UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

March 20, 2023

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: Phillips 66 (the "Company")
Incoming letter dated January 9, 2023

Dear Elizabeth A. Ising:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the State of New Jersey Common Pension Fund D for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests the board of directors issue an audited report by February 2024 that describes the undiscounted expected value to settle obligations for the Company's asset retirement obligations with indeterminate settlement dates.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal micromanages the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Jeffrey Warshauer
State of New Jersey Common Pension Fund D

GIBSON DUNN

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January 9, 2023

VIA EMAIL
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: *Phillips 66*
Shareholder Proposal of the State of New Jersey Common Pension Fund D
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Phillips 66 (the "Company"), intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the "2023 Proxy Materials") a shareholder proposal (the "Proposal"), including statements in support thereof (the "Supporting Statement"), received from the State of New Jersey Common Pension Fund D (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal (including correspondence regarding the status of any negotiations with the Company), a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> **Resolved:** Shareholders request that the Board of Directors issue an audited report that describes the undiscounted expected value to settle obligations for AROs[1] with indeterminate settlement dates. The Board should obtain and ensure publication of the report by February 2024 at reasonable cost and omitting proprietary information. To allow maximum flexibility, nothing in this resolution shall serve to micromanage the Company by seeking to impose methods for implementing complex policies in place of the ongoing judgment of management as overseen by its Board of Directors.

The Supporting Statement also describes several additional and detailed disclosures that the Company would need to provide. A copy of the Proposal and the Supporting Statement is attached as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur that the Proposal may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and seeks to micromanage the Company's operations.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Addresses Matters Related To The Company's Ordinary Business Operations Of Financial Accounting Disclosure And Seeks To Micromanage The Company By Directing The Company's Complex Accounting Judgments And Conclusions Effected As Part Of The Company's Accounting Disclosures

A. Background On Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to its "ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission

[1] "AROs" means Asset Retirement Obligations, which are legal obligations associated with the retirement of a tangible long-lived asset.

explained that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration is related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id*. (citing Exchange Act Release No. 12999 (Nov. 22, 1976) (the "1976 Release")). The Proposal implicates both of these considerations.

Moreover, framing a shareholder proposal in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983); *see also Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).").

B. Background On The Company's Accounting Of AROs

The Financial Accounting Standards Board ("FASB") establishes and interprets United States Generally Accepted Accounting Principles ("US GAAP"). The FASB Accounting Standards Codification ("ASC") is the source of authoritative US GAAP and addresses specific accounting issues, with a view to enhancing the accuracy and transparency of financial reporting. ASC Topic 410, *Asset Retirement and Environmental Obligations* ("ASC 410") addresses financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. ASC 410 governs the calculation and disclosure of AROs and requires companies to record the fair value of an ARO as a liability in the period in which it incurs a legal obligation associated with the retirement of tangible long-lived assets that result from the acquisition, construction, development and/or normal operation of the assets. Under ASC 410, the fair value of a liability for an ARO is required to be recognized in the period in which it is incurred "if a reasonable estimate of fair value can be made." Further, if an asset has an indeterminate useful life and there is insufficient information to estimate a range of potential settlement dates for the obligation, the liability must be initially recognized in the period in which *sufficient information exists* to estimate a range of potential settlement dates needed to employ a present value technique to estimate fair value.

Under various contracts, permits and regulations, the Company has legal obligations to remove tangible long-lived assets and restore the land at the end of operations at certain operational sites. As a result, and consistent with US GAAP, the Company accounts for and makes required disclosures about its AROs in accordance with ASC 410, including disclosure

about AROs with indeterminate settlement dates and why a reasonable estimate of fair value cannot be made of the AROs associated with the Company's refining and other processing assets. Specifically, Management's Discussion and Analysis of Financial Condition and Results of Operation in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021 (the "2021 Annual Report") stated, in relevant part:

> Under various contracts, permits and regulations, we have legal obligations to remove tangible long-lived assets and restore the land at the end of operations at certain operational sites. Estimating the timing and cost of future asset removals is difficult. Our recognized asset retirement obligations primarily involve asbestos abatement at our refineries; decommissioning, removal or dismantlement of certain assets at refineries that have or will be shut down; and dismantlement or removal of assets at certain leased international marketing sites. Many of these removal obligations are many years, or decades, in the future, and the contracts and regulations often have vague descriptions of what removal practices and criteria must be met when the removal event actually occurs. Asset removal technologies and costs, regulatory and other compliance considerations, expenditure timing, and other inputs into valuation of the obligation, including discount and inflation rates, are also subject to change.

In addition, Note 1 to the Consolidated Financial Statements in the 2021 Annual Report states, in relevant part:

> When we have a legal obligation to incur costs to retire an asset, we record a liability in the period in which the obligation was incurred provided that a reasonable estimate of fair value can be made. If a reasonable estimate of fair value cannot be made at the time the obligation arises, we record the liability when sufficient information is available to estimate its fair value. . . .
>
> Our practice is to keep our refining and other processing assets in good operating condition through routine repair and maintenance of component parts in the ordinary course of business and by continuing to make improvements based on technological advances. As a result, we believe that generally these assets have no expected retirement dates for purposes of estimating asset retirement obligations since the dates or ranges of dates upon which we would retire these assets cannot be reasonably estimated at this time. We will recognize liabilities for these obligations in the period when sufficient information becomes available to estimate a date or range of potential retirement dates.

Further, Note 10 to the Consolidated Financial Statements in the 2021 Annual Report provides the required disclosures for the Company's asset retirement obligations with determinate settlement dates.

These disclosures are consistent with the applicable financial accounting standards and effected as part of the Company's ordinary business operations, which involve complex accounting judgments and conclusions that reflect the day-to-day business experience and well-developed knowledge of the Company's management and independent auditors with respect to a variety of factors relevant to accounting for AROs, including present and future use, complexity, resilience, location, cost structure, margin capture, and maintenance of the Company's assets.

The Company's annual financial statements are audited by an independent registered public accounting firm, and that firm's opinion states that the Company's financial statements present fairly, in all material respects, its consolidated financial position as of December 31, 2021 and 2020 and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with US GAAP. Further, the Audit and Finance Committee of the Company's Board of Directors (which is composed solely of independent directors) oversees the Company's financial reporting process and discusses the Company's significant accounting policies and financial reporting issues and judgments made in connection with the preparation of the Company's financial statements with the Company's management and its independent auditors.

C. The Proposal Is Excludable Because It Relates To The Company's Accounting Judgments And Financial Disclosures

The Proposal is excludable under Rule 14a-8(i)(7) because it involves ordinary business matters, specifically the request for the Company to provide additional, audited disclosures on its AROs with indeterminate settlement dates that are contrary to the Company's accounting judgments and conclusions and financial disclosures, which the Company and its independent auditors have determined to be in accordance with US GAAP. In addition, the Proposal requests disclosures that are not required by US GAAP for AROs with indeterminate settlement dates and that are more extensive than the disclosures currently required for AROs with determinate settlement dates.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of proposals like the Proposal relating to a company's accounting judgments and financial disclosure. For example, in *International Business Machines Corp.* (avail. Jan. 9, 2001), the proposal requested that the board of directors adopt a policy that future executive incentive compensation be determined "by profit from real company operations not including accounting rule profit from pension fund surplus," and that the company provide "transparent financial reporting of profit from real company operations." The company argued that the proposal was excludable under Rule 14a-8(i)(7) because the "disclosure by the company of financial information in its periodic reports, and the compliance by the company with applicable financial accounting standards in effecting such disclosure, both fall within the company's ordinary business operations under Rule 14a-8(i)(7)." The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7), noting "in particular that a portion of the proposal relates to the ordinary business operations (i.e., the presentation of financial statements in reports to

shareholders)." *See also The Boeing Co. (Shuper)* (avail. Mar. 6, 2000) (concurring with the exclusion of a proposal requesting "complete and clear disclosure of the inclusion, listing and use of employee pension fund trust assets and/or surplus in all current and future earnings statements" as relating to a matter of ordinary business, where the company effected its own pension plan disclosures in accordance with the applicable financial accounting standards); *General Electric Co.* (avail. Feb. 10, 2000) (concurring with the exclusion of a proposal requesting the company to discontinue an accounting technique, not use funds from the General Electric Pension Trust to determine executive compensation, and use the funds from the trust as intended and voted on by prior shareholders, noting "in particular that a portion of the proposal relates to ordinary business operations (i.e., choice of accounting methods)"); *LTV Corp.* (avail. Nov. 25, 1998) (concurring with the exclusion of a proposal requiring a new disclosure in a note to the financial statements as ordinary business under Rule 14a-8(i)(7)); *Potomac Electric Power Co.* (Mar. 1, 1991) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting disclosure of a "contingent liability account," noting that the proposal relates to ordinary business matters "(i.e., the accounting policies and practices of the [c]ompany)").

Similarly, in *Johnson Controls, Inc.*, the Staff concurred with the exclusion of a proposal asking that the company ensure that it disclosed in its financial statements "goodwill-net" and identified the so-called "true value" of shareholders' equity so long as goodwill was high relative to shareholders' equity. The company argued that its accounting for "goodwill" was in full compliance with US GAAP, that their financial statements were audited by PricewaterhouseCoopers LLP, and that such firm's opinion stated that its financial statements presented fairly its financial position in conformity with US GAAP. In concurring with the exclusion, the Staff (like in *International Business Machines Corp.*) noted that the proposal "relat[ed] to [the company's] ordinary business operations (i.e., the presentation of financial statements in reports to shareholders)."

The Proposal relates to ordinary business matters like the proposals in *International Business Machines Corp., Johnson Controls Inc., General Electric Co.* and *LTV Corp.*, specifically, the Company's accounting standards and the presentation of such information to shareholders. The Proposal would require the Company to provide disclosures that differ from the disclosures required by applicable financial accounting standards. Under ASC 410-20-50, "[i]f the fair value of an asset retirement obligation cannot be reasonably estimated, that fact and the reasons therefore shall be disclosed." As disclosed in the 2021 Form 10-K, "we believe that generally these assets have no expected retirement dates for purposes of estimating asset retirement obligations since the dates or ranges of dates upon which we would retire these assets *cannot be reasonably estimated at this time*" (emphasis added).

However, the Proposal seeks to substitute the Company's accounting methodologies for shareholders' judgements about the Company's accounting methodologies by requesting additional financial disclosure in the form of "an audited report that describes the undiscounted expected value to settle obligations for AROs with indeterminate settlement dates." In this regard, the Proponent takes issue with the nature of the financial accounting standards

themselves as suggested in the Supporting Statement, that "[i]f companies choose not to recognize the fair value of AROs on grounds that assets have indeterminate lives, it is imperative that they disclose the undiscounted costs to settle these material off-balance sheet liabilities." Notably, as described in the 2021 Form 10-K, there is no "choice" here, just the Company's determination that sufficient information does not exist to reasonably estimate the fair value of specific AROs. Thus, the Proposal seeks to implement specific accounting judgments and conclusions that are contrary to the accounting conclusions and judgments the Company's management and independent auditors have determined to be in accordance with US GAAP and consistent with industry practice.

The exclusion of the Proposal under Rule 14a-8(i)(7) is also consistent with the Staff's well-established position concurring with the exclusion of proposals seeking disclosure of accounting judgments that at the time were not required. *See, e.g.*, *General Electric Co.* (avail. Jan. 28, 1997) (concurring with the exclusion of a proposal to adopt fair value method of accounting for stock-based compensation plans as recommended but not required at the time in Statement of Financial Accounting Standard No. 123 under Rule 14a-8(i)(7) ("i.e., the presentation of financial reports to shareholders")); *American Stores Co.* (avail. Apr. 7, 1992) (concurring with the exclusion of a proposal requesting the company include in its annual report the earnings, profits and losses for each subsidiary and each of its major retail operations under Rule 14a-8(i)(7)); *Santa Fe Southern Pacific Corp.* (avail. Jan. 30, 1986) (concurring with the exclusion of a proposal requesting the company to prepare current cost basis financial statements for the company and its subsidiaries as part of the company's ordinary business operations ("i.e., the determination to make financial disclosure not required by law")); *Citigroup Inc. (Missionary Oblates of Mary Immaculate)* (avail. Feb. 20, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting disclosure of certain prescribed financial information on a website on a quarterly basis).

Moreover, as was the case in *Johnson Controls Inc.*, the Company's annual financial statements are audited by an independent registered public accounting firm, and that firm's opinion states that the Company's financial statements present fairly, in all material respects, its consolidated financial position and the consolidated results of its operations in conformity with US GAAP. The Proposal seeks disclosure of the AROs with indeterminate settlement dates in an audited report to shareholders. Thus, the Proposal also relates to the ordinary business matter of how the Company presents financial statements in its reports to shareholders.

These precedents demonstrate that shareholder proposals, such as the Proposal, that seek supplemental disclosures that expand upon other specific items of interest to proponents not required by applicable laws, regulations or financial accounting standards may be omitted under Rule 14a-8(i)(7) because they involve ordinary business operations. The Proposal concerns financial accounting practices that have historically been determined as excludable under Rule 14a-8(i)(7) as relating to a company's ordinary business matters and seeks supplemental disclosures not required by applicable laws, regulations or financial accounting standards. Thus, we believe that the Proposal may be omitted pursuant to Rule 14a-8(i)(7).

D. The Proposal Does Not Focus On A Significant Social Policy Issue That Transcends The Company's Ordinary Business Operations

In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the "ordinary business" exception that the Commission had initially articulated in the 1976 Release. In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that "focus on" significant social policy issues. The Commission stated, "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.").

In contrast, shareholder proposals that only touch upon topics that might raise significant social policy issues—but which do not focus on such issues—are not transformed into a proposal that transcends ordinary business. As a result, such proposals remain excludable under Rule 14a-8(i)(7). For example, in *Dominion Resources, Inc.* (avail. Feb. 3, 2011), a proposal requested that the company promote "stewardship of the environment" by initiating a program to provide financing to home and small business owners for installation of rooftop solar or renewable wind power generation. Even though the proposal touched upon environmental matters, the Staff concluded that the proposal actually related to "the products and services offered for sale by the company" and therefore could be excluded under Rule 14a-8(i)(7).

In SLB 14L, the Staff stated that it "will realign its approach for determining whether a proposal relates to 'ordinary business' with the standard the Commission initially articulated in [the 1976 Release], which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release." As such, the Staff stated that it will focus on the issue that is the subject of the shareholder proposal and determine whether it has "a broad societal impact, such that [it] transcend[s] the ordinary business of the company," and noted that proposals "previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7)."

Here, the Proposal does not focus on a significant social policy issue that transcends the ordinary business of the Company, which was the standard articulated by the Commission in the 1998 Release. While the introduction to the Proposal and the Supporting Statement contain a few references to energy transition, the Proposal's central focus (as evidenced in the Resolved clause, the title and the discussion of estimates) is on the Company's accounting of AROs with indeterminate settlement dates. The Proposal does not address climate transition risks and the

two references to the word "climate" are in the context of the Proposal's concerns about such liabilities. These references are insufficient to result in the Proposal focusing on a significant social policy issue under Rule 14a-8(i)(7). Accordingly, the Proposal does not transcend the ordinary business of the Company and is excludable under Rule 14a-8(i)(7) because it relates to ordinary business matters.

E. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company By Directing Complex Accounting Judgments And Conclusions Effected As Part Of The Company's Accounting Disclosures

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." In addition, SLB 14L clarified that in considering arguments for exclusion based on micromanagement, the Staff "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." Furthermore, the Staff noted that the ordinary business exclusion "is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters." SLB 14L.

The Proposal seeks to micromanage the Company by directing the Company's accounting judgments and financial disclosures by requesting that the Company disclose very specific and detailed information related to the undiscounted expected value to settle obligations for AROs with indeterminate settlement dates despite management's conclusion that sufficient information is not available to do so. These accounting judgments and conclusions depend on the day-to-day business experience and well-developed knowledge of both the Company's management and the Company's independent auditors with respect to a variety of factors. Accordingly, it is unrealistic for shareholders to decide the accounting judgments and conclusions necessary to account for the Company's AROs with indeterminate settlement dates.

Moreover, by mandating how the Company should account for and present its AROs with indeterminate settlement dates, the Proposal impermissibly seeks to replace management's informed and reasoned judgments with respect to specific accounting judgments and conclusions (that the Company's management and independent auditors have determined to be in accordance with US GAAP) with an accounting standard advocated by the Proponent that would be inconsistent with US GAAP and that would require more extensive financial disclosures for AROs with indeterminate settlement dates than is currently required by US GAAP, even for AROs with determinate settlement dates.

In this regard, the Proposal is similar to the proposal excluded in *Deere & Co.* (avail. Jan. 3, 2022). There the Staff concurred with the exclusion under the micromanagement prong of Rule 14a-8(i)(7) of a proposal requesting that the company's board publish "the written and oral content of any employee-training materials offered to any subset of the company's employees" where the supporting statement focused on the company's diversity, equity, and inclusion efforts. In its no-action request, the company argued that the proposal "intend[ed] for shareholders to step into the shoes of management and oversee the 'reputational, legal and financial' risks to the [c]ompany" and thus did not "afford[] management sufficient flexibility or discretion to address and implement its policy regarding the complex matter of diversity, equality, and inclusion." *See also Verizon Communications Inc.* (avail. Mar. 22, 2022) (same); *Marriott International, Inc.* (avail. Mar. 17, 2010, *recon. denied* Apr. 19, 2010) (concurring with the exclusion of a proposal requiring the installation of low-flow showerheads at certain of the company's hotels because "although the proposal raise[d] concerns with global warming, the proposal … [sought] to micromanage the company to such a degree that exclusion of the proposal … [was] appropriate").

As in *Deere & Co.*, the Proposal intends for shareholders to step into the shoes of management and does not afford management sufficient flexibility or discretion to address and implement a complex matter. The Proposal seeks to micromanage the Company by dictating the specific manner in which the Company accounts for and presents its financial disclosures regarding AROs with indeterminate settlement dates This detailed requirement, which combined with the Supporting Statement's requirements, does not provide the Company sufficient flexibility to allow for management to apply its accounting judgment, and the judgment of the Company's independent auditor, in accounting for AROs that have indeterminate settlement dates. Moreover, the Proposal requires that such calculations take into account "a range of potential settlement dates" for assets that the Company has already determined have "indeterminate settlement dates." And the Proposal mandates that the Company describe the related probabilities and, if known, whether these assumptions and estimates will change. In sum, the Proposal prescribes that the Company both engage in a complicated guessing game and describe whether the Company thinks that the guesses using the Proposal's complicated formula are or are not accurate. The accounting judgments and conclusions underlying the company's accounting for its AROs reflect the day-to-day business experience and the well-developed knowledge of both the Company's management and the Company's independent auditors with respect to a variety of factors. Accordingly, it would be unrealistic for shareholders to decide how to solve for such accounting judgments and conclusions at an annual meeting of shareholders. The shareholder proposal process is not intended to provide an avenue for shareholders to impose detailed financial requirements of this sort.

Thus we believe that the Proposal may be omitted pursuant to Rule 14a-8(i)(7) because it seeks to micromanage the Company by probing too deeply into a complex matter regarding the Company's financial reporting and accounting practices under the applicable FASB standards upon which shareholders, as a group, would not be in a position to make an informed judgment.

This is true despite the Proposal being framed as not "serv[ing] to micromanage the Company by seeking to impose methods for implementing complex policies in place of the ongoing judgment of management as overseen by its Board of Directors" as such statement does not negate the Proposal's language restricting management's flexibility to address the complex matter of accounting and disclosing financial information for AROs with indeterminate settlement dates.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2023 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8(i)(7).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Jenarae N. Garland, the Company's Managing Counsel & Assistant Corporate Secretary, at (832) 765-2828.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Jenarae N. Garland, Phillips 66
Jeffrey Warshauer, The State of New Jersey Common Pension Fund D

EXHIBIT A

State of New Jersey

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

DEPARTMENT OF THE TREASURY
DIVISION OF INVESTMENT
P.O. BOX 290
TRENTON, NJ 08625-0290
Telephone (609) 292-5106
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ELIZABETH MAHER MUOIO
State Treasurer

SHOAIB KHAN
Director

December 1, 2022

Vanessa Allen Sutherland
Executive Vice President, Legal and Government Affairs,
General Counsel and Corporate Secretary
Phillips 66
2331 CityWest Blvd.
Houston, Texas 77042

Dear Ms. Sutherland,

On behalf of the State of New Jersey Common Pension Fund D (the "Shareholder"), I submit the enclosed shareholder proposal (the "Proposal"), for inclusion in the proxy statement that Phillips 66 (the "Company") plans to circulate to shareholders in anticipation of the 2023 annual meeting of shareholders (the "Annual Meeting"). The Proposal is being submitted under SEC Rule 14a-8. The Shareholder requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting.

The Shareholder has beneficially owned more than $25,000 worth of the common stock of the Company from the date hereof for over one year continuously. The Shareholder intends to hold at least $25,000 in market value of the common stock through the date of the Annual Meeting. A letter from the Shareholder's custodian bank and record holder of the shares documenting the Shareholder's proof of ownership is being submitted under separate cover.

Jeffrey Warshauer, Corporate Governance Officer, is available to meet with the Company via teleconference on December 12, 2022 and December 15, 2022, between 9:00 a.m. and 5:30 p.m. CT. Should these times not work, staff from the NJ Division of Investment would be happy to coordinate another.

The Proposal is attached. The Shareholder or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Shareholder has no "material interest" other than that believed to be shared by shareholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to Jeffrey Warshauer, Corporate Governance Officer at [redacted].

Sincerely,

Shoaib Khan
Director

Report on asset retirement obligations

Oil and gas companies are legally required to decommission certain long-lived tangible assets at the end of their useful life. The obligations associated with doing so are recognized as Asset Retirement Obligations (AROs) by the Financial Accounting Standards Board. The demand for refined products such as gasoline is anticipated to decline as alternative sources of energy become more widely adopted, whether because of consumer demand, government directives, or other forces. As a result, the time to decommission refineries will likely come sooner than anticipated. Yet, investors have little insight into the associated costs of such decommissioning.

AROs are critical accounting estimates, yet useful detail on midstream and downstream AROs is not included in the Company's financial reports due to uncertainty about the timing of decommissioning. According to the Company's most recent annual report, it owns 12 refineries in the U.S. and Europe, which have a new crude throughput capacity of approximately 2 million barrels per day. We appreciate that the Company discloses some information in its most recent annual report about its recognized AROs. However, for those unrecognized AROs, the Company states "[w]e believe that generally these assets have no expected retirement dates for purposes of estimating asset retirement obligations since the dates or ranges of dates upon which we would retire these assets cannot be reasonably estimated at this time."

Rising climate transition risks and responsive corporate climate strategies make it reasonably possible that near-term changes in legal or economic conditions could materially accelerate realization of these liabilities. If companies choose not to recognize the fair value of AROs on grounds that assets have indeterminate lives, it is imperative that they disclose the *undiscounted* costs to settle these material off-balance sheet liabilities. Absent this information, investors cannot assess the true risk-adjusted value of their investment nor deploy capital effectively.

Resolved: Shareholders request that the Board of Directors issue an audited report that describes the undiscounted expected value to settle obligations for AROs with indeterminate settlement dates. The Board should obtain and ensure publication of the report by February 2024 at reasonable cost and omitting proprietary information. To allow maximum flexibility, nothing in this resolution shall serve to micromanage the Company by seeking to impose methods for implementing complex policies in place of the ongoing judgement of management as overseen by its Board of Directors.

Supporting Statement: In the Board and management's reasonable discretion we recommend such report also include: (1) a range of potential settlement dates based on each asset's estimated economic life, (2) probabilities associated with the potential settlement dates, with due consideration given to the potential impact of the energy transition away from fossil fuels, and (3) whether, based on known information, it is reasonably possible that these assumptions and estimates will change in the near term.