



case absent further order of the Court and (b) granting related relief. In support of this Motion, the Debtors submit the *Declaration of Jeffrey S. Stein in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors and (II) Granting Related Relief*, filed contemporaneously herewith. In addition, the Debtors request that the Court schedule a final hearing within approximately 21 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

### **Jurisdiction and Venue**

2. 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 Motion 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.

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

4. The bases for the relief requested herein are sections 105(a), 363, 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

### **Background**

5. 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.

6. 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 Motion, 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.

#### **Preliminary Statement**

7. As described herein and more fully in the First Day Declaration, the Debtors operate a refining complex (the "Refining Complex") that consists of two separate refineries with a combined distillation capacity of 335,000 barrels of crude oil per day. The Refining Complex is the Debtors' principal asset and historically represented approximately 28 percent of the United States' east coast's crude oil refining capacity. However, a significant portion of the Girard Point facility, which represented 57 percent of the Debtors' refining and distillation capacity, is now in ashes as a result of the large-scale fire incident at the alkylation unit at the Girard Point facility on June 21, 2019 (the "Girard Point Incident"). As a result, the Girard Point refining facility is

currently inoperable and will require a lengthy and extensive rebuild. The Girard Point Incident has left the Debtors in a crippled state, and since the Girard Point Incident, the Refining Complex has entered an extreme preservation-focused operational mode of conduct, processing only approximately 145,000 barrels of crude oil per day, that the Debtors believe will ultimately lead to the preservation of value for all stakeholders, coupled with compliance with all applicable health, safety, and environmental obligations.

8. In light of these devastating circumstances, the Debtors commenced these chapter 11 cases in order to secure the time and resources necessary to engage with their various stakeholders and reach a resolution that preserves as much value as possible for stakeholders. In the interim, the Debtors have shifted focus to extreme liquidity conservation mode, including running only limited amounts of crude oil through the facility and idling damages portions of the Refining Complex by securing its equipment, removing elevated risk chemicals, and putting catalyst, equipment, and vessels in a safe state (such process, “Safing”) until the Debtors are able to prudently evaluate all options and choose a path forward.

9. Nonetheless, even when operating in an extreme preservation-focused mode, the Debtors’ ability to operate the remaining operational portions of the Refining Complex in uninterrupted fashion is critically important to their overall financial performance and depends on prompt and continuous access to various providers for certain critical services, logistics, refinery expenses, capital expenditures, raw materials, SG&A and payroll and benefits, natural gas and electric, and other materials. Thus, as discussed in further detail below, seamless interaction with various third-party vendors, suppliers, service providers, shippers, and contractors is necessary for the Debtors’ continued operations. Many of these vendors offer unique or highly customized products or services not available from many other suppliers, holding a substantial leverage over

the goods and services they provide. Replacement vendors, even where available, would likely result in substantially higher costs for the Debtors, and would require significant time to fulfill orders—time the Debtors do not have.

10. Accordingly, the Debtors believe that the relief requested herein is necessary to enable them to operate their business in uninterrupted fashion, and is ultimately in the best interest of the Debtors' estates and stakeholders.

### **The Debtors' Critical Vendors**

11. In the ordinary course of their business, the Debtors engage a limited number of providers for certain critical services, logistics, refinery expenses, capital expenditures, raw materials, SG&A and payroll and benefits, natural gas and electric, and other materials the Debtors depend upon to operate their business. The Debtors obtain such services, equipment, or parts from a limited number of highly specialized vendors, service providers, and other business (collectively, the "Critical Vendors")—often on an order-by-order basis and without long-term contracts—replacement of which likely would be impossible or would result in substantially higher costs for the Debtors. Further, certain Critical Vendors are the sole source providers of replacement parts necessary to maintain the Debtors' equipment, and the inability to acquire these parts would result in the deterioration of the Debtors' equipment. In light of the current extreme preservation-focused operational mode of conduct and Safing process, the Debtors are only seeking relief with respect to those Critical Vendors that provide goods and services critical to the limited crude oil processing and Safing process.

12. The Debtors rely on timely and frequent delivery of these equipment, parts, and services, and any interruption in this supply—however brief—would disrupt the Debtors' operations, impact their revenue, and their ability to service clients, likely causing irreparable harm to their business, reputation, goodwill, employees, customer base, market share and potentially

compliance with certain health and safety regulations. Such harm would likely far outweigh the cost of payment of certain of the prepetition claims held by certain Critical Vendors and accrued in the ordinary course of business (collectively, the “Critical Vendor Claims”).

13. The Debtors believe some of their vendors may be unfamiliar with the chapter 11 process and unwilling to do business on existing terms—assuming such parties will continue to supply the Debtors at all. Indeed, prior to the Petition Date, certain of the Debtors’ vendors cancelled existing favorable trade terms due to rumors of a bankruptcy filing. As a result, certain vendors that previously allowed payments on a net 30 or net 60 day basis instead began requiring the Debtors to pay on a prepay basis or cash on delivery. Any further deterioration in trade terms, whether on account of demands for cash in advance, prepay basis, cash on delivery, or otherwise, will negatively impact the Debtors’ liquidity and jeopardize their ability to maintain and service their equipment and to purchase any additional equipment required for their operations.

14. The Critical Vendors generally fall into the following categories:

- Logistics. Vendors relating to the transportation of crude and/or refined product to and from the refinery. These vendors provide transportation of crude and/or refined product by ship, pipeline, rail, etc., as well as provide storage, customs services, and brokerage/trading and marketing services.
- Refinery Expenses. Suppliers, service providers, and vendors relating to refinery operations. These vendors include machinery lessors, equipment and supplies providers, parts and service providers, contractors, and other industrial services providers.
- Capital Expenditures. Suppliers, service providers, and vendors relating to refinery maintenance and construction. These vendors include engineering services providers, equipment and supplies providers, construction services, contractors, and other industrial services.
- Raw Materials. Vendors relating to the purchase of refined products and crude from suppliers outside of the Debtors’ intermediation arrangement. These vendors provide products and chemicals, including ethanol and butane, used in the production of refined products sold by the refinery.

- SG&A and Payroll and Benefits. General corporate expenses including office rent, professional fees for ordinary course professionals not employed in the Debtors' chapter 11 cases, employee related expenses, marketing, information technology, general operations and human resources services, labor relations and recruiting services, accounting, audit, tax, and other financial services.
- Natural Gas and Electric. Vendors relating to the purchase of natural gas & electricity for purposes of running the refinery.

15. The ultimate goal of the Debtors' chapter 11 cases is to preserve the value of their assets for all stakeholders. Accordingly, it is important that the Debtors maintain positive relationships with the Critical Vendors that are essential to their business operations throughout the course of these chapter 11 cases. An adequate supply of equipment and timely services from the vendors to the Debtors are vital to continue and maintain operations and to avoid significant costs associated with missing contractual deadlines.

#### **I. The Debtors' Process for Identifying Critical Vendors.**

16. Recognizing that payment of all prepetition claims of third-party vendors outside of the Debtor's chapter 11 plan would be extraordinary relief, the Debtors, with the assistance of their advisors, spent significant time reviewing and analyzing their books and records, consulting operations management and purchasing personnel, reviewing contracts, supply agreements and purchase orders incorporated thereunder, and analyzing applicable laws, regulations, and historical practice to identify the limited number of vendors that are critical to operation of the Debtors' business—the loss of which could further materially harm their business or reduce their enterprise value. Specifically, in identifying the Critical Vendors, the Debtors examined each of their vendor relationships with the following criteria in mind:

- whether a vendor is a sole- or limited-source or high-volume supplier for goods or services critical to the Debtors' business operations;
- whether alternative vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;

- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms and whether failure to pay under an agreement would result in the vendor refusing to ship goods or provide critical services under other non-contractual arrangements;
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to ship goods or to provide critical services on a postpetition basis; and
- whether failure to pay a particular vendor could result in contraction of trade terms as a matter of applicable non-bankruptcy law or regulation.

17. In addition to these factors, the Debtors and their advisors examined the health of each vendor relationship, their familiarity with the chapter 11 process, and the extent to which each vendor's prepetition claim could be satisfied elsewhere in the chapter 11 process. This process resulted in the Debtors identifying approximately 78 critical vendors, which account for approximately 16.3 percent of their prepetition vendors that have amounts outstanding as of the Petition Date.

18. In summary, the Debtors' selection process balanced the need to ensure that these chapter 11 cases do not disrupt their operations or adversely affect their business, with the need to limit the expenditure of estate resources. To that end, the Debtors undertook a lengthy process to ensure that the Critical Vendors truly represent those vendors that are vital to the Debtors' operations. Paying targeted Critical Vendor Claims renders a benefit to the Debtors' estates both monetarily and operationally by preserving liquidity and enabling the Debtors to operate smoothly during the chapter 11 cases.

19. The Debtors submit that the requested relief will allow the Debtors to preserve stakeholder value by paying certain prepetition claims of certain counterparties where critical to unlock incremental liquidity for the Debtors' business enterprise. The Debtors therefore seek authority to honor prepetition obligations to Critical Vendors. As of the Petition Date, the Debtors owe approximately \$35.4 million to the Critical Vendors on account of prepetition goods and

services, approximately \$9.34 million of which will become due within the first 21 days of these chapter 11 cases.

## **II. Customary Trade Terms.**

20. Subject to the Court's approval, the Debtors intend to pay Critical Vendor Claims only to the extent necessary to preserve their business. The Debtors have designated a core group of executives, advisors, and employees who have experience in the Debtors' business and in the Debtors value-preserving process to review, assess, and potentially recommend any payment on account of a Critical Vendor Claim. In return for paying the Critical Vendor Claims, the Debtors will use commercially reasonable efforts to condition payment of Critical Vendor Claims upon each Critical Vendor's agreement to continue supplying goods and services on terms that were in place in the 120 days prior to the Petition Date or are otherwise acceptable to the Debtors in light of customary industry practices (the "Customary Trade Terms").

21. In addition, the Debtors request that if any party accepts payment pursuant to the relief requested by this Motion and thereafter does not continue to provide goods or services on Customary Trade Terms, then: (a) such payment may be deemed to be an improper postpetition transfer on account of a prepetition claim, and therefore, immediately recoverable by the Debtors in cash upon written request; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by this Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

### **Basis for Relief**

#### **I. Authority Supports Payment of the Critical Vendor Claims as Provided Herein.**

22. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations, including payments to critical vendors, where necessary to protect and preserve the estate. *See, e.g., Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that courts “have approved . . . ‘critical vendor’ orders that allow payment of essential suppliers’ prepetition invoices”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“The ability of a bankruptcy court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept”); *Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

23. Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Pursuant to section 363(b) of the Bankruptcy Code, payment of prepetition obligations may be authorized where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616

(Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”). Indeed, courts have recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

24. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *See Just for Feet*, 242 B.R. at 825. Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *Ionosphere Clubs*, 98 B.R. at 176.

25. Indeed, the United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been

paid”); *Just for Feet*, 242 B.R. at 824–825 (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–192 (Bankr. D. Del. 1994) (same).

26. This flexible approach is particularly critical where, as here, the Critical Vendors are crucial to the Debtors’ chapter 11 plan. In *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court recognized that “a bankruptcy court may exercise its equity powers under section 105(a) of the Bankruptcy Code to authorize payment of prepetition claims where such payment is necessary ‘to permit the greatest likelihood of survival of the debtors and payment of creditors in full or at least proportionately.’” *Id.* The court explained that “a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Bankruptcy Code.” *Id.* at 932.

27. Allowing the Debtors to pay Critical Vendor Claims pursuant to sections 363(b) and 105(a) of the Bankruptcy Code is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Savs. Ass’n v. 203 N. LaSalle St. P’Ship*, 526 U.S. 434, 453 (1999). As described above, the goods and services the Critical Vendors provide to the Debtors are absolutely necessary for the Debtors to conduct their business in the ordinary course and the Safing process. The Debtors cannot rely on bringing a motion to compel a creditor to adequately address potential holdups as its sole means of ensuring uninterrupted supply of goods and services. Ensuring these Critical Vendors continue to supply and serve is therefore vital to the success of these chapter 11 cases and the ability of the Debtors to safely continue operations.

28. Courts in this district regularly grant relief consistent with that which the Debtors are seeking in this Motion. *See, e.g., In re Hexion Holdings LLC*, No. 19-10684 (KG) (Bankr. D. Del. May 1, 2019) (authorizing the payment of prepetition critical vendor claims); *In re ATD Corp.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 24, 2018) (same); *In re VER Techs. Holdco LLC*, No. 18-10834 (KG) (Bankr. D. Del. May 4, 2018) (same); *In re Claire's Stores, Inc.*, No. 18-10584 (Bankr. D. Del. Apr. 17, 2018) (same); *In re Charming Charlie Holdings, Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Jan. 10, 2018) (same); *In re True Religion Apparel, Inc.*, No. 17-11460 (CSS) (Bankr. D. Del. July 31, 2017) (same); *In re GST AutoLeather, Inc.*, No. 17-12100 (LSS) (Bankr. D. Del. Nov. 13, 2017) (same); *In re TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del. Aug. 9, 2017) (same).

**II. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.**

29. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, the proposed debtor in possession financing, and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Critical Vendor Claims. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

30. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, authorizing the Debtors to pay Critical Vendors and granting the other relief requested herein is integral to the Debtors’ ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their business in the ordinary course, complete the Safing process, and preserve the ongoing value of the Debtors’ operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**Reservation of Rights**

31. Nothing contained herein is intended or shall be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors’ or any other party in interest’s rights to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay a prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors’ or any other party in interest’s rights under the Bankruptcy Code or any other applicable law.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

32. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**Notice**

33. The Debtors will provide notice of this Motion to: (a) the Office of the U.S. 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 Motion is seeking "first day" relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion 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**

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

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and Final 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/ Laura Davis Jones*

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Interim Order**

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

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

**INTERIM ORDER (I) AUTHORIZING  
THE DEBTORS TO PAY CERTAIN PREPETITION  
CLAIMS OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) (a) authorizing, but not directing, the Debtors to pay certain prepetition Critical Vendor Claims in an amount not to exceed the Critical Vendors Interim Order Cap absent further order of the Court, (b) granting related relief, and (c) scheduling a final hearing to consider approval of the Motion on a final basis, all as more fully set forth in the Motion and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; 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 Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2019, at \_\_\_:\_\_\_ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2019, and shall be served on: (a) proposed counsel to the Debtors, (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Edward O. Sassower, P.C., Steven N. Serajeddini, and Matthew C. Fagen; and (ii) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Laura Davis Jones; (b) counsel to the DIP Lenders, (i) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Damian S. Schaible and Aryeh E. Falk, and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney and Andrew R. Remming; (c) counsel to ICBC Standard Bank Plc; (d) counsel to the official committee of unsecured creditors (if any) appointed in these chapter 11 cases; (e) the Internal Revenue Service, (f) the U.S. Trustee for the District of Delaware, and (g) any other party that has filed a request for notices with the Court. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

3. The Debtors are authorized to pay or honor prepetition Critical Vendor Claims in an interim amount not to exceed \$9.34 million (the “Critical Vendors Interim Order Cap”) absent further order of the Court.

4. The Debtors are authorized, in their reasonable business judgment, to pay Critical Vendor Claims, in whole or in part, subject to the Critical Vendors Interim Order Cap, upon such terms and in the manner provided in this Interim Order; *provided* that if any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, product mix, availability, and other programs) in place in the 120 days immediately prior to the Petition Date, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors’ sole discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise. The Debtors shall provide a copy of this Interim Order to the applicable party prior to such party’s acceptance of any payment hereunder. Any party that accepts payment from the Debtors on account of a Critical Vendor Claim shall be deemed to have agreed to the terms and provisions of this Interim Order.

5. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay a prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or in this Interim Order; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Critical Vendor Claims.

8. Notwithstanding anything to the contrary in this Interim Order, any payment made, or authorization contained, hereunder, shall be subject to the requirements imposed on the Debtors under any order of this Court approving the debtor in possession financing facility and use of cash

collateral (the “DIP Order”). In the event of any inconsistency between the terms of this Interim Order and the DIP Order, the terms of the DIP Order shall govern.

9. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

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

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Proposed Final Order**

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

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In re:	)	
	)	Chapter 11
	)	
PES HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-[____] (____)
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	<b>Re: Docket No. __</b>

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**FINAL ORDER (I) AUTHORIZING THE  
DEBTORS TO PAY CERTAIN PREPETITION  
CLAIMS OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”) (a) authorizing the Debtors to pay certain prepetition Critical Vendor Claims in an amount not to exceed the Critical Vendors Final Order Cap absent further order of the Court, and (b) granting related relief, all as more fully set forth in the Motion, and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; 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 Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein on a final basis.
2. The Debtors are authorized to pay or honor prepetition Critical Vendors Claims in an aggregate amount not to exceed \$35.4 million (the “Critical Vendors Final Order Cap”) on a final basis absent further order of the Court.
3. The Debtors are authorized, in their reasonable business judgment, to pay Critical Vendor Claims, in whole or in part, subject to the Critical Vendors Final Order Cap, upon such terms and in the manner provided in this Final Order; *provided* that if any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, product mix, availability, and other programs) in place in the 120 days immediately prior to the Petition Date, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors’ sole discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to

repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise. The Debtors shall provide a copy of this Final Order to the applicable party prior to such party's acceptance of any payment hereunder. Any party that accepts payment from the Debtors on account of a Critical Vendor Claim shall be deemed to have agreed to the terms and provisions of this Final Order.

4. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay a prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or in this Final Order; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored

as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Critical Vendor Claims.

7. Notwithstanding anything to the contrary in this Final Order, any payment made, or authorization contained, hereunder, shall be subject to the requirements imposed on the Debtors under any order of this Court approving the debtor in possession financing facility and use of cash collateral (the “DIP Order”). In the event of any inconsistency between the terms of this Final Order and the DIP Order, the terms of the DIP Order shall govern.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE