IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
PES HOLDINGS, LLC, *et al.*,[1]	)	Case No. 19-11626 (LSS)
Debtors.	)	(Jointly Administered)

DECLARATION OF JEFFREY S. STEIN
IN SUPPORT OF THE DEBTORS' MOTION FOR
ENTRY OF AN ORDER (I) APPROVING THE AMENDMENT TO
THE PURCHASE AGREEMENT AND (II) GRANTING RELATED RELIEF

I, Jeffrey S. Stein, hereby declare under penalty of perjury as follows:

1. I am the Chief Restructuring Officer of the above-captioned debtors and debtors in possession (collectively, the "Debtors"). I am also a member of the board of directors (the "Board") of PES Energy Inc., the indirect parent of PES Holdings, LLC, and have held that position since July 8, 2019.

2. I am a member of the Board's restructuring committee (the "Restructuring Committee"), which, in light of any potential conflicts of interest amongst other Board members, vets and ensures all decisions are made in the Debtors' best interests. The Restructuring Committee includes no representatives from any of the Debtors' lenders, and the Restructuring Committee has made all material decisions relating to the Debtors' restructuring since I joined the Board. In addition, prior to and during the Debtors' 2018 chapter 11 cases, I was an independent board member of Debtor North Yard GP, LLC.

[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.

3. In my capacity as Chief Restructuring Officer, I am very familiar with the above-captioned Debtors' operations, business affairs, books and records, as well as the Debtors' restructuring efforts, including, but not limited, to its entry into the January 17, 2020 Purchase and Sale Agreement (the "Purchase Agreement") between the Debtors and HRP Philadelphia Holdings LLC ("HRP") [Docket No. 780-6], and the negotiation of amendments thereto.

4. In addition to my work with the Debtors, I am the Managing Partner of Stein Advisors LLC, a financial advisory firm that provides consulting services to public and private companies experiencing significant challenges, including financial restructuring, increased regulatory oversight and emergence from bankruptcy. Prior to founding Stein Advisors LLC in 2010, from January 2003 through December 2009, I served as Principal of Durham Asset Management LLC, a global event-driven distressed debt and special situations equity asset management firm that I co-founded. From July 1997 to December 2002, I served as Co-Director of Research at The Delaware Bay Company, Inc., a boutique research and investment banking firm focused on the distressed debt and special situations equity asset classes. From September 1991 to August 1995, I was an Associate and Assistant Vice President at Shearson Lehman Brothers in the Capital Preservation and Restructuring Group. I received a B.A. in Economics from Brandeis University and an M.B.A. with Honors in Finance and Accounting from New York University.

5. I am an experienced corporate executive and director, with over 28 years of experience in both the debt and equity asset classes. In addition, I have been active in the development and implementation of plans of reorganization for numerous companies. I am above eighteen years of age and am competent to testify.

6. Except as otherwise indicated, all matters set forth in this declaration (the "Declaration") are based on: (a) my personal knowledge of the Debtors' business operations,

my review of relevant information provided to me by other members of the Debtors' management and the Debtors' professional advisors, including Kirkland & Ellis LLP ("K&E"), Alvarez & Marsal North America, LLC ("A&M"), PJT Partners LP ("PJT"); (b) my opinion based upon my experience, knowledge, and information concerning the Debtors' operations; and (c) my review of relevant documents. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

General Background and Entry Into the Purchase Agreement With HRP

7. The Debtors operated a refining complex on an approximately 1,300 acre site near downtown Philadelphia. When fully operational, the Debtors refining complex represented 28% of the crude oil refining capacity of the United States' east coast region. [*See* Docket No. 32 ¶¶ 5-7]

8. On July 21, 2019, the Debtors filed chapter 11 petitions in the Bankruptcy Court for the District of Delaware (this "Court") shortly after an explosion left the Debtors unable to continue operating the refining complex. [*See*, *e.g.*, Docket No. 1]

9. In August 2019, the Debtors began conducting an extensive marketing process to solicit interest in the Debtors' assets. With the assistance of PJT and the Debtors' management, the Debtors contacted approximately 223 potential strategic and/or financial buyers, including, among others, refinery restart bidders, land development and/or real estate bidders, alternative fuel facility bidders, and decommissioning and environmental remediation bidders. Ultimately, approximately thirty-eight parties executed nondisclosure agreements with the Debtors and engaged in discussions regarding a sale, thirty-six parties were granted access to the Debtors' virtual data room, and fifteen parties submitted indications of interest in the first round of the Bidding Procedures, in or around September 23, 2019.

10. Through bidding rounds two and three, from October 15, 2019 through January 9, 2020, the Debtors organized and conducted forty-three site visits at the refinery complex and conducted management meetings with potential bidders. The Debtors also provided potential bidders with more than 5,000 documents via a secure data room. At the end of round three, the Debtors received six bids, only four of which were binding.

11. In the final weeks leading up to the January live auction (the "Auction"), the Debtors and their advisors held additional and extensive meetings, facilitated diligence, and communicated with three of the final bidders, both orally and in writing. During this time, the Debtors and their advisors made progress in improving the potential bids of two parties.

12. On January 17, 2020, in accordance with the Bidding Procedures Order, the Debtors, with the assistance of PJT, conducted the Auction between the only two parties that submitted Qualified Bids—HRP and Industrial Realty Group, LLC ("IRG"). The Auction, which was attended by representatives and/or principals of nearly every significant case constituent, culminated in a blind round where both Qualified Bidders submitted their "best and final" offers for the Debtors to consider. HRP offered a purchase price of $240 million, secured by a $30 million deposit. This price represented an increase of $86 million from their Qualified Bid prior to the commencement of the Auction.

13. The other Qualified Bidder, IRG, offered an approximately 10 percent premium to the HRP purchase price, however only offering a $5 million deposit, more than seventy percent lower than that of HRP and less than two percent of the total purchase price. IRG was entering into the purchase agreement at the parent-level entity, with a fully capitalized balanced sheet representing a counterparty that would be capable of performance and a full backstop if specific performance was required. However, IRG's bid also contained material contingencies, including

thirty days of a financing contingency that would effectively permit this bidder to walk away (only losing its $5 million deposit) at any time and for any reason during the thirty day period. The Debtors and PJT made clear to IRG that the size of the deposit was a critical factor of the decision-making, and that the proposed $5 million deposit was insufficient. In short, IRG's abnormally small deposit and its financing contingency essentially gave IRG an option to purchase, and created real risk over whether the bid would ever close. This problem was particularly acute because HRP refused to permit its bid to serve as a backup bid. Thus, if the Debtors had selected the IRG bid, and they decided to exercise their thirty-day out, the Debtors would have had no backstop and HRP could have returned to its $154 million opening bid (or could have bid even lower), saving itself almost $90 million while likely remaining the highest and best bid.

14. Following the completion of the Auction, the Debtors, in consultation with their advisors, including PJT, and the Consultation Parties[2], selected HRP as the Winning Bidder, as set forth in the *Plan Supplement for the First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 780] (the "First Plan Supplement").

15. Following the completion of the Auction, the Debtors continued corresponding with HRP and IRG, consistent with their goal of maximizing recovery to the estates. While IRG improved its bid and made a larger deposit ($20 million in total), it still contained a number of contingencies that rendered it inferior. Among other issues, IRG had not engaged at all with Sunoco on revisions related to the underlying deed on the property (a condition to closing under

[2] Capitalized terms used but not defined herein have the meaning ascribed to such terms in the Plan, Purchase Agreement, or the Confirmation Order, as applicable.

the IRG agreement), nor had it taken any steps toward reaching agreement on a soil management plan with the Pennsylvania Department of Environmental Protection ("PaDEP").

16. During this period, HRP's bid became stronger. HRP agreed to increase its purchase price by $12 million (raising the purchase price to $252 million). After discussing the issue at length with the Debtors' management team, advisors, and with the Restructuring Committee of the Debtors' board of directors, the Debtors proceeded with a plan that provided for a sale to HRP under the Purchase Agreement.

17. On February 13, 2020, the Debtors filed the *Fourth Amended Joint Chapter 11 Plan of PES Holdings LLC and Its Debtors Affiliates* (the "Plan"), which provided for a sale to HRP, was confirmed by the Court, and was deemed to be in the best interests of the Debtors' estates and stakeholders. [Docket No. 1004]

The Debtors' Subsequent Engagement with HRP Regarding Amending the Purchase Agreement

18. Shortly after confirmation of the Plan, the COVID-19 pandemic necessitated shut down orders through much of the country, including the regions in which the Debtors operate. Based on my own experience and advice provided to me by the Debtors' advisors, I understand that this change in the economic environment has had a significant negative impact on general M&A activity. Despite this environment, both HRP and the Debtors continued to take steps to satisfy their respective closing conditions, and HRP repeatedly reiterated its commitment to continuing to work with the Debtors to close the transaction.

I. HRP Requests An Amended Purchase Price.

19. On June 6, 2020, I received an email from Roberto Perez, HRP's CEO, reiterating HRP's commitment to purchasing the Debtors. In that same communication, however, HRP formally requested a purchase price reduction, citing, among other items: (1) the COVID-19

pandemic and the accompanying unprecedented economic uncertainty which has led to many firms abandoning acquisitions that were agreed upon prior to the pandemic; (2) increased environmental remediation costs; and (3) expenses related to a post-confirmation bulkhead breach on the Debtors property which requires a costly repair, among other items. HRP also requested an extension of the closing date.

II. The Debtors' Restructuring Committee Concludes Further Negotiation With HRP is in the Best Interests of the Debtors.

20. On June 7, 2020, the Restructuring Committee of the Debtors met with our legal advisors from K&E and financial advisors from A&M and PJT to discuss HRP's June 6, 2020 request for a purchase price adjustment. The Restructuring Committee specifically considered: (1) potentially attempting to take recourse against HRP under the Purchase Agreement, (2) pursuing a transaction with the backup bidder IRG; (3) conducting a new sale process; and (4) the considerations associated with negotiating an amendment to the Purchase Agreement with HRP.

21. *First,* the Restructuring Committee considered its rights under the Purchase Agreement against HRP if the Debtors decided not to negotiate with HRP. In sum, the Debtors had two potential options: (1) terminating the Purchase Agreement, and seeking to retain HRP's $30 million earnest money deposit; or (2) filing a legal proceeding seeking to force HRP to close under the Purchase Agreement.

22. While the Restructuring Committee and its advisors believe that the Debtors should prevail in retaining the escrow from a legal, contractual, and equitable perspective, I understand that no outcome is guaranteed. I expect any attempt by the Debtors to terminate the Purchase Agreement and retain the escrow deposit would be met with strong opposition from HRP. I understand that HRP would likely assert that the Debtors breached the Purchase Agreement, and

thus that the Debtors do not have the right to terminate the Purchase Agreement or retain the escrow deposit. This dispute would inevitably result in costly litigation, significant delay in return of the escrow, if the escrow was returned at all (jeopardizing the Debtors' liquidity and ability to complete a new sale), and disruption to any subsequent sale process conducted by the Debtors.

23. The same challenges exist if the Debtors would seek to force HRP to close under the Purchase Agreement. Moreover, if the Debtors pursue HRP at all, the reality was that they would be seeking damages, specific performance, or both, from HRP, a special purpose vehicle that does not currently have sufficient funds to close. Accordingly, I understand that in order to force HRP to close, the Debtors would likely have to seek recourse against HRP's parent entity, Hilco Redevelopment Partners LLC ("Hilco") and potentially its affiliates, who would argue they are not parties to the Purchase Agreement, and thus are not obligated under it. Hilco would likely respond to any attempt to "pierce the veil" with the assertion that all parties involved (the Debtors, the Unsecured Creditors' Committee (the "Creditors' Committee"), and all of the Debtors' lenders) knew that they were entering into a contract with a special purpose vehicle only (HRP), and not Hilco, and thus should have no basis to seek recourse against Hilco. These realities pose significant challenges to any litigation effort, which would likely require additional financing commitments to pursue.

24. *Second,* the Restructuring Committee considered whether pursuing a sale with the Debtors' back-up bidder, IRG, would provide greater benefits to the Debtors' estates and stakeholders. But, as detailed above, IRG's backup bid contained a number of contingencies that render closing a transaction with IRG far from certain. For example, in order to close, IRG will need to reach agreement with ETP/Sunoco on deed modifications—a process that took HRP months to complete and, to the best of the Debtors' knowledge, IRG had taken not begun at the

time of confirmation (nor has undertaken since). IRG would also have to secure financing for the transaction, which could be challenging in the current COVID-19 environment. Finally, the additional time required by IRG to conduct those negotiations and secure financing would lead to increased professional fees and other carrying costs that would reduce stakeholders' ultimate recoveries. Taking these risks and expenses into account, the Restructuring Committee concluded that closing a transaction with IRG would require significantly more capital (and provide creditors with less recovery) than would be required if the Debtors attempted to negotiate a guaranteed closing date and a purchase price adjustment with HRP.

25. *Third,* the Restructuring Committee evaluated whether commencing a new sale process would be in the best interests of the Debtors and their stakeholders. As a threshold issue, the Restructuring Committee already knew that the universe of potential interested buyers for the Debtors and/or their assets is limited and highly uncertain, given the robust marketing process already conducted, which resulted in only two qualified bids. Further, even if new potential buyers were identified, any new sale process would require significant time and liquidity. Such a process would also be further impacted by COVID-19, which limits access to the site (something that the Debtors were able to provide to interested parties during the first marketing process) and management (some of whom have left the Debtors since confirmation of the Plan), and will make procuring financing sources more challenging. Additionally, given the robustness of the original sale process, I have no reason to believe that the process will result in materially better results than the previous one. New purchasers after a "busted deal" often seek deep discounts to the previously disclosed sale price, and likewise, holding IRG to its original bid may also require costly litigation.

26. *Finally,* the Restructuring Committee weighed the potential benefits to the estate and the Debtors' stakeholders of trying to negotiate a commercial resolution with HRP.

Specifically, the Restructuring Committee considered the proposed reduction of distributable value to the estate due to the reduced purchase price on the one hand, compared with certainty of closing, limitations on professional fees and cash burn, and the risks associated with the other sale options on the other hand. After weighing the various considerations, the Restructuring Committee's decision was unanimous, and was consistent with my business judgment—that the Debtors should pursue further negotiations with HRP to seek a negotiated resolution rather than filing a lawsuit.

27. Accordingly, the Restructuring Committee authorized me to continue to engage in arms-length negotiations with HRP on behalf of the Debtors, which I did through numerous phone calls with Mr. Perez of HRP over the course of the following days.

28. The Restructuring Committee also authorized me to respond to Mr. Perez with a counterproposal, which I sent to HRP on June 11, 2020. This counterproposal emphasized three factors: (1) the Debtors' need for certainty of closing, and a path for immediate recovery of significant escrow funds in the unlikely event that the transaction failed to close; (2) HRP's assumption of the Debtors' cost of operating prior to closing; and (3) a purchase price adjustment that was less than the one HRP was demanding.

III. The Debtors Engaged With its Stakeholders, Who Generally Supported Further Negotiations With HRP.

29. Throughout this process, I, along with the Debtors' advisors from K&E, remained in communication with the stakeholders' advisors, including, but not limited to, advisors for the term loan lenders, ICBCS, and the Creditors' Committee. While the Debtors' Restructuring Committee's approach was largely supported by the Debtors' stakeholders—including the Required Term Loan Lenders and the Creditors' Committee—one of the Debtors' term loan lenders expressed disagreement with the Restructuring Committee's business judgment.

30. On June 12, 2020, this lender sent a letter addressed to the Board, requesting that the Board cease negotiations with HRP on a purchase price adjustment, and instead file an adversary proceeding against Hilco seeking damages for its violation of Section 11.02 of the Purchase Agreement and file a motion to compel HRP to close the transaction under the Purchase Agreement. However, although pursuing such path would be costly, this lender did not offer to provide any liquidity which would be vital to pursuing the alternative approach this lender requested. While the letter was carefully considered by the Restructuring Committee (including during the June 14, 2020 meeting discussed below), the Debtors disagreed for the reasons discussed above. Litigation was clearly not in the best interests of the estate if the Debtors could achieve a firm closing date, could minimize carrying costs until that closing date, and could negotiate down—at least to some degree—the purchase price adjustment demanded by HRP. Based on my independent assessment as Chief Restructuring Officer and as a member of the Restructuring Committee of the Board, I still believed—and continue to believe—that the value-maximizing path forward is entering into the Amendment (as defined below) with HRP.

IV. The Restructuring Committee Authorizes A New Counterproposal.

31. On June 14, 2020, the Restructuring Committee convened again to discuss the ongoing negotiations between the Debtors and HRP, and to authorize the Debtors' "best and final" offer to HRP. After discussion amongst the Restructuring Committee members and their advisors, including consideration of the significant progress HRP has made towards closing (including but not limited to reaching an agreement with ETP/Sunoco with respect to post-closing operations, and submitting a final proposed Soil Management Plan to PaDEP for their review and approval), and the funds available for distribution to the Debtors' creditors under proposed settlement terms, we unanimously concluded that the proposed settlement represents the best risk-adjusted path forward for the Debtors and their stakeholders. The Restructuring Committee then authorized me

to submit the Debtors' "best and final" offer to HRP, which I did on June 15, 2020. HRP and the Debtors then negotiated into the evening regarding the final terms.

The Amendment Is In The Best Interest of The Debtors And Their Stakeholders.

32. On June 17, 2020, the Debtors and HRP entered into an Amendment to the Purchase Agreement (the "Amendment") that, among other things, provides that (1) HRP will close on or before June 26, 2020; (2) HRP will agree to forfeit $15 million of the escrow deposit immediately to the Debtors if the closing does not occur by June 26, 2020, while reserving rights with respect to the remaining escrow deposit; (3) HRP will cover the cost of carry from June 1, 2020 up to but excluding the closing date, at a rate of $357,143 per day (approximately $2.5 million per week); (4) PES agrees to reduce the cash purchase price by $27.5 million and transfer all Emission Reduction Credits to HRP; and (5) HRP will waive all closing conditions set forth in the Purchase Agreement, including those related to the soil management plan and facility turnover.

33. I believe that the Amendment provides for the greatest combination of value and security for the Debtors' stakeholders. As discussed above, all of the Debtors' other options come with significant costs and delay that, when compared to the value available under the Amendment, are not in the best interests of the Debtors' stakeholders. Furthermore, I understand that the majority of the Debtors' key stakeholders—*i.e.,* the Required Term Loan Lenders and the Creditors' Committee—agree with the Debtors' business judgment and support entry into the Amendment.

34. Any other option at this time would be highly risky for the Debtors and all of the stakeholders in these chapter 11 cases. While the Debtors believe that they would have a strong lawsuit if it was initiated, the lawsuit would be against a special purpose vehicle with limited (if any assets) unless the Debtors could pierce the veil to Hilco, a process that would be massively expensive to pursue, would take a substantial amount of time, and would have a highly uncertain

result. There is no doubt that an amended purchase agreement that has a firm closing date, requires HRP to cover the Debtors' carrying costs until that closing date (giving HRP incentive to close as soon as possible), and guarantees the Debtors at least $15 million in cash from the escrow if HRP does not close, is the Debtors and all stakeholders' best option at this time.

35. In sum, in light of the foregoing, the approval of the Amendment to the Purchase Agreement is, in my opinion, in the best interests of the Debtors, their estates, stakeholders, and other parties in interest.

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

Dated: June 17, 2020

Respectfully submitted,

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