

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Joint Administration Requested)

MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION TAXES AND RELATED OBLIGATIONS AND (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR ALL RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS

Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”), the debtors and debtors in possession in the above captioned cases (collectively, the “Debtors”), hereby submit this *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing Payment of Certain Prepetition Taxes and Related Obligations and (II) Authorizing Financial Institutions to Honor All Related Checks and Electronic Payment Requests* (the “Motion”). In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider and determine this Motion 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. This is a core proceeding

¹ 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.

within the meaning of 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are Sections 105(a), 363(b), 507(a) and 541 of Title 11 of chapter 11 of the United States Code (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

3. 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”), the Debtors consent to the entry of a final order or judgment by the Court in connection with this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

4. On the date hereof (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court.

5. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession, pursuant to Bankruptcy Code Sections 1107(a) and 1108. As of the date of this Motion, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

6. Additional information regarding the circumstances leading to the commencement of the Chapter 11 Cases and information regarding the Debtors’ business and capital structure is set forth in detail in the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of*

the Debtors' Chapter 11 Petitions and First Day Pleadings (the "First Day Declaration"), filed contemporaneously with the Motion and incorporated herein by reference.²

THE DEBTORS' TAXES

7. In the ordinary course of business, the Debtors incur various state and local income, property, sales and use taxes and similar taxes and obligations (collectively, the "Taxes") owed to certain taxing authorities (the "Taxing Authorities").³

8. The Debtors estimate that there are approximately \$300,000.00 in Taxes that have accrued as of the Petition Date which have not yet been paid, consisting of (i) \$210,000.00 related to Renewable Energy Certificates, and (ii) \$90,000.00 related to various state and local taxes. The Debtors believe that no taxes will become due in February 2024, however, out of an abundance of caution, request authorization to pay a maximum of \$210,000.00 in Taxes on an interim basis is requested. Failure to pay the accrued Taxes may result in additional interest and penalties charged to the Debtors. As of Petition Date, the Debtors do not owe Tax payments to Taxing Authorities.

RELIEF REQUESTED

9. By this Motion, the Debtors request entry of an interim order substantially in the form attached hereto as **Exhibit A** (the "Interim Order") and a final order substantially in the form attached hereto as **Exhibit B** (the "Final Order" and together with the Interim Order, the "Proposed Orders") (a) authorizing the Debtors to pay unpaid prepetition Taxes owed to the Taxing Authorities, as more fully described herein; and (b) authorizing and directing financial institutions

² The First Day Declaration and other relevant case information are available on the following website maintained by the Debtors' proposed claims and noticing agent, Epiq: <https://dm.epiq11.com/Burgess>

³ A non-exhaustive list of the Taxing Authorities to which the Debtors pay Taxes is attached hereto as **Exhibit C**. While the Debtors have exercised its reasonable best efforts to list all of the Taxing Authorities on **Exhibit C**, it is possible that certain Taxing Authorities may have been inadvertently omitted from this list. The Debtors request that any order granting the relief requested herein apply to any Taxing Authorities that have been inadvertently omitted from **Exhibit C**.

to receive, process, honor, and pay all related checks and electronic payment requests for payment of the Taxes. Such relief will be without prejudice to the Debtors' rights to contest the amounts of any Taxes on any grounds they deem appropriate.⁴ By this Motion, the Debtors request authority to pay all prepetition Taxes to the Taxing Authorities, subject to the imposition of interim cap of \$210,000.00 and a final cap of \$290,000.00. For the avoidance of doubt, the Debtors are not seeking authority to pay any amounts on account of past due taxes or to prepay any taxes.

10. As of the Petition Date, the Debtors were substantially current on their payment of Taxes. However, certain Taxes attributable to the prepetition period may not yet be due and payable. In addition, certain Taxing Authorities have not been paid or may have been sent checks for Taxes that may or may not have been presented or cleared as of the Petition Date. Accordingly, the Debtors seek authorization for their banks to honor prepetition checks issued by the Debtors to the Taxing Authorities in payment of prepetition Taxes that, as of the Petition Date, have not cleared or been transferred. In addition, to the extent the Debtors have not yet sought to remit payment to the Taxing Authorities with respect to certain Taxes, the Debtors seek authorization to issue checks or provide for other means of payment to the Taxing Authorities to pay the Taxes.

BASIS FOR RELIEF

A. The Court Should Authorize, but Not Direct, the Debtors' Payment of Taxes

11. The relief requested herein may be granted on any number of grounds. First, certain Taxes may not be property of the Debtors' estates pursuant to Bankruptcy Code Section 541. Second, Taxes are likely entitled to priority status pursuant to Bankruptcy Code Section 507(a)(8). Third, it is possible that the Taxing Authorities might sue the Debtors' directors and officers for

⁴ Nothing in this Motion should be construed as impairing the Debtors' right to contest the amount of any taxes, penalties, fines, charges or other amounts that may be allegedly owed to the Taxing Authorities.

certain unpaid Taxes, unnecessarily distracting them from the Debtors' efforts in these Chapter 11 Cases. Fourth, Bankruptcy Code Section 363 grants the Debtors the ability to pay Taxes in the ordinary course of business. Lastly, payment of the Taxes is appropriate under Bankruptcy Code Section 105.

i. Certain Taxes Are Not Property of the Estate

12. Certain of the collected Taxes are not property of the estate pursuant to Bankruptcy Code Section 541(d), which provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” 11 U.S.C. § 541(d).

13. To the extent the Debtors have collected Taxes from third parties, such funds may constitute so-called “trust fund” taxes that are required to be collected from third parties and must be held in trust by the Debtors for payment to the Taxing Authorities. *See, e.g., EBS Pension LLC v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 243 B.R. 231, 235 (Bankr. D. Del. 2000) (noting that property held in trust, whether constructively or expressly, does not become part of the estate when the debtor files its bankruptcy petition), reconsideration denied, 2001 Bankr. LEXIS 1333 (Bankr. D. Del. Oct. 11, 2001); *see also Al Copeland Enters., Inc. v. Texas (In re Al Copeland Enters., Inc.)*, 991 F.2d 233, 236-40 (5th Cir. 1993) (sales tax required by state law to be collected from customers is a “trust fund” tax); *Shank v. Washington State Dep’t of Revenue (In re Shank)*, 792 F.2d 829, 830 (9th Cir. 1986) (same); *DeChiaro v. New York State Tax Comm’n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (same). To the extent these trust fund taxes are collected and held by the Debtors, they are not property of the Debtors’ estates under Section 541(d). *See Begier*

v. *IRS*, 496 U.S. 53, 59 (1990) (holding that prepetition payment of trust fund taxes is not an avoidable preference because such funds are not property of the debtor's estate); *see also In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103-04 (Bankr. E.D. Pa. 1987) (excise and withholding taxes are trust fund taxes), *aff'd*, 1987 U.S. Dist. LEXIS 16856 (E.D. Pa. May 12, 1987); *In re Tap, Inc.*, 52 B.R. 271, 278 (Bankr. D. Mass. 1985) (withholding taxes are trust fund taxes).

14. Because these trust fund taxes do not constitute property of the Debtors' estates, these amounts will not be available to the Debtors' estates or their creditors. Thus, the payment of Taxes will not adversely affect the Debtors' estates or creditors, and the requested relief is warranted.

ii. *The Taxes Likely Are Entitled to Priority Status Under Bankruptcy Code Section 507(a)(8)*

15. Some, if not all, of the Taxes are entitled to priority payment status pursuant to Bankruptcy Code Section 507(a)(8). *See* 11 U.S.C. § 507(a)(8)(A) (taxes measured on gross income); *id.* § 507(a)(8)(C) (debtor's liability in connection with "trust fund" taxes); *id.* § 507(a)(8)(E) (excise taxes).⁵ Under any chapter 11 plan, priority Taxes must be paid in full and in regular cash installments over a five-year period from the date of the order for relief. *See id.* § 1129(a)(9)(C)(i)-(ii). Additionally, such Taxes must be paid in the order of priority no less favorable than the treatment given to the most favored general unsecured claims. *See id.* § 1129(a)(9)(C)(iii). Finally, any chapter 11 plan must provide the same treatment for those taxes that constitute secured claims that, were they unsecured, would have been priority tax claims under Bankruptcy Code Section 507(a)(8). *See id.* § 1129(a)(9)(D). Thus, in most cases, the payment of

⁵ For bankruptcy purposes, a tax is characterized as "(a) an involuntary pecuniary burden, regardless of name, laid upon the individual or property; (b) imposed by, or under authority of the legislature; (c) for the public purposes, including the purposes of defraying expenses of government or undertakings authorized by it; and (d) under the police or taxing power of the state." *In re Chateaugay Corp.*, 53 F.3d 478, 498 (2d Cir. 1995) (citation omitted).

Taxes that are entitled to such priority in the ordinary course of the Debtors' business only affects the timing of the payment and does not prejudice the rights of the Debtors' other creditors.

iii. Payment of Taxes Is Necessary to Avoid Possible Distraction for the Debtors' Officers and Directors.

16. Many state and local Taxing Authorities have enacted laws providing that certain Taxes constitute trust fund taxes, and officers and directors of the collecting debtor entity may be held personally liable for nonpayment of such Taxes. *See, e.g., Conway v. U.S.A.*, 647 F.3d 228, 236 (5th Cir. 2010) (holding CEO personally liable for failure to ensure that company paid over to IRS pre-petition excise taxes that were withheld from airline passengers); John F. Olson, et al., DIRECTOR & OFFICER LIABILITY: INDEMNIFICATION AND INSURANCE § 3.04, at 3-20.27 (rel.10- 1999) ("some states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation, regardless of cause"). To the extent any of the Debtors' accrued Taxes were unpaid as of the Petition Date, the Debtors' officers and directors may be subject to lawsuits in such jurisdictions during the Chapter 11 Cases. Any such lawsuits would prove extremely distracting for (a) the Debtors; (b) the named officers and directors, whose attention to the Debtors' chapter 11 process is required; and (c) the Court, which might be asked to entertain various motions seeking injunctions with respect to the potential actions. Thus, it is in the best interests of the Debtors' estates to eliminate the possibility of the foregoing distraction.

iv. Bankruptcy Code Section 363(b)(1) Permits the Payment of the Taxes

17. Courts have also authorized debtors to pay Taxes under Bankruptcy Code Section 363(b)(1), which provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. . . ." Under this Section, a court may authorize a debtor to pay certain prepetition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of

prepetition wages pursuant to Bankruptcy Code Section 363(b)); *In re FV Steel & Wire Co.*, Case No. 04-22421 (Bankr. E.D. Wis. Feb. 26, 2004) (authorizing the continuation of customer programs and the payment of prepetition claims under Bankruptcy Code Section 363); *In re UAL Corp.*, Case No. 02-48191 (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of prepetition claims under Bankruptcy Code Section 363 as an out-of-the-ordinary-course transaction). To use property in the ordinary course of business, “the debtor must articulate some business justification, other than the mere appeasement of major creditors. . . .” *Ionosphere Clubs*, 98 B.R. at 175. As discussed herein, the Debtors’ failure to pay Taxes could have a material adverse impact on their ability to operate in the ordinary course of business.

v. *Bankruptcy Code Section 105(a) Permits Payment of Taxes*

18. Finally, Bankruptcy Code Section 105(a) empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *Ionosphere Clubs*, 98 B.R. at 175.

19. Numerous courts have used Section 105’s equitable powers under the “necessity of payment doctrine” to authorize payment of a debtor’s prepetition obligations in order to preserve and maximize the value of the debtor’s estates. *See, e.g., Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286, 311-12 (1882) (recognizing the existence of judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor); *see also In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business

until their pre-reorganization claims shall have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-845 (D. Del. 1999) (noting that in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

20. For these reasons, authorizing the Debtors to pay, in their discretion, the prepetition Taxes will help the Debtors avoid serious disruption to their operations that would result from the nonpayment of Taxes, including the distraction and adverse effect that could result from liability for nonpayment imposed upon the Debtors’ directors and officers. Furthermore, nonpayment of these obligations may cause Taxing Authorities to take precipitous action, including, but not limited to, filing liens, preventing the Debtors from conducting business in applicable jurisdictions, and seeking to lift the automatic stay, all of which could disrupt the Debtors’ day-to-day operations, impose significant costs on the Debtors’ estates, and destroy the going-concern value of the Debtors’ business.

21. Courts in numerous other chapter 11 cases have entered orders granting relief similar to the relief requested herein. *See, e.g., In re Lincoln Power, L.L.C.*, Case No. 23-10382 (LSS) (Bankr. D. Del. Apr. 27, 2023); *In re Pear Therapeutics, Inc.*, Case No. 23-10428 (TMH) (Bankr. D. Del. Apr. 27, 2023); *In re Allena Pharmaceuticals, Inc.*, Case No. 22-10842 (KBO) (Bankr. D. Del. Sep. 26, 2022); *In re Agway Farm & Home Supply, LLC*, Case No. 22-10602 (JKS) (Bankr. D. Del. Aug. 3, 2022); *In re Enjoy Technology, Inc.*, Case No. 22-10580 (JKS) (Bankr. D. Del. July 20, 2022); *In re CCX, Inc.*, Case No. 22-10252 (JTD) (Bankr. D. Del. Apr. 20, 2022); *In re American Eagle Delaware Holding Company LLC*, Case No. 22-10028 (JKS) (Bankr. D. Del. Feb. 9, 2022); *In re Riverbed Technology, Inc.*, Case No. 21-11503 (CTG) (Bankr. D. Del. Nov. 18, 2021); *In re Gulf Coast Health Care, LLC*, Case No. 21-11336 (KBO) (Bankr.

D. Del. Nov. 12, 2021); *In re The Collected Group, LLC*, Case No. 21-10663 (LSS) (Bankr. D. Del. Apr. 28, 2021); *In re SFP Franchise Corporation*, Case No. 20-10134 (JTD) (Bankr. D. Del. Feb. 13, 2020); *In re HRI Holding Corp.*, Case No. 19-12415 (MFW) (Bankr. D. Del. Dec. 5, 2019); *In re EdgeMarc Energy Holdings, LLC*, Case No. 19-11104 (BLS) (Bankr. D. Del. June 13, 2019); *In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. Mar. 22, 2019); *In re Things Remembered, Inc.*, Case No. 19-10234 (KG) (Bankr. D. Del. Feb. 26, 2019); *In re Argos Therapeutics, Inc.*, Case No. 18-12714 (KJC) (Bankr. D. Del. Jan. 22, 2019); *In re Bertucci's Holdings, Inc.*, Case No. 18-10894 (MFW) (Bankr. D. Del. May 3, 2018).

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

22. The Debtors further request that the Debtors' banks be authorized, when requested by the Debtors in their sole discretion, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay all prepetition Taxes, whether those checks or electronic fund transfers were presented prior to or after the Petition Date, and to make other transfers provided that sufficient funds are available in the applicable account to make such payments. Given the commencement of these Chapter 11 Cases, absent an order of the Court providing otherwise, the Debtors' checks and electronic fund transfers on account of the Taxes may be dishonored or rejected by their banks. The Debtors represent that, under their cash management system, each of these checks and transfers can be readily identified as relating directly to the authorized payment of prepetition Taxes. Accordingly, checks and transfers, other than those relating to authorized payments, will not inadvertently be honored. The Debtors submit that the banks should be authorized to rely on the Debtors' representations as to whether any check drawn or transfer request issued by the Debtors should be honored pursuant to this Motion.

23. Nothing in this Motion should be construed as impairing the Debtors' right to contest the amount of any Taxes that may be owed to any Taxing Authority, and the Debtors expressly reserve all of their rights with respect thereto.

24. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

BANKRUPTCY RULES 6003 AND 6004

25. Rule 6003 of the Bankruptcy Rules provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting ... (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” Fed. R. Bankr. P. 6003. As set forth above, the payment of the Taxes is necessary to prevent immediate and irreparable harm to the Debtors' operations and efforts to maximize the value of their estates that would result from the failure to maintain good standing with the jurisdictions in which they conduct business or protect their directors and officers from personal liability. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support granting the relief requested herein.

26. In order to effectively implement the foregoing, the Debtors seek a waiver of the notice requirements and the fourteen-day stay of the order authorizing the use, sale or lease of property of the estate under Bankruptcy Rule 6004(h), to the extent applicable.

RESERVATION OF RIGHTS

27. Nothing in the Proposed Orders or this Motion (a) is intended to or shall be deemed as an admission to the validity of any claim against the Debtors or their estates, (b) shall impair,

prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors or their estates, (c) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any Taxing Authority, or (d) shall be construed as a promise to pay a claim.

NOTICE AND NO PRIOR REQUEST

28. Notice of the Motion has been or will be provided to (a) the U.S. Trustee (Attn: Jane M. Leamy); (b) the holders of the twenty (20) largest unsecured claims against each Debtor; (c) counsel to Deutsche Bank Trust Company Americas in its capacity as Collateral Agent, Hogan Lovells LLP; (d) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP; (e) Berlin Biopower Investment Fund, LLC, with a copy to Murray Plumb & Murray; (f) Greenline CDF Subfund XVIII LLC, with a copy to Kutak Rock LLP, U.S. Bancorp Community Development Corporation and Leverage Law Group, LLC; (g) Public Service of New Hampshire d/b/a Eversource Energy, with a copy to Hunton Andrews Kurth LLP; (h) the United States Attorney's Office for the District of Delaware; (i) the United States Attorney's Office for the District of New Hampshire; (j) the United States Environmental Protection Agency; (k) the Nuclear Regulatory Commission; (l) the United States Department of Energy; (m) the Federal Energy Regulatory Commission; (n) New Hampshire Department of Environmental Services; (o) New Hampshire Public Utilities Commission; (p) New Hampshire Site Evaluation Committee; (q) New Hampshire Department of Energy; (r) City of Berlin; (s) ISO New England, Inc.; (t) the United States Securities and Exchange Commission; (u) the Internal Revenue Service; (v) the Taxing Authorities; and (w) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, the Debtors will serve copies of this Motion and any order entered in response of this Motion as required by Rule 9013-1(m) of the Local Rules. The

Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

29. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order (a) authorizing the Debtors to pay certain unpaid Taxes owed to Taxing Authorities; (b) authorizing and directing financial institutions to receive, process, honor, and pay all related checks and electronic payment requests for payment of the Taxes; and (c) granting such other and further relief as is just and proper.

Dated: February 9, 2024

/s/ Chantelle D. McClamb
Chantelle D. McClamb (No. 5978)
GIBBONS P.C.
300 Delaware Avenue, Suite 1015
Wilmington, Delaware 19801
Telephone: (302) 518-6300
E-mail: cmclamb@gibbonslaw.com

-and-

Robert K. Malone (pro hac vice pending)
Kyle P. McEvilly (pro hac vice pending)
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Telephone: (973) 596-4500
E-mail: rmalone@gibbonslaw.com
kmcevilly@gibbsonlaw.com

*Proposed Co-Counsel for Debtors Burgess
BioPower, LLC and Berlin Station, LLC*

Alison D. Bauer (pro hac vice pending)
William F. Gray, Jr. (pro hac vice pending)
Jiun-Wen Bob Teoh (pro hac vice pending)
FOLEY HOAG LLP
1301 Avenue of the Americas, 25th Floor
New York, New York 10019
Telephone: (212) 812-0400
Email: abauer@foleyhoag.com
wgray@foleyhoag.com
jteoh@foleyhoag.com

-and-

Kenneth S. Leonetti (pro hac vice pending)
Christian Garcia (pro hac vice pending)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Massachusetts 02210
Telephone: (617) 832-1000
Email: ksl@foleyhoag.com
cgarcia@foleyhoag.com

*Proposed Co-Counsel for Debtors Burgess
BioPower, LLC and Berlin Station, LLC*

EXHIBIT A

Interim Order

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Joint Administration Requested)

Re: D.I.

**INTERIM ORDER (I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION
TAXES AND RELATED OBLIGATIONS AND (II) AUTHORIZING FINANCIAL
INSTITUTIONS TO HONOR ALL RELATED CHECKS AND ELECTRONIC
PAYMENT REQUESTS**

Upon consideration of the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing Payment of Certain Prepetition Taxes and Related Obligations and (II) Authorizing Financial Institutions to Honor All Related Checks and Electronic Payment Requests* (the "Motion"),² and upon the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings*; and the Court finding that: (a) 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; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (c) the Court may enter a final order consistent with Article III of the United States Constitution; and upon the record herein; and after due deliberation thereon; and it appearing that sufficient notice of the Motion has been given and that no other or further notice is necessary, except as set forth in

¹ 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.

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

the Motion with respect to entry of this Interim Order; and good cause appearing therefor; it is hereby

ORDERED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, to remit and pay Taxes to the Taxing Authorities in the ordinary course of business in an amount not to exceed \$210,000.00, pending entry of an order granting the Motion on a final basis.
3. Nothing in this Interim Order shall be construed as authorizing the Debtors to pay any amounts on account of past due taxes or to prepay any taxes.
4. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors in the Debtors' discretion, to receive, process, honor, and pay any and all checks and funds transfers evidencing amounts paid by the Debtors pursuant to the Motion, whether presented or issued prior to or after the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Interim Order and any such bank shall not have liability to any party for relying on such representations by the Debtors, as provided for in this Interim Order.
5. The Debtors are authorized to issue postpetition checks, or to effectuate postpetition funds transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the Chapter 11 Cases with respect to prepetition amounts owed in connection with the Taxes.

6. The hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the “Final Hearing”) shall be held **on _____, 2024 at _____ (prevailing Eastern Time)**. Any objections or responses to the entry of a final order on the Motion shall be filed on or **before 4:00 p.m. (prevailing Eastern Time) on _____, 2024** and shall be served on: (a) the Debtors, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408, Attn: Dean Vomero; (b) Foley Hoag, 1301 Avenue of the Americas, 25th Floor, New York, New York 10019, Attn: Alison Bauer, Esq. (abauer@foleyhoag.com) and Jiun-Wen Bob Teoh, Esq. (jteoh@foleyhoag.com), and 155 Seaport Boulevard, Boston, Massachusetts 02210, Attn: Kenneth S. Leonetti, Esq. (ksl@foleyhoag.com); (c) Gibbons, P.C., 300 Delaware Ave., Suite 1015, Wilmington, Delaware 19801, Attn: Chantelle D. McClamb, Esq. (cmcclamb@gibbonslaw.com), and One Gateway Plaza, Newark, New Jersey, 07102, Attn: Robert K. Malone, Esq. (rmalone@gibbonslaw.com); (d) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware; 19801, Attn: Jane M. Leamy, Esq. (jane.m.leafy@usdoj.gov); (e) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP, One International Place, Suite 2000, Boston, MA 02110, Attn: Julia Frost-Davies (julia.frostdavies@gtlaw.com), and 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801, Attn: Dennis Meloro (melorod@gtlaw.com); and (f) counsel to any statutory committee appointed in these chapter 11 cases. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

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

8. Notwithstanding the relief granted herein or any actions taken pursuant thereto, nothing in this Interim Order shall be deemed: (a) an admission as to the validity, priority or classification of any claim against the Debtors; (b) a waiver of the rights of the Debtors, their successors, or any other party's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined hereunder; (e) a request or authorization to assume any agreement, contract or lease pursuant to Bankruptcy Code Section 365; or (f) a waiver of the rights of the Debtors under the Bankruptcy Code or any other applicable law.

9. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

10. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Interim Order shall be immediately effective and enforceable upon its entry.

11. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

EXHIBIT B

Final Order

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Joint Administration Requested)

Re: D.I.

**FINAL ORDER (I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION TAXES
AND RELATED OBLIGATIONS AND (II) AUTHORIZING FINANCIAL
INSTITUTIONS TO HONOR ALL RELATED CHECKS AND ELECTRONIC
PAYMENT REQUESTS**

Upon consideration of the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing Payment of Certain Prepetition Taxes and Related Obligations and (II) Authorizing Financial Institutions to Honor All Related Checks and Electronic Payment Requests* (the “Motion”),² and upon the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings*; and the Court finding that: (a) 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; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (c) the Court may enter a final order consistent with Article III of the United States Constitution; and upon the record herein; and after due deliberation thereon; and it appearing that sufficient notice of the Motion has been given and that no other or further notice is necessary; and good cause appearing therefor; it is hereby

¹ 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.

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

ORDERED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. The Debtors are authorized, but not directed, to remit and pay Taxes to the Taxing Authorities in the ordinary course of business in an amount not to exceed \$290,000.00.
3. Nothing in this Final Order shall be construed as authorizing the Debtors to pay any amounts on account of past due taxes or to prepay any taxes.
4. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors in the Debtors' discretion, to receive, process, honor, and pay any and all checks and funds transfers evidencing amounts paid by the Debtors pursuant to the Motion, whether presented or issued prior to or after the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Interim Order and any such bank shall not have liability to any party for relying on such representations by the Debtors, as provided for in this Final Order.
5. The Debtors are authorized to issue postpetition checks, or to effectuate postpetition funds transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the Chapter 11 Cases with respect to prepetition amounts owed in connection with the Taxes.
6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

7. Notwithstanding the relief granted herein or any actions taken pursuant thereto, nothing in this Final Order shall be deemed: (a) an admission as to the validity, priority or classification of any claim against the Debtors; (b) a waiver of the rights of the Debtors, their successors, or any other party's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined hereunder; (e) a request or authorization to assume any agreement, contract or lease pursuant to Bankruptcy Code Section 365; or (f) a waiver of the rights of the Debtors under the Bankruptcy Code or any other applicable law.

8. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Final Order shall be immediately effective and enforceable upon its entry.

9. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

Exhibit C
Taxing Authorities

Taxing Authority	Type
New Hampshire	Income, Utility, Business and Sales Tax
City of Berlin	City Tax, Renewable Energy Certificate Tax and Real Estate and Personal Property