

**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)

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) APPROVING
ENTRY INTO NEW LEAD MARKET PARTICIPANT AGREEMENT
AND (II) GRANTING RELATED RELIEF**

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 *Debtors’ Motion for Interim and Final Orders (I) Approving Entry into a New Lead Market Participant Agreement and (II) Granting Related Relief* (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider and determine the 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 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 and 363 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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.

3. Pursuant to Rule 9013-1(f) of 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 with respect to the 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 the Motion, no trustee, examiner, or statutory committee has been appointed in the 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* [D.I. 4] (the “First Day Declaration”), incorporated herein by reference.²

A. Lead Market Participant

7. Berlin owns and Burgess leases and holds the necessary regulatory licenses to operate a 75-megawatt baseload wood-fired electric generation facility (the “Facility”) located on

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>.

an approximately 62-acre site in Berlin, New Hampshire and all its components and ancillary facilities, including associated interconnection facilities. The Debtors are continuing to produce and sell energy and related products every day post-petition. The only practical market for the sale of Debtors' energy is through ISO New England Inc. ("ISO-NE"), which is the organization that operates the wholesale electricity markets encompassing the whole of New England (except for a remote portion of northern Maine). Participation in ISO-NE's markets is governed by the ISO-NE's Transmission, Markets, and Services Tariff (the "ISO-NE Tariff"), which is a governing document reviewed and accepted by the Federal Energy Regulatory Commission ("FERC") and considered a regulation adopted under the Federal Power Act.

8. In order to participate in the ISO-NE markets, including those that provide for the sale of physical electricity (i.e., "energy" under the ISO-NE Tariff) and "capacity"³ to wholesale customers in New England, power producers must register as a Market Participant⁴ with ISO-NE. Berlin is registered as a Market Participant, which allows the Facility, through Burgess as the Facility's lessee, to participate in the ISO-NE markets.

9. In addition, a Lead Market Participant must also be assigned for each resource, and the Lead Market Participant may be different from the Market Participant that registered the resource with ISO-NE.⁵ Under Section I.2.2 of the ISO-NE Tariff, a Lead Market Participant for the energy market "is the entity authorized to submit Supply Offers, Demand Bids, Demand Reduction Offers or Baseline Deviation Offers for a Resource," and for the purposes of the

³ The Facility's "capacity" refers to the Facility's capacity supply obligation as a result of its participation and clearing in an ISO-NE-administered capacity auction, reconfiguration capacity auction, or any successor or other capacity supply auction, marketplace, or agreement.

⁴ Capitalized terms not otherwise defined here, aside from proper nouns, have the meanings ascribed to them in the ISO-NE Tariff, available at <https://www.iso-ne.com/participate/rules-procedures/tariff/>.

⁵ See ISO-NE Tariff at § I.2.2 (defining Lead Market Participant).

capacity market, “is the entity designated to participate in that market on behalf of an Existing Capacity Resource” ISO-NE Tariff at I.2.2. The Facility is considered an Existing Capacity Resource.

10. Pursuant to the Amended and Restated Power Purchase Agreement entered into by and between Berlin and Public Service Company of New Hampshire, doing business as Eversource Energy (“Eversource”), dated as of May 18, 2011 and amended on November 19, 2019 and August 18, 2022 (the “PPA”), Eversource currently serves as the exclusive Lead Market Participant for the Facility. This is the case notwithstanding that Berlin owns the Facility and Burgess, as lessee, has all rights to sell electric energy and capacity from the Facility. The PPA establishes Eversource as the Debtors’ Lead Participant (as such term is defined by New England Power Pool (“NEPOOL”) or ISO-NE) at any auction at which the Debtors would bid on capacity commitments. PPA, § 9.7. The terms “Lead Participant” and “Lead Market Participant” are effectively identical for purposes of the Debtors’ participation in ISO-NE.⁶

11. Without a Lead Market Participant, energy producers like the Debtors cannot sell the energy and capacity they produce into ISO-NE, which is the only realistic market to which generators in New England have access. And a functional and cooperative Lead Market Participant is essential to the Debtors’ ability to sell the energy and capacity it delivers daily to the electrical grid. Energy and capacity account for the vast majority of the Debtors’ operating revenues in the incipient phase of these Chapter 11 reorganization cases.

12. The Debtors require a Lead Market Participant for two distinct roles: (1) the Lead Market Participant role for sale of energy, which role can be transferred at any time; and (2) the

⁶ In fact, Eversource is reflected as the Debtors’ Lead Market Participant on ISO-NE’s online Customer Asset Management System, known as CAMS.

Lead Market Participant role for the capacity market, which role cannot be transferred until after the conclusion of the annual capacity auction, which is described in more detail below. Although the Debtors – as owners and sellers of products from the facility – ought to be the parties to direct who will serve as the Lead Market Participant, the only way to transfer the Lead Market Participant role under the existing ISO-NE process is for the existing Lead Market Participant to initiate the transfer on ISO-NE’s Customer Asset Management System (“CAMS”) for the energy asset, and through execution of a fillable portable document format (“Fillable PDF”) form for its role in the capacity market, both of which are essentially administrative functions controlled by Eversource. Neither the Debtors nor ISO-NE has the ability to initiate the transfer on CAMS or using the Fillable PDF.

13. To satisfy the region’s future electricity needs, ISO-NE holds a capacity auction each year for energy services that will be provided approximately three years later. The Debtors compete in the ISO-NE capacity auction to obtain a commitment to supply that future capacity. This commitment is called a capacity supply obligation. The most recent auction began on February 5, 2024.

14. The Debtors cannot change their Lead Market Participant for the capacity market (currently Eversource) during the annual capacity auction. Thus, until the auction concluded, the Debtors’ Lead Market Participant for the capacity market must be Eversource in accordance with ISO-NE regulations.

B. Eversource’s Breach of the PPA

15. On January 16, 2024, Eversource confirmed to the New Hampshire Public Utilities Commission (“NHPUC”) that, “according to the terms of the PPA [Eversource] can only deduct repayment of the excess of the CRF from the revenue produced from Burgess’ energy generation.

The payments cannot be taken from capacity or REC revenue.” First Day Declaration, Ex. D. After receiving the most recent New Hampshire Class I Renewable Energy Certificates (“RECs”) from the Debtors, however, Eversource made the exact deduction that, one week earlier, it told the NHPUC was forbidden.

16. On January 22, 2024, Eversource materially breached its payment obligations under the PPA by failing to pay a \$5,151,119.88 invoice for RECs. On January 23, 2024, Eversource sent the Debtors a “revised” invoice that revealed that it had purported to setoff against the \$5,151,119.88 due for RECs and \$336,707.00 due as a Capacity payment (together, the “Invoice”) and applying such amounts to Eversource’s own account. Eversource’s failure to pay amounts owed for the Debtors’ RECs and Capacity caused the Debtors to face a substantial, imminent liquidity crisis. Also on January 23, 2024, the Debtors provided written notice to Eversource of this breach and noted that if Eversource did not remedy its non-payment within seven business days, such non-payment would constitute an Event of Default under the PPA. Eversource failed to timely remedy its non-payment. As a result, on February 8, 2024, the Debtors provided written notice to Eversource (a) that Eversource had defaulted under the PPA and (b) terminating both the PPA and the option agreement entered into by and between Eversource, Berlin, and Burgess and dated as of November 25, 2013 (the “Option Agreement”).

17. At the time of breach, Eversource was on notice of the Debtors’ financial distress. Eversource was aware that failure to pay the Invoice would immediately threaten the viability of the Debtors’ business. Nevertheless, instead of curing its material breach, on January 25, 2024, Eversource sent a letter to the Debtors disputing that it had breached the PPA and purporting to invoke inapplicable billing dispute provisions in the PPA. As more fully described in *Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to Reject the Power Purchase Agreement*

and Option Agreement with Eversource Nunc Pro Tunc to the Petition Date and (II) Granting Related Relief, Eversource asserted that it had no obligation to pay the Invoice, directly contradicting the plain language of the PPA, Eversource's representations to Debtors and New Hampshire regulators as recently as January 16, 2024, and the parties' yearslong course of dealing. Eversource's about-face in a matter of days and its reliance on inapplicable sections of the PPA to create a sham billing dispute was a naked attempt to delay and interfere with the Debtors' ability to sell power to another buyer that would actually pay for it, thus driving the Debtors further into financial distress and undermining their ability to achieve a reorganization.

18. Although the Debtors have terminated the PPA with proper notice to Eversource, to the extent Eversource contends that the PPA was not properly terminated, the Debtors have also filed substantially contemporaneously herewith a motion for authorization to reject the PPA *nunc pro tunc* to the Petition Date to ensure the Debtors can be immediately released from its devastating impact on their estates.

19. Because of the termination of the PPA, Eversource's right to serve as the Debtors' Lead Market Participant for either the capacity or energy markets has also terminated. However, according to the ISO-NE policies for market participation, Eversource will continue to hold the Lead Market Participant roles (for both energy and capacity) until Eversource initiates the administrative transfer of those roles (on CAMS and Fillable PDF, respectively) and a successor Lead Market Participant assumes them. If the Debtors are unable to proceed immediately with a new Lead Market Participant for their underlying energy resource and, for the capacity market, after the capacity auction, the Debtors will suffer material revenue losses. Accordingly, it is critical that the Court ensure that Eversource complete its administrative function in transferring the Lead Market Participant on CAMS and through the execution of the Fillable PDF as described above.

C. The Lead Market Participant Services Agreement

20. The Debtors intend to enter into a Lead Market Participant Services agreement with CS Berlin Ops, Inc. (“CS Berlin Ops”)⁷ through which CS Berlin Ops would agree to serve as the Lead Market Participant for energy and capacity (the “Agreement,” attached hereto as **Exhibit A**). CS Berlin Ops is able to immediately take on the Lead Market Participant role, ensuring that the Debtors are adequately represented in the energy market. This Agreement would enable the Debtors to continue participating in the ISO-NE energy and capacity markets, which is essential to the Debtors’ ability to generate revenue going forward. Without this Agreement, the Debtors’ ability to generate revenue would be thrown into doubt, thereby harming the estates and the ability to secure a successful reorganization.

21. In addition to requiring a Lead Market Participant to sell their energy and capacity, the Debtors have obtained debtor in possession financing that is contingent on the Debtors obtaining an Interim Order that, among other things, requires the Debtors to enter into the Lead Market Participant Services agreement with CS Berlin Ops no later than three (3) business days after the Petition Date. A failure to enter into a new Lead Market Participant agreement would therefore have financially devastating consequences for the Debtors and their estates, and the Debtors would lose out on the revenue they could generate by selling power into the energy market.

RELIEF REQUESTED

22. By this Motion, the Debtors request entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”) and **Exhibit B** (the “Final Order”) (i) authorizing the Debtors, in their sole discretion, to enter into a Lead Market Participant

⁷ CS Berlin Ops is a Delaware corporation and an affiliate of the Debtors that would serve in only a pass-through capacity for payments earmarked for the Debtors. CS Berlin Ops would not receive compensation for its Lead Market Participant services.

agreement in substantially the form of the Agreement with CS Berlin Ops, attached hereto as **Exhibit C**, or with such other entity as agreed to by the Chief Restructuring Officer of the Debtors and as consented to by the DIP Lenders and Prepetition Lenders, and (ii) directing Eversource to (a) initiate the transfer of the Lead Market Participant role to CS Berlin Ops or other Lead Market Participant of the Debtors' choosing and (b) subject to entry of the Proposed Final Order, remit all revenue received in its role as Lead Market Participant on behalf of the Debtors to the estates.

BASIS FOR RELIEF REQUESTED

I. The Cooperation Requested of Eversource Is Ministerial, and Eversource Is Not Prejudiced by Terminating its Lead Market Participant Status or Remitting Property of the Estate to the Debtors.

23. Because the Debtors terminated the PPA, Eversource no longer has any right or authority to serve as the Debtors' Lead Market Participant in either the energy market or, once the current capacity auction ended, the capacity market.⁸ However, in an abundance of caution, the Debtors have sought an order from the Bankruptcy Court to ensure Eversource's cooperation in a prompt termination of its Lead Market Participant status and its facilitation of all actions required to transfer Lead Market Participant status to a new entity. Eversource's actions are critical to the Debtors' efficient transition from selling energy to Eversource under the PPA to selling energy into the wholesale market. Absent Eversource's cooperation, the Debtors' ability to generate revenue will be extremely hampered.

24. Eversource's action to effectuate this termination is entirely ministerial, and the Debtors have no reason to expect that Eversource will suffer any prejudice from taking this action. But in the unlikely event that Eversource articulates some prejudice it might suffer, Eversource's rights to assert any such damages against the estates are not prejudiced by the relief sought herein.

⁸ This is true even if Eversource disputes the prepetition termination of the PPA and the Court authorizes the Debtors' rejection of the PPA *nunc pro tunc* to the Petition Date.

II. Approval of a New Lead Market Participant Is Appropriate Because the Debtors, Based on a Sound Exercise of Their Business Judgment, Require One.

25. As an initial matter, the Debtors' appointment of a Lead Market Participant is an action taken in the ordinary course of their business, because they cannot sell their products into ISO-NE without a Lead Market Participant. The Debtors nevertheless seek authority to appoint a new Lead Market Participant.

26. Section 363(b) of the Bankruptcy Code authorizes a bankruptcy court, after notice and a hearing, to authorize a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under Section 363(b) of the Bankruptcy Code, a debtor must "show that a sound business purpose justifies such actions." *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted); *see also In re Elpida Memory, Inc.*, No. 12-10947 (CSS), 2012 Bankr. LEXIS 5367 at *18, 2012 WL 6090194, at (Bankr. D. Del. Nov. 16, 2012) (it is "well-settled" that a debtor may use its assets outside the ordinary course where such use "represents the sound exercise of business judgment"); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (judicial approval under Section 363 requires only that the proposed action is fair and equitable, in good faith, and supported by a good business reason). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Committee of Asbestos-Related Litigants v. Johns-Manville (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task").

27. Through their sound business judgment, the Debtors have determined that they must enter into a new Lead Market Participant agreement. Having a Lead Market Participant is a requirement for participating in the ISO-NE wholesale energy and capacity markets, including the day-ahead and real-time energy markets, and annual and monthly capacity auctions. Access to these markets and auctions is vital to the Debtors' business because that is how the Debtors will sell energy, given the termination of the PPA, and secure revenue from future capacity supply obligations. The Debtors could also sell their products bilaterally via a new power purchase agreement and might do so in the future, but the Debtors do not currently have such bilateral arrangements immediately available to them, whereas the ISO-NE wholesale markets can be immediately accessed if the Debtors can appoint a new Lead Market Participant.

28. Following the termination of the PPA, the Debtors are left with a lame duck Lead Market Participant: Eversource is no longer contractually obligated to carry out its duties as Lead Market Participant, though it continues to occupy that role based on ISO-NE policies for market participation and the inability of the Debtors or ISO-NE to initiate the Lead Market Participant transfer on CAMS for the energy asset or using the Fillable PDF for the capacity market. The Debtors must be able to operate their business and generate revenue to maximize the value of their estates. Accordingly, it is essential for the Debtors to immediately enter into a new Lead Market Participant agreement.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED
AND BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

29. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, the Court may issue an order granting "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" before 21 days after the Petition

Date. Certain aspects of the relief requested herein may, if granted, be subject to Rule 6003(b) of the Bankruptcy Rules.

30. For the reasons described above and in the First Day Declaration, the relief requested herein should be allowed in the Debtors' business judgment. Because the relief requested herein is necessary to avoid immediate and irreparable harm, Rule 6003(b) of the Bankruptcy Rules is satisfied.

31. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under Section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Rule 6004(a) of the Bankruptcy Rules, to the extent not satisfied, and of the 14-day stay under Rule 6004(h) of the Bankruptcy Rules. As described above, the relief that the Debtors seek in the Motion is immediately necessary for the Debtors to be able to continue to operate their business and preserve the value of their estates. Accordingly, the Debtors submit that the requested waiver of the notice requirements of Rule 6004(a) of the Bankruptcy Rules and the 14-day stay imposed by Rule 6004(h) of the Bankruptcy Rules is appropriate.

RESERVATION OF RIGHTS

32. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' property; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to Section 363 of the Bankruptcy Code; (f) a waiver of any rights, claims and defenses the Debtors have or may have related to Eversource; or (g) a limitation on the Debtors' rights under Section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to

the Proposed Orders once entered. Nothing contained in the Proposed Orders will be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE AND NO PRIOR REQUEST

33. 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) CS Operations; (w) CS Berlin Ops; and (y) 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.

34. 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 grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: February 9, 2024

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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 ON THE MOTION OF THE DEBTORS FOR AN
ORDER (I) APPROVING ENTRY INTO A NEW LEAD MARKET PARTICIPANT
AGREEMENT AND (II) GRANTING RELATED RELIEF**

Upon the *Motion of the Debtors for Interim and Final Orders (I) Approving Entry into a New Lead Market Participant Agreement and (II) Granting Related Relief* (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); (c) venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (d) an interim hearing has been held on the Motion following proper notice in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and all applicable Local Rules; (e) all objections, if any, to the interim relief set forth at the hearing having been withdrawn, resolved, or overruled by the Court; and (f) it appearing that approval of the interim relief is necessary for the Debtors and their estates pending a final Hearing on the Motion (“Final Hearing”), and is otherwise is fair and

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

reasonable and in the best interests of the Debtors, their estates, and all parties in interest, and is essential for the continued operation of the Debtors' businesses and the maximization of the value of the Debtors' assets, 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 to enter into a Lead Market Participant Services agreement with CS Berlin Ops or such other party consented to by the Senior Secured Noteholders and DIP Lenders in substantially the form of the Agreement attached to the Motion as **Exhibit C** (the "Agreement") and to sell their Products (as defined in the PPA) in and on any available market, notwithstanding any provisions of the PPA, until this Court adjudicates the Motion on a final basis.
3. Public Service Company of New Hampshire, doing business as Eversource Energy ("Eversource"), is hereby ordered to cooperate immediately with the Debtors to effectuate the transfer of the Lead Market Participant, including without limitation by completing and executing any and all forms and taking any other action necessary to transfer the Lead Market Participant role for Berlin's participation in ISO-NE as both an energy and a capacity resource to the new Lead Market Participant under the Agreement, including but not limited to executing the Resource Lead Market Participant Change Request form of ISO-NE and arranging for transfer of the Lead Market Participant listed for Berlin within ISO-NE's online Customer and Asset Management System, and cooperating with Berlin and ISO-NE to effect such transfer.
4. Immediately and not later than one business day after receiving service of this Order, Eversource shall confirm in writing (email being sufficient) to the Debtors that it has executed and submitted ISO-NE's Resource Lead Market Participant Change Request form.

5. To the extent Eversource receives any revenue on behalf of the Debtors in its role as Lead Market Participant, Eversource shall hold those funds in a segregated account pending further order of this Court.

6. ISO-NE and all applicable government authorities are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion. And to the extent provided by Bankruptcy Code section 525, no governmental unit (as defined in Bankruptcy Code section 101(27)) may “deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant” to the Debtors, or any individuals or entities associated with the Debtors, based on these Chapter 11 Cases or the any of the relief ordered by this Court.

7. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors’ property; (b) a waiver of the Debtors’ rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to Section 363 of the Bankruptcy Code; (f) a waiver of any rights, claims, causes of action and defenses the Debtors have or may have related to Eversource; or (g) a limitation on the Debtors’ rights under Section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the Proposed Orders once entered. Nothing contained herein shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

8. The requirements set forth in Rule 6004(a) of the Bankruptcy Rules are hereby waived.

9. The requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

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

11. This Interim Order is effective immediately upon its entry.

12. The hearing to consider entry of an order granting the relief requested in the Motion on a final basis 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.leamy@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.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement 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) APPROVING ENTRY INTO NEW
LEAD MARKET PARTICIPANT AGREEMENT
AND (II) GRANTING RELATED RELIEF**

Upon the *Debtors' Motion for Interim and Final Orders (I) Approving Entry into a New Lead Market Participant Agreement and (II) Granting Related Relief* (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); (c) the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) 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 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 defined herein shall have the meanings ascribed 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 in their sole discretion to enter into a new Lead Market Participant agreement and to sell their Products (as defined in the PPA) in and on any available market, notwithstanding any provisions of the PPA.
3. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' property; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to Section 363 of the Bankruptcy Code; (f) a waiver of any rights, claims, causes of action and defenses the Debtors have or may have related to Eversource; or (g) a limitation on the Debtors' rights under Section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the Proposed Orders once entered. Nothing contained herein shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.
4. Eversource is hereby ordered to cooperate immediately with the Debtors to execute any and all forms and take any other action necessary to transfer the Lead Participant or Lead Market Participant role for Berlin's participation in ISO New England ("ISO-NE") as both an energy and a capacity resource to a new Lead Market Participant of Berlin's choosing, including but not limited to executing ISO-NE's Resource Lead Market Participant Change Request form and arranging for transfer of the Lead Participant listed for Berlin within ISO-NE's online

Customer and Asset Management System, and cooperating with Berlin and ISO-NE to effect such transfer.

5. Within two business days of receipt of any revenue received on behalf of the Debtors in its role as Lead Market Participant, Eversource shall remit such amounts to the estates in full.

6. ISO-NE and all applicable government authorities are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion. And to the extent provided by Bankruptcy Code section 525, no governmental unit (as defined in Bankruptcy Code section 101(27)) may “deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant” to the Debtors, or any individuals or entities associated with the Debtors, based on these Chapter 11 Cases or the any of the relief ordered by this Court.

7. The requirements set forth in Rule 6004(a) of the Bankruptcy Rules are hereby waived.

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

9. This Final Order is effective immediately upon its entry.

10. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

EXHIBIT C

Proposed Lead Market Participant Agreement with CS Berlin Ops