

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

In re

BURGESS BIOPOWER, LLC, *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10235 (LSS)  
(Joint Administration Requested)

**Re: D.I. 18**

**NOTICE OF FILING OF EXHIBIT C TO THE DEBTORS' MOTION FOR INTERIM  
AND FINAL ORDERS (I) APPROVING ENTRY INTO NEW LEAD MARKET  
PARTICIPANT AGREEMENT AND (II) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that, on February 9, 2024, the debtors and debtors in possession in the above-captioned cases filed the *Debtors' Motion for Interim and Final Orders (I) Approving Entry into a New Lead Market Participant Agreement and (II) Granting Related Relief* [D.I. 18] (the "Motion"). The Application inadvertently omitted the contents of Exhibit C to the Motion.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as Exhibit C is the inadvertently omitted Exhibit C to the Application..

Dated: February 12, 2024

/s/ Chantelle D. McClamb  
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-and-

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Burgess BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors' corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

-and-

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**EXHIBIT C**

**Proposed Lead Market Participant Agreement with CS Berlin Ops**

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LEAD MARKET PARTICIPANT SERVICES AGREEMENT

between

**Burgess BioPower, LLC**

and

**CS Berlin Ops, Inc.,**  
as Service Provider

Dated as of February 8, 2024

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## LEAD MARKET PARTICIPANT SERVICES AGREEMENT

This Lead Market Participant Services Agreement, dated as of February 8, 2024, is between Burgess BioPower, LLC, a Delaware corporation, as lessee with right to operate and use the herein-defined Energy Station (the “Company”), and CS Berlin Ops, Inc., a Delaware corporation (the “Service Provider”).

### Recitals

A. The Company leases and operates the Energy Facility (as defined below) under lease and right to use agreements made and entered into by Lessor (as defined below) as of September 2, 2011; and

B. The Company wishes to engage the Service Provider to serve as the Lead Market Participant for the Energy Station on such terms and conditions as provided herein.

Now, therefore, in consideration of the foregoing and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Certain Rules of Construction; Definitions. Except as the context otherwise explicitly requires, (a) the capitalized term “Section” refers to sections of this Agreement, (b) references to a particular Section shall include all subsections thereof and (c) the word “including” shall be construed as “including without limitation.” Capitalized terms defined in the Tariff (as defined below) and not otherwise defined herein have the meanings ascribed to them in the Tariff.

1.1. “Lessor” means Berlin Station, LLC.

1.2. “Energy Manager” means such entity that Service Provider may contract with to provide Energy Management.

1.3. “Energy Management” means dispatch, scheduling, outage coordination, capacity market participation support, payment settlement support, and other appropriate services to facilitate the sale of energy, capacity, and ancillary services produced or provided by the Energy Station into the ISO-NE organized markets.

1.4. “Energy Station” means the 75-megawatt baseload wood-fired electric generation facility located on an approximately sixty-two (62) acre site in Berlin, New Hampshire and all components and ancillary facilities, including associated interconnection facilities, thereof, which is as of this date known as Berlin Station and owned by Lessor and leased by Company with right to use under lease and right to use agreements made and entered into by Company and Lessor as of September 2, 2011.

1.5. “FERC” means the Federal Energy Regulatory Commission.

1.6. “ISO-NE” means ISO New England Inc.

1.7. “PSNH” means Eversource Energy d/b/a PSNH.

1.8. “Tariff” means the ISO New England Transmission, Markets and Services Tariff as accepted by FERC as it may be amended and in full effect.

2. Services. Service Provider agrees to provide the following (the “Services”):

2.1. Service Provider hereby agrees to (a) serve as the Lead Market Participant for the Energy Station upon and contemporaneous with PSNH relinquishing that role, and acknowledging that the role may be transferred in whole or in part, and that Service Provider shall assume each part of the role as PSNH relinquishes it; for the avoidance of doubt, Service Provider agrees to act as Lead Market Participant for the Energy Station, including assuming such rights and responsibilities as are required of a Lead Market Participant participating on behalf of a generating facility in the energy and capacity markets under the Tariff, including compliance with financial assurance requirements under the ISO-NE Financial Assurance Policy using the Funded Amount (defined in Section 5.1 below), subject to the provisions of this Agreement; and (b) cooperate and use commercially reasonable efforts to assist the Company and Lessor in effectuating the transfer of the Lead Market Participant role to the Service Provider;

2.2. Service Provider may contract for Energy Management with an Energy Manager for the Company, provided such Energy Manager and the terms of any contract for Energy Management shall be subject to Company consent and approval;

2.3. Service Provider shall arrange for payment of charges and fees as may be provided by contract with Energy Manager, whereby Company shall provide funds to pay such charges and fees and Service Provider may remit such payment to Energy Manager, unless Company and Service Provider otherwise agree in writing to other process for payment and subject to Section 3 of this Agreement, Company shall be solely liable for all payments due and owing to Energy Manager;

2.4. Service Provider shall arrange for the sale of energy and capacity, and other products and services produced by the Energy Station as may be available under the Tariff, including working with any Energy Manager, as directed by Company, and shall promptly transfer to Company revenues received by Service Provider for such sales and related payments by means mutually agreed in writing by Company and Service Provider; for the avoidance of doubt, subject to Section 3 of this Agreement, all such revenues are the property of Company and Service Provider is acting as a custodian for Company;

2.5. Except as otherwise provided in this Agreement, Service Provider’s service as Lead Market Participant is at Company’s sole election; in the event Company elects to have another entity serve as the Lead Market Participant for the energy or capacity markets in ISO-NE, or both, Company shall communicate such election in writing, and Service Provider agrees to (a) cooperate with Company to transfer the Lead Market Participant role or any relevant part thereof to such new entity, including expeditiously executing all consent forms, whether physical or electronic, and delivering them as required once executed, with a copy to Company; and (b) promptly return to the Company any collateral posted by the Company, or transfer such collateral to the new Lead Market Participant, as directed by the Company; following such

transfer of the Lead Market Participant role, the repayment provision in Section 5.3 shall apply; and

2.6. Except to the extent a transfer of Lead Market Participant occurs pursuant to Section 2.5, above, or as otherwise provided herein, Service Provider shall provide the Services for so long as Company has the exclusive right to use the Energy Station pursuant to its lease and right to use agreement with Berlin Station.

3. Agency; Fines.

3.1. Company agrees and so designates Service Provider as agent to the full extent necessary to permit Service Provider to provide the Services.

3.2. Service Provider shall be liable to pay any and all penalties, fines, sanctions, etc. imposed by ISO-NE, NEPOOL, NERC, FERC or any similar or successor organization caused by Service Provider's failure to provide the Services in accordance with the requirements of the Tariff or applicable law (a "Service Provider Fine"). The Company shall be liable to pay any and all penalties, fines, sanctions, etc. imposed by ISO-NE, NEPOOL, NERC, FERC or any similar or successor organization related to any Energy Station-related non-compliance with the rules and requirements or such organizations (a "Company Fine").

3.3. To the extent any Company Fine is initially assessed to Service Provider pursuant to its role as the Lead Market Participant for the Energy Station (as defined in the ISO New England Operating Documents) ("Fines"), Service Provider shall provide Company with documentation of such Fines and Company shall reimburse Service Provider for its payment of such Fines or, in the alternative and by mutual consent, may in writing permit Service Provider to reduce revenue transfers it would otherwise make to Company under Section 2.4, by the amount of such Fines paid by Service Provider or shall otherwise transfer the monetary obligation to Company. Service Provider agrees to work with Company to contest any Company Fines or amounts of Company Fines as may be disputed by Company and to engage in any dispute resolution procedures provided under the Tariff for resolving such dispute.

4. Responsibility for Costs. Company shall be responsible for all actual and necessary costs of providing the Services, including, without limitation, those related to additional equipment and software Service Provider may need to provide the Services and those related to Sections 2.3 and 3 of this Agreement. To the extent not otherwise provided herein, Service Provider may pass through any such costs incurred by them for reimbursement by Company, and Company shall promptly pay or reimburse Service Provider on a net thirty (30) day basis from the date of invoicing.

5. Funding of Cash Collateral Account.

5.1. Funding. In consideration for the Services, the Company intends to issue to the Service Provider one or more promissory notes (collectively, the "Note") in an aggregate amount equal to the amount required by ISO-NE to be deposited in a cash collateral account under its Financial Assurance Policy (the "Funded Amount").

5.2. Use of Proceeds.

5.2.1. Unless otherwise instructed by the Company, the Service Provider shall directly or through its agents deposit the Funded Amount in Service Provider's Blackrock account established for the purpose of posting cash collateral as financial assurance to facilitate participation in the ISO-NE markets (the "Account"). The Account shall comply in all material respects with ISO-NE's requirements for cash collateral accounts, shall bear the customer number ending in \*\*\*\*227 in the ISO-NE Financial Assurance Management system, and shall be administered by the agents and employees of the Service Provider (with such full account number to be provided by an Authorized Officer of Company). Any accrued interest on the Funded Amount deposited in the Account shall be applied first to accrued interest under the Note and second to offset against any Fines payable by the Company pursuant to Section 3 hereof.

5.2.2. Service Provider shall directly or through its agents invest the Funded Amount deposited in the Account in investments designated as permitted by ISO-NE under its financial assurance policy and shall choose such permitted investments for amounts as directed in writing by the Company, unless instructed otherwise by the Company as set forth in this Section 5.2

5.3. Repayment. If at any time ISO-NE no longer requires any amounts to be deposited in the Account, the Service Provider shall promptly remit the Funded Amount to the Company, together with any accrued interest on the Funded Amount held in the Account, which shall be applied to repay the obligations outstanding under the Note. Upon termination of this Agreement, the Service Provider shall promptly remit any Funded Amount remaining to the Company, together with any accrued interest on the Funded Amount then held in the Account, which shall be applied to repay the obligations outstanding under the Note.

6. Continuing Agreement, Termination. This Agreement shall be a continuing agreement, shall be irrevocable and shall remain in full force and effect until the later of: (1) the Lead Market Participant role for the Energy Station has been relinquished by Service Provider and assumed by a new Lead Market Participant that has been approved by Company or its legal successor or assign, or (2) Company has indicated in writing that the Services are no longer required and ISO-NE has authorized the release of all remaining collateral security from the Account and repayment has been made pursuant to above Section 5.3. This Agreement shall also terminate upon the termination of the lease and right to use agreements in effect between Company and Lessor, if those agreements are terminated and not replaced with a materially similar contractual arrangement providing Company with the right to use and operate the Energy Station, provided that the termination shall not be effective until Company has indicated in writing that the Services are no longer required and ISO-NE has authorized the release of all remaining collateral security from the Account and repayment has been made pursuant to above Section 5.3. In addition, in the event that reimbursement to Service Provider under Section 4, above, is past due, Service Provider may provide thirty (30) written days' notice to Company and an opportunity to cure, after which if not cured Service Provider may terminate this Agreement by providing written notice of termination date, provided that such termination shall not become effective until the date the ISO-NE confirms and reflects in its systems that the Service Provider is no longer the Lead market Participant for any portion of the Energy Station's participation in ISO-NE markets and repayment has been made pursuant to above Section 5.3, and provided that Service Provider shall cooperate with Company to transfer the Lead Market Participant role or any

relevant part thereof to a new entity chosen by Company, including expeditiously executing all consent forms, whether physical or electronic, and delivering them as required once executed, with a copy to Company.

7. Successors and Assigns. This Agreement may not be assigned by either party except as agreed in writing by the other party or by operation of law.

8. Amendment. No purported amendment or modification of this Agreement shall be effective unless expressly set forth in a writing signed by each party.

9. Venue; Service of Process. The Company, by its execution hereof:

(a) Irrevocably submits to the nonexclusive jurisdiction of the state courts of Delaware and to the nonexclusive jurisdiction of the United States District Court for the District of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or thereof brought by the Service Provider, or its successors or assigns;

(b) Waives to the extent not prohibited by applicable law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that such proceeding is brought in an inconvenient forum, that the venue of such proceeding is improper, or that this Agreement, or the subject matter hereof or thereof, may not be enforced in or by such court;

(c) Consents to service of process in any such proceeding in any manner permitted by Delaware law and agrees that service of process by registered or certified mail, return receipt requested, at its address provided to the Service Provider in writing is reasonably calculated to give actual notice; and

(d) Waives to the extent not prohibited by applicable law that cannot be waived any right it may have to claim or recover in any such proceeding any special, exemplary, punitive or consequential damages.

10. WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH OF THE COMPANY AND THE SERVICE PROVIDER HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND OR ACTION ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR THEREOF OR ANY OBLIGATION OR IN ANY WAY CONNECTED WITH THE DEALINGS OF THE SERVICE PROVIDER OR THE COMPANY IN CONNECTION WITH ANY OF THE ABOVE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT OR TORT OR OTHERWISE. The Company acknowledges that it has been informed by the Service Provider that the provisions of this Section 10 constitute a material inducement upon which the Service Provider has relied, is relying and will rely in entering into this Agreement, and that it has reviewed the provisions of

this Section 10 with its counsel. The Service Provider or the Company may file an original counterpart or a copy of this Section 10 with any court as written evidence of the consent of the Service Provider or the Company to the waiver of their rights to trial by jury.

11. General. The headings in this Agreement are for convenience of reference only and shall not limit, alter or otherwise affect the meaning hereof. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision hereof, and any invalid or unenforceable provision shall be modified so as to be enforced to the maximum extent of its validity or enforceability. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior and current understandings and agreements, whether written or oral. This Agreement may be executed in any number of counterparts, which together shall constitute one instrument. This Agreement shall be governed by and construed in accordance with the laws (other than the conflict of laws rules) of The State of Delaware.

[the remainder of this page is intentionally blank]

Each of the undersigned has caused this Agreement to be executed and delivered by its duly authorized officer as an agreement under seal as of the date first above written.

**Burgess BioPower, LLC**

By   
Name: Dean Vomero  
Title: Chief Restructuring Officer

**CS Berlin Ops, Inc.**

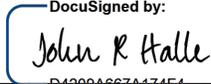
By \_\_\_\_\_  
Name: Jean R. Hallé  
Title: President and Chief Executive Officer

Each of the undersigned has caused this Agreement to be executed and delivered by its duly authorized officer as an agreement under seal as of the date first above written.

**Burgess BioPower, LLC**

By \_\_\_\_\_  
Name: Dean Vomero  
Title: Chief Restructuring Officer

**CS Berlin Ops, Inc.**

By  \_\_\_\_\_  
Name: Jean R. Hallé  
Title: President and Chief Executive Officer