenses shall be included in Omni's own applications, both interim and final, but determined by this Court after notice and a hearing.

13. In the event Omni is unable to provide the services set out in this Order, Omni will immediately notify the Clerk and the Debtors' counsel and, upon approval of this Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' counsel.

14. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by Omni but is not specifically authorized by this Order.

15. The Debtors and Omni are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

16. Omni shall not cease providing claims processing services during these chapter 11 cases for any reason, including nonpayment, without an order of this Court; *provided* that Omni may seek such an order on expedited notice by filing a request with this Court with notice of such request to be served on the Debtors, the Office of the United States Trustee, and any official committee of creditors appointed in these cases by facsimile or overnight delivery; *provided, further*, that except as expressly provided herein, the Debtors and Omni may otherwise terminate or suspend other services as provided under the Engagement Agreement.

17. After entry of an order terminating Omni's services as the Claims and Noticing Agent, upon the closing of these cases, or for any other reason, Omni shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable.

18. In the event of any inconsistency between the Engagement Agreement, the Application and this Order, this Order shall govern.

19. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

20. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of the Bankruptcy Rules and the Local Rules are satisfied by such notice.

21. Notwithstanding any Bankruptcy Rule to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

22. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

23. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Deutch Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
	)	Chapter 11
PES HOLDINGS, LLC, <i>et al.</i> , ¹)	
	)	Case No. 19-11626 (____)
)	
Debtors.	)	(Joint Administration Requested)
)	

**DECLARATION OF PAUL H. DEUTCH
IN SUPPORT OF THE DEBTORS' APPLICATION
FOR ENTRY OF AN ORDER (I) AUTHORIZING AND
APPROVING THE APPOINTMENT OF OMNI MANAGEMENT GROUP, INC.
AS CLAIMS AND NOTICING AGENT AND (II) GRANTING RELATED RELIEF**

I, Paul H. Deutch, under penalty of perjury, declare as follows:

1. I am a Senior Vice President of Omni Management Group, Inc. ("Omni"), a chapter 11 administrative services firm, whose offices are located at 1120 Avenue of the Americas, 4th Floor, New York, New York 10036. Except as otherwise noted, I have personal knowledge of the matters set forth herein and, if called and sworn as a witness, I could and would testify competently thereto.

2. This declaration (this "Declaration") is made in support of the *Debtors' Application for Entry of an Order (I) Authorizing and Approving the Appointment of Omni Management Group, Inc. as Claims and Noticing Agent and (II) Granting Related Relief*, which was filed contemporaneously herewith (the "Application").²

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors' service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Application.

3. Omni is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Omni's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. Omni's professionals have acted as debtors' administrative advisor and/or official claims and noticing agent in many large bankruptcy cases in this district and in other districts nationwide, including: *In re FTD Companies, Inc.*, No. 19-11240 (LLS) (Bankr. D. Del. Jun. 4, 2019); *In re L.K. Bennett U.S.A. Inc.*, No. 19-10760 (KG) (Bankr. D. Del. May 7, 2019); *In re Hexion Holdings LLC*, No. 19-10684 (KG) (Bankr. D. Del. Apr. 2, 2019); *In re 1515-GEENERGY Holding Co. LLC*, No. 19-10303 (KJC) (Bankr. D. Del. Feb. 19, 2019); *In re Consolidated Infrastructure Group, Inc.*, No. 19-10165 (Bankr. D. Del. Jan. 31, 2019); *In re NSC Wholesale Holdings LLC*, 18-12394 (KJC) (Bankr. D. Del. Oct. 26, 2018); *In re Brookstone Holdings Corp.*, No. 18-11780 (BLS) (Bankr. D. Del. Aug. 3, 2018); *In re Arecont Vision Holdings, LLC*, No. 18-11142 (CSS) (Bankr. D. Del. May 15, 2018); *In re Videology, Inc.*, No. 18-11120 (BLS) (Bankr. D. Del. May 11, 2018); *In re PES Holdings, LLC*, No. 18-10122 (KG) (Bankr. D. Del. Jan. 23, 2018); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 13, 2017); *In re Answers Holdings, Inc.*, No. 17-10496 (SMB) (Bankr. S.D.N.Y. Mar. 10, 2017); *In re Memorial Production Partners LP*, No. 17-30262 (MI) (Bankr. S.D. Tex. Jan. 16, 2017).³

4. As agent and custodian of Court records pursuant to 28 U.S.C. § 156(c), Omni will perform, at the request of the Office of the Clerk of the Bankruptcy Court (the "Clerk's Office"), the services specified in the Application and the Engagement Agreement, and, at the Debtors'

³ Because of the voluminous nature of the orders cited herein, such orders have not been attached to the Application. Copies of these orders are available upon request to the Debtors' proposed counsel.

request, any related administrative, technical, and support services as specified in the Application and the Engagement Agreement. In performing such services, Omni will charge the Debtors the rates set forth in the Engagement Agreement, which is attached as **Exhibit C** to the Application.

5. Before the Petition Date, the Debtors provided Omni a retainer in the amount of \$20,000.00. Omni seeks to hold the retainer under the Engagement Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

6. Omni represents, among other things, the following:

- a. Omni is not a creditor of the Debtors;
- b. Omni will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;
- c. by accepting employment in these chapter 11 cases, Omni waives any rights to receive compensation from the United States government in connection with these chapter 11 cases;
- d. in its capacity as the Claims and Noticing Agent in these chapter 11 cases, Omni will not be an agent of the United States and will not act on behalf of the United States;
- e. Omni will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;
- f. Omni is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- g. in its capacity as Claims and Noticing Agent in these chapter 11 cases, Omni will not intentionally misrepresent any fact to any person;
- h. Omni shall be under the supervision and control of the Clerk’s Office with respect to the receipt and recordation of claims and claim transfers;
- i. Omni will comply with all requests of the Clerk’s Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and

- j. none of the services provided by Omni as Claims and Noticing Agent in these chapter 11 cases shall be at the expense of the Clerk's Office.

7. To the best of my knowledge and based solely upon information provided to me by the Debtors, and except as provided herein, neither Omni, nor any employee thereof, has any materially adverse connection to the Debtors, their creditors or other relevant parties. Omni may have relationships with certain of the Debtors' creditors as a vendor or in connection with cases in which Omni serves or has served in a neutral capacity as noticing, claims and balloting agent for another chapter 11 debtor.

8. Omni personnel may have relationships with some of the Debtors' creditors or other parties-in-interest. However, to the best of my knowledge, such relationships, to the extent they exist, are of a personal nature and completely unrelated to these chapter 11 cases. Omni has and will continue to represent clients in matters unrelated to these chapter 11 cases. In addition, Omni has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals, and other parties-in-interest that may be involved in the Debtors' cases in matters unrelated to these cases. Omni may also provide professional services to entities or persons that may be creditors or parties-in-interest in these chapter 11 cases, which services do not directly relate to, or have any direct connection with, these chapter 11 cases or the Debtors. To the best of my knowledge, neither Omni, nor any employees thereof, represents any interest materially adverse to the Debtors' estates with respect to any matter upon which Omni is to be engaged.

9. Although the Debtors do not propose to retain Omni under section 327 of the Bankruptcy Code (such retention will be sought by separate application), Omni has nonetheless reviewed its electronic database to determine whether it has any relationships with the entities provided by the Debtors. At this time, we are not aware of any relationship which would present a disqualifying conflict of interest. Should Omni discover any new relevant facts or relationships

bearing on the matters described herein during the period of its retention, Omni will use reasonable efforts to file promptly a supplemental declaration. Omni will also comply with all requests of the Clerk's Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

10. Based on the foregoing, I believe that Omni is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code.

[Remainder of page intentionally left blank.]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Dated: July 22, 2019
Wilmington, Delaware

/s/ Paul H. Deutch

Paul H. Deutch
Executive Managing Director
Omni Management Group Inc.

Exhibit C

Engagement Agreement

OMNI MANAGEMENT GROUP

5955 De Soto Avenue, Suite 100
Woodland Hills, CA 91367
818-906-8300

June 26, 2019

John McShane
Executive Vice President & General Counsel
PES Holdings, LLC, et al.
1735 Market Street, 11th Floor
Philadelphia, PA 19103

Re: **Omni Management Group Retention letter**

Mr. McShane:

This letter (the "Agreement") will acknowledge that you have requested Omni Management Group, Inc. ("Omni") to provide services to PES Holdings, LLC ("PESH") and certain of its affiliates and subsidiaries (collectively with PESH, the "Companies") in preparation of, and in connection with, the Companies' potential joint chapter 11 cases. Omni will make itself available to the Companies, *as requested*, for the purposes of assisting the Companies with pre- and post-petition case administration matters including data entry, preparation and management of the creditor matrix, preparation of schedules of assets and liabilities and statements of financial affairs, claims management, noticing, plan solicitation and tabulation, distribution, the development and maintenance of a virtual data room, the development and maintenance of an informational website, and any other services as may be requested by the Companies.

The services to be rendered by Omni will be billed at rates ranging from \$25.00 to \$155.00 per hour as per the attached rate sheet. In addition, Omni will provide the Companies with an additional discount of **up to \$50,000**. Such discount will be effectuated by a voluntary reduction of each monthly § 156(c) invoice (excluding postage, publication, and other pass through charges) by ten (10%) percent until the aforementioned \$50,000 is reached.

Rates are adjusted annually on January 2nd of each year and are subject to increases not to exceed ten (10%) percent per annum. Increases greater than ten (10%) percent per annum will be discussed with you, and be subject to your prior approval, before becoming effective.

For all such services rendered, we require a \$20,000 retainer. All charges will be on a portal to portal basis plus out-of-pocket expenses. Omni shall be compensated on a monthly basis for those services performed by Omni during the preceding calendar month. Invoices are payable within 7 days of receipt by the Companies.

Each of Omni and the Companies, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all nonpublic records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably

John McShane
June 25, 2019
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believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

The parties understand that the software programs and other materials furnished by Omni pursuant to this Agreement and/or developed during the course of this Agreement by Omni are the sole property of Omni. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Companies agree not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement. The Companies further agree that any ideas, concepts, know-how or techniques relating to data processing or Omni's performance of its services developed during the course of its Agreement by Omni shall be the exclusive property of Omni. Upon the Companies' request at any time or times while this Agreement is in effect, Omni shall immediately deliver to the Companies and/or the Companies' retained professionals, at the Companies' expense, any or all of the non-proprietary data and records held by Omni pursuant to this Agreement, in the form requested by the Companies.

To the fullest extent permitted by applicable law, the Companies shall indemnify and hold harmless Omni and its members, directors, officers, employees, representatives, affiliates, consultants, subcontractors and agents (collectively, the "Indemnified Parties") from and against any and all losses, claims, damages, judgments, liabilities and expenses, whether direct or indirect (including, without limitation, counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to Omni's performance hereunder. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third parties against any Indemnified Parties. Omni and the Companies shall notify each other in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that either party becomes aware of with respect to the services provided under and pursuant to the Agreement. The Companies' indemnification of Omni hereunder shall exclude Losses resulting from Omni's ordinary negligence, gross negligence, or willful misconduct. The Companies' indemnification obligations hereunder shall survive the termination of this Agreement.

In no event shall Omni be liable for any indirect, special or consequential damages (such as loss of anticipated profits or other economic loss) in connection with or arising out of the services provided under and pursuant to this Agreement.

This Agreement is terminable at will by the parties hereto upon thirty (30) days written notice. Notwithstanding the foregoing, either party may terminate this Agreement immediately upon written notice in the event of a breach by the other party. In the event that this Agreement is terminated, regardless of the reason for such termination, Omni shall cooperate with the Companies to maintain an orderly transfer of all records, data and information and record keeping functions, and shall provide all necessary staff, services and assistance required for an orderly transfer. The Companies agree to pay for such services in accordance with Omni's then existing prices for such services.

Please acknowledge the above by signing and returning a copy of this letter. Should you have any questions regarding the above, please do not hesitate to call me.

John McShane
June 25, 2019
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Sincerely,

/s/ Paul H. Deutch

Paul H. Deutch
Senior Vice President

PES HOLDINGS, LLC, *ET AL.*

Date: 6/26/19

By: John B. McShane
John McShane
Executive Vice President & General Counsel

Enc.

cc: Matthew Fagen, Esq.
Marc Beilinson, Esq.
Brian Osborne