

**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 (KG)
)	
Debtors.	)	(Jointly Administered)
)	

**DEBTORS' APPLICATION FOR
ENTRY OF AN ORDER AUTHORIZING RETENTION
AND EMPLOYMENT OF KLEHR HARRISON AS SPECIAL
EMPLOYEES' COUNSEL *NUNC PRO TUNC* TO DECEMBER 1, 2019
PURSUANT TO SECTIONS 327(E), 328(A), 330, AND 363(B)(1) OF THE
BANKRUPTCY CODE**

The above-captioned debtors and debtors in possession (collectively, the "Debtors")² respectfully state as follows in support of this application (this "Application").

Relief Requested

1. Pursuant to sections 327(e), 328(a), 330, and 363(b)(1) of title 11 of the United States Code (the "Bankruptcy Code") and rules 2014(a), 2016, and 5002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek entry of an order, substantially in the form attached hereto as Exhibit A (the "Order"), authorizing them to retain and employ the law firm of Klehr Harrison Harvey Branzburg LLP ("Klehr Harrison" or the "Firm") as special employee pool counsel ("Special Employees' Counsel") to represent the Employees (as defined

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 business 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 [Docket No. 32] (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, on July 21, 2019 (the "Petition Date").

herein) in connection with the Investigations (as defined herein) in accordance with the terms and conditions set forth in that certain engagement letter between the Debtors and Klehr Harrison (the “Engagement Letter”), a copy of which is attached as **Exhibit 1** to **Exhibit B** hereto, *nunc pro tunc* to December 1, 2019. In support of this Application, the Debtors submit the *Declaration of James A. Petkun in Support of Debtors’ Application for Entry of an Order Authorizing Retention and Employment of Klehr Harrison as Special Employees’ Counsel Nunc Pro Tunc to December 1, 2019 Pursuant to Sections 327(e), 328(a), 330, and 363(b)(1) of the Bankruptcy Code* (the “Petkun Declaration”), which is attached hereto as **Exhibit B** and incorporated herein by reference, and the *Declaration of Jeffrey S. Stein in Support of Debtors’ Application for Entry of an Order Authorizing Retention and Employment of Klehr Harrison as Special Employees’ Counsel Nunc Pro Tunc to December 1, 2019 Pursuant to Sections 327(e), 328(a), 330, and 363(b)(1) of the Bankruptcy Code* (the “Stein Declaration”), attached hereto as **Exhibit C** and incorporated herein by reference.

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 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.

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

4. The bases for the relief requested herein are sections 327(e), 328(c), 330, and 363(b)(1) of the Bankruptcy Code, Bankruptcy Rules 2014(a), 2016, and 5002, and Local Rules 2014-1 and 2016-1.

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 interconnected refineries that had 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 businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are procedurally consolidated and jointly administered pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases. On August 5, 2019, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee") [Docket No. 152].

The Investigations and The Retention Of Klehr Harrison

7. Since the historic, large-scale, catastrophic incident at the Debtors' alkylation unit of the Girard Point refining facility (the "Girard Point Incident") and subsequent commencement of these chapter 11 cases, the Debtors have cooperated with investigations commenced by various private and governmental entities concerning the causes of the Girard Point Incident, the Debtors' involvement therein, and the events leading to the filing of these chapter 11 petitions (each, an "Investigation," and collectively, including such additional governmental and non-governmental investigations as may be commenced from time to time, the "Investigations"). The private and governmental entities that commenced such investigations include the Department of Justice, the Environmental Protection Agency, the Philadelphia Department of Environmental Protection, the Occupational Safety and Health Administration, the U.S. Chemical Safety Board, the U.S. Bureau of Alcohol, Tobacco, and Firearms, the Philadelphia Fire Marshal, the Philadelphia Police Department, and several private insurance companies.

8. As the Investigations proceed, the Debtors anticipate that a number of parties, including certain current and former employees of the Debtors, will likely be advised that they are under investigation, but who are not themselves targets of the Investigations. In addition to such parties, there may be current and former employees of the Debtors who will not be advised that they are under investigation, but who may have information relevant to one or more of the Investigations and whose assistance, cooperation, and participation is, or likely will be, sought in connection with one or more of the Investigations (the "Employees").

9. The Debtors believe that the cooperation, assistance, and participation of the Employees is critical to the timely completion of the Investigations, ultimately fostering the Debtors' reorganization effort. In order to facilitate the Employees' cooperation while assuring their legal rights are fully protected, and especially in light of the complexity of the Investigations,

the Employees require representation by counsel. Accordingly, the Debtors determined to retain Klehr Harrison as Special Employees' Counsel, effective *nunc pro tunc* to December 1, 2019, to represent the Employees in connection with the Investigations.

Basis for Relief

10. Section 327(e) of the Bankruptcy Code provides that the debtor in possession, "with the Court's approval, may employ for a specified special purpose . . . an attorney that has represented the debtor if it is in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed." 11 U.S.C. § 327(e).

11. Section 363(b)(1) of the Bankruptcy Code provides that the trustee, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

12. As set forth in the Petkun Declaration, since December 1, 2019, Klehr Harrison has represented certain of the Employees and has been available to represent other employees of the Debtors in connection with the Investigations.

13. The Debtors believe that Klehr Harrison is well qualified to represent the Employees in connection with the Investigations, and that the retention of Klehr Harrison is necessary and in the best interests of the Debtors and their estates. It is anticipated that Klehr Harrison will provide the following services:

(a) representing the Employees in connection with specific Investigations or other regulatory matters relating to the Debtors involving any branches and/or agencies of the United States Government (including, by way of illustration only, any hearings and/or investigations initiated by the Environmental Protection Agency and the Department of Justice), as well as similar matters initiated by foreign or domestic state or local governmental entities;

- (b) representing the Employees in any litigation or arbitration matters relating to the foregoing;
- (c) attending meetings with third parties with respect to the above matters on behalf of the Employees;
- (d) appearing before the Bankruptcy Court, any district or appellate courts, and the United States Trustee on behalf of the Employees with respect to the matters referred to above;
- (e) facilitating and coordinating communications between the Employees and other parties in connection with the Investigations; and
- (f) performing on behalf of the Employees the full range of legal services normally associated with matters such as those identified above.

14. Klehr Harrison has indicated its willingness to act in these cases as Special Employees' Counsel and to render the foregoing services. Klehr Harrison will work closely with other professionals as may be retained by the Debtors and others in connection with the Investigations (including Mark L. Farley, PC ("MLF"), the Debtors' special counsel with respect to the Investigations), in order to facilitate the Employees' participation in the Investigations, to protect the legal rights of the Employees, and to take the necessary and appropriate steps to avoid any unnecessary duplication of effort with such other professionals.

15. Although, as noted, the Debtors have retained MLF as their special counsel in connection with the Investigations (and other matters),³ the Debtors believe that the Employees require separate and independent counsel. Consequently, although Klehr Harrison is being retained by the Debtors, the attorney-client relationship will be between Klehr Harrison and the

³ On September 17, 2019, the Court entered an order authorizing the retention and employment of MLF as special counsel to the Debtors [Docket No. 386].

Employees, and Klehr Harrison's ethical obligations will run directly and solely to the Employees. For example, Klehr Harrison will treat any communications between Klehr Harrison and the Employees as privileged and confidential. Likewise, Klehr Harrison will take instruction directly from the Employees and not the Debtors. In addition, although at the present time most of the Employees are employees of the Debtors, if any Employee resigns, he or she will continue to be represented by Klehr Harrison provided his or her interests continue to remain aligned with those of the other Employees and the interests of the Debtors in facilitating a timely completion of the Investigations.

16. Based upon information currently available, neither the Debtors nor Klehr Harrison anticipate that any of the Employees will become targets of any of the Investigations or that their interests in connection with the Investigations will conflict with the interests of the Debtors in facilitating a timely completion of the Investigations. However, in the event that any of the Employees becomes a target of any of the Investigations, such Employee will be required to retain separate counsel and Klehr Harrison will no longer represent such Employee.

17. Klehr Harrison will not represent any of the Employees in matters that are unrelated to the Investigations.

18. The Debtors believe that if they are not authorized to retain Klehr Harrison to represent the Employees and pay the legal fees and expenses incurred by the Employees on account of such representation, many of the Employees will be unwilling or unable to obtain adequate representation (or any representation) in connection with the Investigations. The Debtors believe that this would, in all likelihood, substantially delay progress of the Investigations and possibly prevent the Investigations from coming to a fair conclusion, thereby harming the Debtors' reorganization efforts. The retention of Klehr Harrison also affords the Debtors the important

advantage of being able to communicate and interact with only one law firm insofar as the Employees are concerned with respect to the Investigations.

TERMS OF RETENTION

19. Klehr Harrison's hourly rates range from \$415 to \$825 for partners, \$355 to \$480 for counsel, \$275 to \$445 for associates, and \$200 to \$280 for paralegals.

20. Klehr Harrison adjusts its rates from time to time usually as of January 1 of each year. Klehr Harrison charges for reimbursement of out-of-pocket expenses including photocopying, telephone and telecopier, toll and other charges, travel expenses, expenses for "working meals," computerized research, transcription costs, and non-ordinary overhead expenses such as secretarial and other overtime.

21. The Debtors made no payments to Klehr Harrison during the ninety days immediately preceding the Petition Date and Klehr Harrison currently has no claim against the Debtors (other than for services rendered to date in connection with the Investigations).

22. If retained, Klehr Harrison will apply to the Court from time to time for allowances of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court by submitting fee applications on appropriate notice on a monthly basis. In light of privilege and confidentiality considerations, however, Klehr Harrison reserves the right to redact its time and expense records and to seek authority from the Court to file such time and expense records under seal.

Klehr Harrison Has No Conflicts on the Matters for Which It Is To Be Retained

23. To the best of the Debtors' knowledge and except as set forth in the Petkun Declaration:

(a) As required by section 327(e) of the Bankruptcy Code, neither James A. Petkun nor any attorney at the Firm holds or represents an interest adverse to the Debtors or the estates with respect to the matters on which Klehr Harrison is to be retained.

(b) Neither James A. Petkun nor any attorney at the Firm is or was a creditor or an insider of the Debtors as such terms are respectively defined in section 101(10) and (31) of the Bankruptcy Code.

(c) Neither James A. Petkun nor any attorney at the Firm is or was, within three years before the filing of the Debtors' chapter 11 cases, an investment banker of the Debtors, or an attorney for an investment banker of the Debtors, in connection with the offer, sale, or issuance of any security of the Debtors.

(d) Neither James A. Petkun nor any attorney at the Firm is or was, within two years before the Petition Date, a director, officer, or employee of the Debtors or of an investment banker of the Debtors.

(e) Klehr Harrison does not have an interest materially adverse to the interests of the estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with or interest in the Debtors or an investment banker specified in the foregoing paragraphs, including with respect to the matters on which Klehr Harrison is to be retained.

(f) No attorney at Klehr Harrison is related to any United States District Judge or U.S. Bankruptcy Judge for the District of Delaware or to the U.S. Trustee for such district or to any known employee of the office thereof.

(g) As set forth in the Petkun Declaration, Klehr Harrison previously represented, or currently represents, various creditors of one or more of the PES and other parties who are, or may be, parties-in-interest in the Debtors' cases, including JJ White, Inc., Honeywell, Liberty Mutual Ins. Co., American Financial, Goldman, Sachs & Co., The Carlyle Group, Sheetz Inc., Diversified Building Co., LLC, and Windstream Holdings, Inc, in matters that are substantially unrelated to the Debtors' cases and/or the Investigations.

24. To the best of the Debtors' knowledge, information, and belief, Klehr Harrison (i) does not hold or represent any interest which is adverse to the Debtors' estates with respect to the matters on which Klehr Harrison is to be retained, and (ii) is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code for the purpose of the representation described.

25. The Debtors believe that Klehr Harrison is well-qualified to represent the Employees in connection with the Investigations and that its retention is in the best interest of the Debtors and their estates.

26. The Debtors request that Klehr Harrison's retention be approved *nunc pro tunc* to December 1, 2019. The decision to approve the employment of professionals on a *nunc pro tunc* basis is well within the discretion of this Court. *In re F/S Airlease, II, Inc.*, 844 F.2d 99, 103 (3d Cir.), cert. denied, 488 U.S. 852 (1988). Retroactive approval of Klehr Harrison's retention is appropriate under the circumstances. Specifically, the preparation and presentation of this Application on a *nunc pro tunc* basis has not been occasioned by any action or omission of Klehr Harrison or its personnel, but was the result of, among other things, the complexity of the Debtors' cases and the Investigations, the very limited scope of Klehr Harrison's retention, and the number of creditors and parties-in-interest in the Debtors' cases, which lengthened the amount of time that

Klehr Harrison needed to address potential conflict issues. Accordingly, it is respectfully submitted that good cause exists justifying the *nunc pro tunc* retention requested herein. See *In re Arkansas Co., Inc.*, 798 F.2d 645, 548 (3d Cir. 1986).

27. As described above, the Debtors believe that the retention of Klehr Harrison as Special Employees' Counsel is in the best interests of the estate and, for the reasons described herein and in the Petkun Declaration, the Debtors respectfully submit that they have demonstrated a "good business reason" for the requested relief. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application."). See also *In re Enron Corp.*, 335 B.R. 22 (S.D.N.Y. 2005) (approving an application to retain special employees' counsel under section 363(b)(1) of the Bankruptcy Code where the retention was in the debtors' best interest).

NOTICE

28. The Debtors will provide notice of this Motion to: (a) the U.S. Trustee; (b) the Committee; (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 lenders under the Debtors' debtor-in-possession financing facility and counsel thereto; (j) the United States Attorney's Office for the District of Delaware; (k) the Internal Revenue Service; (l) the state attorneys general for all states in which the Debtors conduct business; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

29. No prior motion 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: January 16, 2020

/s/ Jeffrey S. Stein

Jeffrey S. Stein
Chief Restructuring Officer
PES Holdings LLC

**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 (KG)
)	
Debtors.	)	(Jointly Administered)

Objection Deadline: January 30, 2020 at 4:00 p.m. (ET)
Hearing Date: February 6, 2020 at 9:00 a.m. (ET)

**NOTICE OF HEARING REGARDING DEBTORS' APPLICATION
FOR ENTRY OF AN ORDER AUTHORIZING RETENTION
AND EMPLOYMENT OF KLEHR HARRISON AS SPECIAL EMPLOYEES'
COUNSEL *NUNC PRO TUNC* TO DECEMBER 1, 2019 PURSUANT TO
SECTIONS 327(E), 328(A), 330, AND 363(B)(1) OF THE BANKRUPTCY CODE**

TO: (a) the U.S. Trustee; (b) the Committee; (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 lenders under the Debtors' debtor-in-possession financing facility and counsel thereto; (j) the United States Attorney's Office for the District of Delaware; (k) the Internal Revenue Service; (l) the state attorneys general for all states in which the Debtors conduct business; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002.

PLEASE TAKE NOTICE that on January 16, 2020, the above-captioned debtors and debtors in possession (collectively, the "Debtors"), filed the *Debtors' Application for Entry of an Order Authorizing Retention and Employment of Klehr Harrison as Special Employees' Counsel Nunc Pro Tunc to December 1, 2019 Pursuant to Sections 327(e), 328(a), 330, and 363(b)(1) of the Bankruptcy Code* (the "Application") with the United States

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.

Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the "Bankruptcy Court"). A copy of the Application is attached hereto.

PLEASE TAKE FURTHER NOTICE that any response or objection to the entry of the order with respect to the relief sought in the Application must be filed with the Bankruptcy Court on or before **January 30, 2020 at 4:00 p.m. Eastern Time**.

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon: (a) 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) co-counsel to the Debtors, 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, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Ray C. Schrock, P.C., and (ii) Richards Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington Delaware 19801 Attn: Mark D. Collins; (d) counsel to the Committee, (i) Brown Rudnick LLP, 7 Times Square, New York, New York 10036, Attn: Robert Stark, and (ii) Elliott Greenleaf, PC, 1105 Market Street, Suite 1700, Wilmington, Delaware 19801, Attn: Rafael Zahralddin-Aravena; and (e) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: David L. Buchbinder.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE APPLICATION WILL BE HELD ON **FEBRUARY 6, 2020 AT 9:00 A.M. EASTERN TIME BEFORE THE HONORABLE KEVIN GROSS, UNITED STATES BANKRUPTCY COURT JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801.**

[Remainder of page intentionally left blank]

Dated: January 16, 2020
Wilmington, Delaware

/s/ Peter J. Keane

Laura Davis Jones (DE Bar No. 2436)
James E. O'Neill (DE Bar No. 4042)
Peter J. Keane (DE Bar No. 5503)
PACHULSKI STANG ZIEHL & JONES LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
Email: ljones@pszjlaw.com
joneill@pszjlaw.com
pkeane@pszjlaw.com

- and -

Edward O. Sassower, P.C.
Steven N. Serajeddini (admitted *pro hac vice*)
Matthew C. Fagen (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: edward.sassower@kirkland.com
steven.serajeddini@kirkland.com
matthew.fagen@kirkland.com

Co-Counsel to the Debtors and Debtors in Possession

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 (KG)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Re: Docket No. ___

**ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF
KLEHR HARRISON AS SPECIAL EMPLOYEES’ COUNSEL *NUNC PRO TUNC* TO
DECEMBER 1, 2019 PURSUANT TO SECTIONS 327(E), 328(A), 330, AND 363(B)(1) OF
THE BANKRUPTCY CODE**

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”) authorizing the Debtors, to retain and employ Klehr Harrison as Special Employees’ Counsel, effective *nunc pro tunc* to December 1, 2019, pursuant to sections 327(e), 328(a), 330, 363(b)(1) of the Bankruptcy Code and Bankruptcy Rules 2014(a), 2016, and 5002, all as more fully set forth in the Application and the Petkun 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 Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found based on the representations made in the

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 meanings given to such terms in the Application.

Application and in the Petkun Declaration that that Klehr Harrison does not hold or represent an interest adverse to the Debtors' estates with respect to the matters on which Klehr Harrison is to be retained as required by section 327(e) of the Bankruptcy Code; 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 the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances 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 this Court (the "Hearing"); and this 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 this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Application is granted *nunc pro tunc* to December 1, 2019.

2. The Debtors are authorized to employ Klehr Harrison as Special Employees' Counsel pursuant to sections 327(e), 328(a), 330, and 363(b)(1) of the Bankruptcy Code in connection with, and through the completion of, all of the Investigations (as that term is defined in the Application).

3. Klehr Harrison shall file fee applications for allowance of its compensation and reimbursement of its expenses with respect to services rendered in these chapter 11 cases with this Court, in accordance with the applicable procedures of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable order of this Court.

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

5. Notice of the Application as provided therein is deemed to be good and sufficient notice of such Application, and the requirements of the Local Rules are satisfied by the contents of the Application.

6. To the extent the Application, the Petkun Declaration, or the Engagement Letter (as defined in the Petkun Declaration) are inconsistent with this Order, the terms of this Order shall govern.

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

8. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: _____, 2020
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Petkun 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 (KG)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Re: Docket No. ___

**DECLARATION OF JAMES A. PETKUN
IN SUPPORT OF DEBTORS' APPLICATION FOR
ENTRY OF AN ORDER AUTHORIZING RETENTION
AND EMPLOYMENT OF KLEHR HARRISON AS SPECIAL
EMPLOYEES' COUNSEL *NUNC PRO TUNC* TO DECEMBER 1, 2019
PURSUANT TO SECTIONS 327(E), 328(A), 330, AND 363(B)(1) OF THE
BANKRUPTCY CODE**

I, James A. Petkun, declare under penalty of perjury:

1. I am a member of the law firm of Klehr Harrison Harvey Branzburg LLP ("Klehr Harrison" or the "Firm"), which maintains offices for the practice of law at Philadelphia, PA, West Conshohocken, PA, Wilmington, DE, Marlton, NJ, and New York City, NY, and am admitted to practice law in Pennsylvania. I am resident in Klehr Harrison's Philadelphia office. I submit this declaration in support of the *Debtors' Application for Entry of an Order Authorizing Retention and Employment of Klehr Harrison as Special Employees' Counsel Nunc Pro Tunc to December 1, 2019 Pursuant to Sections 327(e), 328(a), 330, and 363(b)(1) of the Bankruptcy Code* (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 meanings given to such terms in the Application.

2. Except as is otherwise provided below, the facts set forth in this affirmation are based upon my personal knowledge, or upon records maintained by the Firm in the ordinary course of its business, which have been reviewed by me and/or by other partners or employees of the Firm at my direction.

3. As far as I have been able to ascertain to date, Klehr Harrison: (a) is a disinterested person as that term is defined in 11 U.S.C. § 101(14); (b) does not hold or represent any interest adverse to the Debtors' estates on the matters for which it is to be engaged; and (c) except as set forth herein, has no connections with the Debtors, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee or any person employed in the Office of the United States Trustee (to the extent identified to Klehr Harrison).

Qualifications and Scope of Retention

4. Klehr Harrison is a firm engaged in the general practice of law with offices in Philadelphia, New York City, Marlton, West Conshohocken, and Wilmington. It has approximately 90 lawyers with a wide-ranging national practice in the substantive areas of, among other things, litigation, environmental regulation, corporate, tax, finance, real estate, bankruptcy and creditors' rights, regulatory affairs, and intellectual property.

5. If retained, Klehr Harrison will represent the Employees, including Employees who are no longer employed by the Debtors. The representation will be in connection with, and through the completion of, all of the Investigations (as that term is defined in the Application), including, but not limited to, the investigations commenced by the Environmental Protection Agency, the Department of Justice, local and state governmental agencies, and various private insurers.

6. To the best of my knowledge, none of the Employees has been notified that he or she is a target of any of the Investigations. If any of the Employees is notified that he or she has

become a target of any of the Investigations, such Employee will be instructed to retain separate counsel and will no longer will represented by Klehr Harrison.

7. The terms and scope of Klehr Harrison's proposed retention are set forth in the Application and that certain Engagement Letter between Klehr Harrison and the Debtors, a copy of which is attached hereto as Exhibit 1. As explained in the Application, although Klehr Harrison is to be retained by the Debtors, the attorney-client relationship will be between Klehr Harrison and the Employees. Klehr Harrison will treat the Employees as its clients for all purposes and will take instruction directly from the Employees.

8. It is anticipated that Klehr Harrison will provide the following services as Special Employees' Counsel:

- a. representing the Employees in connection with specific Investigations or regulatory matters involving any branches and/or agencies of the United States Government (including, by way of illustration only, any interviews, depositions, hearings and/or investigations that have been or may be initiated by the Environmental Protection Agency and the Department of Justice), as well as similar proceedings initiated by any foreign or domestic state or local governmental entity;
- b. representing the Employees in any litigation or arbitration matters relating to the foregoing;
- c. attending meetings on behalf of the Employees with third parties with respect to the above matters;
- d. appearing before the Bankruptcy Court, any district or appellate courts, and the U.S. Trustee on behalf of the Employees with respect to the matters referred to above;

e. facilitating and coordinating communications between the Employees and other parties in connection with the Investigations; and

f. performing on behalf of the Employees the full range of services normally associated with matters such as those identified above.

9. Inasmuch as the scope of Klehr Harrison's proposed retention is limited, I believe that the services to be rendered by Klehr Harrison as Special Employees' Counsel in connection with the Investigations will not be duplicative of services rendered or to be rendered by the Debtors' general bankruptcy counsel or by other special counsel. For example, Klehr Harrison will neither represent the Debtors in connection with their reorganization cases, be responsible for conducting negotiations on behalf of the Debtors with their creditors or with other parties-in-interest regarding the terms of any reorganization plan, nor represent the Debtors in connection with the Investigations. Rather, the Debtors intend that Klehr Harrison's representation will be limited to representing the Employees in connection with the Investigations, as described above, and Klehr Harrison will not represent the Employees with respect to matters unrelated to the Investigations. For example, Klehr Harrison will not represent the Employees in connection with any claims that they may have against any of the Debtors.

10. In my view, Klehr Harrison is well qualified to render the legal services requested by the Debtors in connection with the matters described herein. Klehr Harrison has extensive experience in litigation matters and bankruptcy cases and serves as counsel to numerous companies and individuals throughout the United States. It is respectfully submitted that Klehr Harrison has the requisite knowledge and skill to competently represent the Employees in connection with the matters outlined herein.

11. I have been informed that the Debtors believe the retention of Klehr Harrison as Special Employees' Counsel is in the best interests of the Debtors, their estates and their creditors. After reviewing the facts and circumstances surrounding Klehr Harrison's proposed retention, I believe that Klehr Harrison will be able to provide the Employees with diligent and effective representation.

Connections with Creditors and Other Parties-In-Interest

12. In preparing this affirmation, I have utilized a set of procedures established by Klehr Harrison to ensure compliance with the requirements of the Bankruptcy Code and the Bankruptcy Court. Specifically, as set forth below, Klehr Harrison has taken various steps to determine whether or not any conflict of interest exists that would preclude the Debtors' retention of Klehr Harrison as Special Employees' Counsel.

13. In connection with the proposed representation, Klehr Harrison has done a comprehensive search of its internal records to determine whether Klehr Harrison has any conflict of interest that would preclude it from acting as Special Employees' Counsel. The employees responsible for maintaining Klehr Harrison's computerized database of client matters reviewed such database with a view toward determining whether or not Klehr Harrison has or has had any significant connections with the listed parties-in-interest whose names were provided to Klehr Harrison on behalf of the Debtors.

14. In early December 2019, I directed that a memorandum be circulated by e-mail to each attorney at Klehr Harrison. This memorandum, like similar memoranda which Klehr Harrison circulates throughout the firm before a new representation is undertaken, is intended to elicit, among other things, (i) whether Klehr Harrison already represents any other clients in connection with the proposed new matter, (ii) whether Klehr Harrison already represents any other client in a capacity that may be adverse to the proposed client, and/or (iii) whether the proposed

representation might be adverse to the interests of such other client. This memorandum identified the Debtors and the nature of the proposed representation, and the Employees who had been identified to-date by Klehr Harrison.

15. On December 30, 2019, I caused to be circulated a supplemental memorandum by e-mail to each attorney at Klehr Harrison. This memorandum briefly described the nature of the proposed retention of Klehr Harrison, and identified (i) the Employees who had been identified to date by Klehr Harrison; and (ii) the affiliates of the Debtors who employ or employed each of the Employees identified as of that date.

16. In addition to the foregoing, an additional conflicts check was undertaken by Klehr Harrison in connection with the creditors and other parties-in-interest provided in a comprehensive spreadsheet provided to Klehr Harrison on behalf of the Debtors, including the Debtors' past and present officers and directors for the prior five years, entities with which said officers and directors have been affiliated, entities holding 5% or more of the Debtors' stock, reinsurers, creditors, landlords, underwriters, professionals, and adversaries in pending litigation. At the present time, it appears that Klehr Harrison does not currently, and has not previously, represented any of these parties in connection with these proceedings, except as set forth below.

17. Based upon the review of the computerized database described above and responses from individual attorneys described in paragraphs 14, 15, and 16 above, I have determined the following:

a. Klehr Harrison formerly represented the following clients in matters substantially unrelated to this matter:

- JJ White, Inc.
- Honeywell
- Liberty Mutual Ins. Co.
- American Financial

- Goldman, Sachs & Co.
- The Carlyle Group
- Sheetz Inc.
- Diversified Building Co., LLC

b. Klehr Harrison currently represents the following clients in matters substantially unrelated to this matter:

- JJ White, Inc.
- Sheetz Inc.
- Windstream Holdings, Inc.

18. I have been advised by the Debtors that, at the present time, the interests of the Employees with respect to the Investigations are aligned and not in conflict with the interest of the Debtors in facilitating a timely completion of the Investigations. In addition, to the best of my knowledge at the present time, the Debtors and the Employees have no claims against each another except that such Employees may have claims relating to employment, the termination of employment, compensation, severance or other similar claims. Klehr Harrison will not represent any of the Employees in connection with any such claims.

19. Except as set forth above and below, Klehr Harrison has not represented, and does not currently represent or hold any interest adverse to, the Debtors or their estates.

20. None of the attorneys at the Firm are or were a creditor or an insider of the Debtors.

21. None of the attorneys at the Firm are or were an investment banker for any outstanding security of the Debtors.

22. None of the attorneys at the Firm are or were, within three years before the filing of the Debtors' Chapter 11 cases, an investment banker, or an attorney for such an investment banker, in connection with the offer, sale, or issuance of any security of the Debtors.

23. None of the attorneys at the Firm are or were, within two years before the Petition Date, a director, officer, or employee of the Debtors or of an investment banker of the Debtors.

24. The Debtors have or may have other creditors and parties-in-interest not currently known to Klehr Harrison, and Klehr Harrison may have rendered or may be rendering services to certain of such parties, or may become involved in matters unrelated to these cases in which such parties, or attorneys or accountants for any creditor or party-in-interest, were, are or become, involved. Klehr Harrison also may have or represent interests adverse to such creditors or parties-in-interest in matters unrelated to these cases. Based on the information currently available, Klehr Harrison believes that no such matter involves representation of any interest adverse to the Debtors or their estates on the matters on which Klehr Harrison is to be retained.

25. In addition to the foregoing, Klehr Harrison's partners and employees may have business associations with, or interests adverse to, creditors or parties-in-interest, which associations or interests have no connection with these cases. As part of its practice, Klehr Harrison appears in cases, proceedings, and transactions throughout the United States involving many different parties, which may include creditors or parties-in-interest, or attorneys or financial advisors who may represent creditors or parties-in-interest in these cases.

26. Klehr Harrison does not have an interest materially adverse to the interests of the estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtors or any investment banker with respect to the matters on which Klehr Harrison is to be retained.

27. I am not related to, and to the best of my knowledge, no attorney at Klehr Harrison is related to, any U.S. District Judge or U.S. Bankruptcy Judge for the District of Delaware or the U.S. Trustee for such district or to any known employee in the office thereof.

28. As far as I have been able to ascertain to date, Klehr Harrison: (a) is "disinterested," as such term is defined in Bankruptcy Code §101(14), with respect to the Debtors; (b) does not

hold or represent any interest adverse to the Debtors' estate on the matters upon which Klehr Harrison is to be engaged; and (c) except as set forth herein, has no connection with the Debtors, creditors, any other party-in-interest, their respective attorneys and retained professionals, the United States Trustee or any person employed in the Office of the United States Trustee (to the extent identified to Klehr Harrison).

Attorney Statement Pursuant to Revised UST Guidelines

29. The following is provided in response to the request for additional information set forth in Paragraph D.1 of the Revised UST Guidelines:

- a. **Question:** Did Klehr Harrison agree to any variations from, or alternatives to, Klehr Harrison's standard billing arrangements for this engagement?

Answer: No.

- b. **Question:** Do any of the Klehr Harrison professionals in this engagement vary their rate based on the geographic location of the Debtors' chapter 11 cases?

Answer: No.

- c. **Question:** If Klehr Harrison has represented Debtors in the 12 months prepetition, disclose Klehr Harrison's billing rates and material financial terms for the prepetition engagement, including any adjustments during the 12 months prepetition. If Klehr Harrison's billing rates and material financial terms have changed postpetition, explain the difference and the reasons for the difference.

Answer: Klehr Harrison did not represent the Debtors in the 12 months prepetition and will not represent the Debtors pursuant to the engagement contemplated in this Application.

- d. **Question:** Have the Debtors approved Klehr Harrison's budget and staffing plan, and if so, for what budget period?

Answer: The Debtors will closely monitor and review Klehr Harrison's expenses on an ongoing basis. Once requests of the Employees have been made in connection with the Investigations, Klehr Harrison will submit a proposed budget to the Debtors. The costs for each Employee will not

exceed those that are, and will be, reasonable and necessary to properly represent and defend the individual Employees.

Klehr Harrison's Compensation Structure

30. Klehr Harrison will apply to this Court for allowances of compensation and reimbursement of expenses in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Court's local rules and any applicable orders of the Court for all services rendered to the Debtors as Special Employees' Counsel during the Debtors' Chapter 11 cases. Klehr Harrison understands that no compensation will be paid by the Debtors for post-petition services or expenses, either from any retainer or otherwise, except to the extent allowed or approved by the Court or as set forth in any order confirming a plan of reorganization in these cases.

31. Klehr Harrison will seek compensation on an hourly basis, plus reimbursement of actual and necessary expenses as set forth in the Application. The hourly rates for Klehr Harrison's attorneys and legal assistants are as follows:

Billing Category	Range of Hourly Rates
Partners	\$415 - \$825
Counsel	\$355 - \$480
Associates	\$275 - \$445
Paralegals	\$200 - \$280

32. The hourly rates set forth above are the firm's current hourly rates for work of this nature. These rates are set at a level designed to compensate Klehr Harrison fairly for the work of its attorneys and legal assistants and to cover fixed and routine overhead expenses. Such hourly rates do not include charges for non-professional personnel who also record time spent working on matters for particular clients, including clerical, secretarial staff, evening and weekend word processing staff and proofreaders (except for overtime, secretarial work). It is Klehr Harrison's policy to charge its clients for all other services provided and for disbursements and expenses

incurred in the rendition of services, including, among other things, costs for photocopying, travel, overtime secretarial work, business meals, computerized research, long-distance telephone, messengers, and couriers.

33. No agreement exists and no agreement has been made to share any compensation received by Klehr Harrison for its services as Special Employees' Counsel with any other person or firm. No promises have been received by Klehr Harrison nor any member or associate thereof as to payment or compensation in connection with the above-captioned cases other than in accordance with applicable provisions of the Bankruptcy Code. Klehr Harrison has no agreement with any other entity to share with such entity compensation received by Klehr Harrison in connection with the Debtors' bankruptcy cases except as is permitted by Bankruptcy Rule 2016(b).

34. Neither Klehr Harrison nor any of its partners, associates, or employees is or was an officer or director of the Debtors.

35. Klehr Harrison intends to periodically review its conflicts database during the pendency of this Chapter 11 cases to insure, to the extent reasonably practicable, that no conflict or other disqualifying circumstance exists or arises. If any new relevant fact or relationship is discovered or arises, Klehr Harrison will, as soon as reasonably practicable, file a supplemental affirmation with the Court in accordance with Bankruptcy Rule 2014(a).

[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.

Dated: January 16, 2020

/s/ James A. Petkun

James A. Petkun

Exhibit 1

Engagement Letter



**KLEHR HARRISON
HARVEY BRANZBURG^{LLP}**

James A. Petkun
Klehr Harrison LLP
1835 Market Street, Suite 1400
Philadelphia, PA 19103
tel: (215) 569-3022 | email: jpetkun@klehr.com

December 1, 2019

PES Holdings, LLC
1735 Market Street
Philadelphia, PA 19103

RE: Engagement of Klehr Harrison Harvey Branzburg LLP

Dear PES Holdings, LLC:

Thank you for engaging Klehr Harrison Harvey Branzburg LLP (the “Firm”) to represent certain employees/former employees, including William Carney, John Wilson, Art Jensen, Tony Rutkowski , Paul McAndrew, William Melson, Amanda Fowler, and Brian McTiernan related to ongoing investigations commenced by various private and governmental entities concerning the causes of the Girard Point Incident, the Debtors’¹ involvement therein, and the events leading to the filing various chapter 11 petitions (each, an “Investigation,” and collectively, including such additional governmental and non-governmental investigations as may be commenced from time to time, the “Investigations”). We understand the private and governmental entities that commenced such investigations to include the Department of Justice, the Environmental Protection Agency, the Philadelphia Department of Environmental Protection, the Occupational Safety and Health Administration, the U.S. Chemical Safety Board, the U.S. Bureau of Alcohol, Tobacco, and Firearms, the Philadelphia Fire Marshal, the Philadelphia Police Department, and several private insurance companies. As required by the Rules of Professional Conduct, this letter confirms in writing the Firm’s fee arrangements with PES Holdings, LLC (“PES”).

We have been advised that PES has stated its intention to pay the legal fees and expenses in connection with this investigation and our representation of the employees/former employees. Because the legal fees are being paid by a third party, and not the above parties, this letter explains our understanding of this arrangement.

The reasonable value of our services is dependent partly upon the time required of us, and partly upon the complexity and difficulty of the issues and problems presented. It includes consideration of

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.



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the demands made upon our skill and experience, and the amount in issue. It is our desire to afford you conscientious, faithful and diligent service, seeking at all times to achieve outcomes that are just and reasonable for you.

Our services are billed and payable at the hourly rates of the lawyers and paralegals working on each matter. Our rates are subject to increase from time to time. It is anticipated that I will be the lead attorney on the matter. My current rate is \$510.00 per hour. To the extent necessary or appropriate to enhance efficiency, other attorneys and paralegals may work on these matters at the following hourly rates:

Billing Category	Range of Hourly Rates
Partners	\$415 - \$825
Counsel	\$355 - \$480
Associates	\$275 - \$445
Paralegals	\$200 - \$280

Our billing for fees and costs are rendered monthly. Our fee billings will itemize all services rendered and describe the services performed by each attorney, the amount of time expended in connection therewith, the hourly rate charged for such services, and any expenses incurred on your behalf. Our billings are due and payable upon receipt. If you have any questions about a bill, please let me know promptly so that such questions can be addressed and resolved in a timely manner. In addition to hourly fees, you also will be responsible to reimburse the Firm for all out-of-pocket costs and expenses incurred by the Firm in connection with this representation. Included within such expenses are items such as travel expense, filing fees, court reporter costs, photocopying, postage, delivery charges, long distance telephone charges, computerized legal research and staff overtime (non-attorney) to the extent directly attributable to the services to be performed on your behalf.

This Firm cannot guarantee the successful resolution of the matters for which we have been retained. Regardless of the outcome of the matters for which we have been retained, you will be obligated for timely payment of the fees and expenses discussed above.

For the purposes of this matter, William Carney, John Wilson, Art Jensen, Tony Rutkowski, Paul McAndrew, William Melson, Amanda Fowler, and Brian McTiernan are sole clients of the Firm. Payment of legal fees by a third party, such as the PES Holdings LLC, does not and shall not establish an attorney-client relationship between the PES Holdings LLC, any other debtor(s) in the bankruptcy matter, and PES Holdings LLC shall take no action to cause there to be, as a matter of law, an attorney-client relationship with it. At all times in this matter, our advice will be exclusively in the best interests of William Carney, John Wilson, Art Jensen, Tony Rutkowski, Paul McAndrew, William Melson, Amanda Fowler, and Brian McTiernan. The payment of legal fees by a third party must not interfere with the Firm's independent professional judgment or with the confidentiality of our attorney-client relationship with William Carney, John Wilson, Art Jensen, Tony Rutkowski, Paul McAndrew, William Melson, Amanda Fowler, and Brian McTiernan. Any payment by you will be used only to defray legal fees and legal expenses directly related to the representation of William Carney, John Wilson, Art Jensen, Tony Rutkowski, Paul McAndrew, William Melson, Amanda Fowler, and Brian McTiernan, and not for any other purpose.



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At this time, we believe the interests of William Carney, John Wilson, Art Jensen, Tony Rutkowski, Paul McAndrew, William Melson, Amanda Fowler, and Brian McTiernan are not adverse to the interests of any other client of the Firm. *See, e.g., Wheat v. United States*, 486 U.S. 153, 163 (1988) (conflict exists if there is a “demonstration of actual conflict,” or a “showing of a serious potential for conflict”). We will fully advise William Carney, John Wilson, Art Jensen, Tony Rutkowski, Paul McAndrew, William Melson, Amanda Fowler, and Brian McTiernan on the contents of this letter.

You have the right to terminate the Firm’s engagement at any time. The Firm also has the right, subject to our responsibilities under applicable ethical rules, to terminate our engagement by giving you written notice of such termination. We ordinarily will not terminate client relationships except for cause, including actual or threatened conflicts of interest, failure on the part of a client to cooperate, circumstances that impair our ability to continue to serve a client effectively, or nonpayment of our invoices within 30 days of receipt. If either you or the Firm terminates this engagement, then you will remain responsible for our fees and costs incurred prior to that time, and thereafter in the event that a court or other tribunal does not permit the Firm to withdraw as counsel of record in any ongoing proceeding. You, however, agree not to contest the Firm’s withdrawal from any court or administrative proceeding in the event that you or the Firm has terminated this engagement.

All records and files will be retained and disposed of in compliance with the Firm’s policy in effect from time to time. We recommend, therefore, that you maintain your own files for reference or submit a written request for your files promptly upon conclusion of a matter.

Please sign below to indicate your consent to and understanding of the terms of this letter and to the waiver of any potential conflict of interest arising from our representation of William Carney, John Wilson, Art Jensen, Tony Rutkowski, Paul McAndrew, William Melson, Amanda Fowler, and Brian McTiernan.



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To conclude on a more personal note, we very much appreciate your entrusting this matter to the Firm, and we look forward to providing excellent representation.

Yours, Very Respectfully,

/s/ James A. Petkun
James A. Petkun

Intending to be legally bound, the undersigned accepts and agrees to the terms of this letter this
1st day of December, 2019.

ON BEHALF OF PES HOLDINGS, LLC AND ITS
SUBSIDIARIES

By: John E. McShane
Name: John McShane
Title: EVP, Regulatory Affairs Counsel

cc: William Carney
John Wilson
Art Jensen
Tony Rutkowski
Paul McAndrew
William Melson
Amanda Fowler
Brian McTiernan

PENNSYLVANIA NEW JERSEY DELAWARE

Exhibit C

Stein Declaration

2. I submit this declaration (this “Declaration”) in support of the *Debtors’ Application for Entry of an Order Authorizing Retention and Employment of Klehr Harrison as Special Employees’ Counsel Nunc Pro Tunc to December 1, 2019 Pursuant to Sections 327(e), 328(a), 330, and 363(b)(1) of the Bankruptcy Code* (the “Application”),² filed contemporaneously herewith. Except as otherwise noted, I have personal knowledge of the matters set forth herein.

The Debtors’ Selection of Klehr Harrison as Special Employees’ Counsel

3. Since the historic, large-scale, catastrophic incident at the Debtors’ alkylation unit of the Girard Point refining facility (the “Girard Point Incident”) and subsequent commencement of these chapter 11 cases, the Debtors have cooperated with investigations commenced by various private and governmental entities concerning the causes of the Girard Point Incident, the Debtors’ involvement therein, and the events leading to the filing of these chapter 11 petitions (each, an “Investigation,” and collectively, including such additional governmental and non-governmental investigations as may be commenced from time to time, the “Investigations”). The private and governmental entities that commenced such investigations include the Department of Justice, the Environmental Protection Agency, the Philadelphia Department of Environmental Protection, the Occupational Safety and Health Administration, the U.S. Chemical Safety Board, the U.S. Bureau of Alcohol, Tobacco, and Firearms, the Philadelphia Fire Marshal, the Philadelphia Police Department, and several private insurance companies.

4. As the Investigations proceed, the Debtors anticipate that a number of parties, including certain current and former employees of the Debtors, will likely be advised that they are under investigation, but who are not themselves targets of the Investigations. In addition to such parties, there may be current and former employees of the Debtors who will not be advised that

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

they are under investigation, but who may have information relevant to one or more of the Investigations and whose assistance, cooperation, and participation is, or likely will be, sought in connection with one or more of the Investigations (the “Employees”).

5. The Debtors believe that the cooperation, assistance, and participation of the Employees is critical to the timely completion of the Investigations, ultimately fostering the Debtors’ reorganization effort. In order to facilitate the Employees’ cooperation while assuring their legal rights are fully protected, and especially in light of the complexity of the Investigations, the Employees require representation by counsel. Accordingly, Klehr Harrison is proposed to serve as Special Employees’ Counsel, effective *nunc pro tunc* to December 1, 2019, to represent the Employees in connection with the Investigations.

6. The Debtors recognize that a comprehensive review process is necessary when selecting and managing outside special counsel to ensure that professionals retained during the pendency of chapter 11 cases are subject to the same client-driven market forces, scrutiny, and accountability as professionals in nonbankruptcy engagements.

7. To that end, the review process utilized by the Debtors here assessed potential special employee pool counsel based on their expertise in the relevant legal issues and familiarity with the Debtors’ particular facts and circumstances. Using this review process, the Debtors selected Klehr Harrison to serve as Special Employees’ Counsel.

8. Ultimately, the Debtors retained Klehr Harrison because of its extensive experience and knowledge in the field of government investigations. Thus, I believe that Klehr Harrison is well qualified to represent the Employees as Special Employees’ Counsel during the pendency of these chapter 11 cases.

Rate Structure

9. In my capacity as CRO, I am responsible for supervising outside counsel retained by the Debtors. Klehr Harrison has informed the Debtors that its current hourly rates are the same as the hourly rates and corresponding rate structure that Klehr Harrison uses in other matters, regardless of whether a bankruptcy fee application is required. Klehr Harrison has informed the Debtors that Klehr Harrison's standard hourly rates are subject to periodic adjustment in accordance with Klehr Harrison's practice.

Cost Supervision

10. The Debtors and Klehr Harrison expect to develop a prospective budget and staffing plan, recognizing that in the course of these kinds of investigations, especially in the context of large, complex chapter 11 cases, there may be unforeseeable fees and expenses that will need to be addressed by the Debtors and Klehr Harrison. The Debtors recognize that it is their responsibility to closely monitor the billing practices of their special employee pool counsel to ensure the fees and expenses paid by the estate remain consistent with the Debtors' expectations and the exigencies of the chapter 11 cases. The Debtors will continue to timely review the invoices that Klehr Harrison regularly submits, and, together with bankruptcy counsel, periodically amend the budget and staffing plans, as the case develops.

11. The Debtors will continue to bring discipline, predictability, client involvement, and accountability to the special employee pool counsel's fees and expense reimbursement process. While every chapter 11 case is unique, the budgets will provide guidance on the periods of time involved and the level of the attorneys and professionals that will work on various matters, as well as projections of average hourly rates for the attorneys and professionals for various matters.

[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 knowledge and belief.

Dated: January 16, 2020

Respectfully submitted,

/s/ Jeffrey S. Stein

Jeffrey S. Stein
Chief Restructuring Officer
PES Holdings, LLC