

**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 THE MAINTENANCE OF BANK ACCOUNTS AND CONTINUED
USE OF EXISTING BUSINESS FORMS AND CHECKS, (II) AUTHORIZING THE
CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM,
(III) GRANTING LIMITED RELIEF FROM THE REQUIREMENTS OF
BANKRUPTCY CODE SECTION 345(b), AND (IV) GRANTING RELATED RELIEF**

Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”), the debtors and debtors in possession in the above captioned case (collectively, the “Debtors”), hereby submit this *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Maintenance of Bank Accounts and Continued Use of Existing Business Forms and Checks, (II) Authorizing the Continued Use of Existing Cash Management System, (III) Granting Limited Relief from the Requirements of Bankruptcy Code Section 345(b), and (IV) 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

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), 345, 363, 364 and 553 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

3. Pursuant to Rule 9013-1(f) of 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 Sections 1107(a) and 1108 of the Bankruptcy Code. 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 (the "First Day Declaration"), filed contemporaneously with the Motion and incorporated herein by reference.²

RELIEF REQUESTED

7. By the Motion, the Debtors request, pursuant to Sections 105(a), 345, 363, 364 and 553 of the Bankruptcy Code, Rules 6003 and 6004 of the Bankruptcy Rules, and Rule 2015-2 of the Local Rules, entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the "Proposed Interim Order") and **Exhibit B** (the "Proposed Final Order," and together with the Proposed Interim Order, the "Proposed Orders"): (i) authorizing the maintenance of the Bank Accounts (as defined herein) and the Company Credit Card (as defined herein) and continued use of the Business Forms (as defined herein); (ii) authorizing, but not directing, the continued use of the Cash Management System (as defined herein); and (iii) granting related relief.

8. The Debtors also request the right in their discretion, but not the obligation, to (i) pay the Bank Accounts' related fees; and (ii) close or otherwise modify the terms of the Bank Accounts and open new debtor in possession accounts as may be necessary to facilitate the Chapter 11 Cases and operations.

THE DEBTORS' CASH MANAGEMENT SYSTEM

I. The Debtors' Bank Accounts

9. Prior to the commencement of the Chapter 11 Cases, and in the ordinary course of their business, the Debtor Berlin engaged CS Operations, Inc. ("CS Operations"), a nondebtor affiliate of the Debtors, to provide certain management services, including accounting, billing, human resources, and other similar cash management and treasury services, pursuant to a Project Management Agreement dated June 29, 2011 that was assigned to CS Operations pursuant to that

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>

certain Assignment Agreement between Cate Street Capital, Inc. (“CSC”) and CS Operations dated March 1, 2018.

10. The Debtors maintain four (4) bank accounts: (i) an account (SX7590-001) held in the name of Burgess at Deutsche Bank Trust Company Americas (“DBTCA”), an affiliate of Deutsche Bank, which comprises of three (3) subaccounts (SX7590-001.1; SX7590-001.2; SX7590-001.3) (the “Burgess Revenue Account”); (ii) an account (SX7590) held in the name of Berlin at DBTCA, which is comprised of four (4) subaccounts (SX7590.1; SX7590.4; SX7590.5; SX7590.6) (the “Berlin Issuer Account,” and together with the Berlin Revenue Account, the “DB Bank Accounts”); (iii) a checking account (5859) held in the name of Burgess at M&T Bank (“M&T”) (the “Burgess M&T Checking Account”); and (iv) a checking account (1322) held in the name of Berlin at M&T (the “Berlin M&T Checking Account,” and together with the DB Bank Accounts and the Burgess M&T Checking Account, the “Bank Accounts”). The Debtors maintain the Bank Accounts to manage the funds they hold to operate their business. A list of the Bank Accounts is attached hereto as **Exhibit C**. The Bank Accounts are part of a carefully constructed cash management system (as may be amended as set forth herein, the “Cash Management System”) that ensures the Debtors’ ability to efficiently monitor and control their cash position and disburse funds to satisfy their obligations and to comply with terms and conditions of their secured financing arrangements. The DB Accounts are governed by the Collateral Agency, Subordination and Intercreditor Agreement dated September 2, 2011 and as amended by that certain Amended and Restated Collateral Agency, Subordination and Intercreditor Agreement dated as of October 25, 2012 by and among DBTCA, the Senior Secured Noteholders (as such term is defined in the First Day Declaration), the Subordinated Lenders (as such term is defined in the First Day Declaration), and Berlin.

11. Additionally, Berlin maintains an account (X3574) held at BlackRock, Inc. (“BlackRock”) that was set up as part of compliance requirements with ISO New England, Inc. (“ISO-NE”). This account is inactive and has no money in it. The Debtors are not putting money into or trading in this account. For the avoidance of doubt, by this Motion, the Debtors are not seeking any relief with regards to the account held at BlackRock.

12. As described with greater detail in the First Day Declaration, the Debtors own and operate a 75-megawatt biomass plant (the “Facility”) located on an approximately 62-acre site in Berlin, New Hampshire (the “Facility Site”). Their revenue derives from the sale of energy, including capacity, ancillary services, and associated renewable energy certificates produced by the Facility (“RECs” and, together with energy, capacity, and ancillary services, “Products”). Revenue from the sale of Products is deposited into the Burgess Revenue Account.

13. Prior to the Petition Date, Burgess would submit a disbursement requisition monthly (or if necessary, more frequently), and Berlin would submit a disbursement requisition on a quarterly and semiannual basis to DBTCA (each, a “Disbursement Requisition”), identifying each obligation Burgess or Berlin, as applicable, needed to have paid. Disbursement Requisitions were submitted to DBTCA at other times as well. Disbursement Requisitions were historically reviewed and approved by the Required Holders as defined in the Senior Note Documents (as such term is defined in the First Day Declaration).

14. DBTCA is the only party authorized to make disbursements and transfers from the Burgess Revenue Account (a DBTCA account into which revenues would flow) in accordance with these Disbursement Requisitions. DBTCA would then transfer funds to the Burgess M&T Checking Account, from which both Burgess and Berlin’s operating expenses, as well as lease

obligations and other fees (outside of principal and interest) under the Senior Note Documents, were paid.

15. On a quarterly basis, DBTCA would transfer funds from the Burgess Revenue Account to the Berlin Issuer Account, from which money was disbursed by DBTCA from the subaccount (SX7590.4) to principal and interest due and owing under the Senior Note Documents. Funds were also transferred from the Burgess M&T Checking Account to the Berlin M&T Checking Account to facilitate certain intercompany transfers and make monthly payments to ISO-NE. As of the Petition Date, the aggregate balance of funds held in the Bank Accounts is approximately \$3.45 million (almost all of which amounts are held in restricted accounts).

16. As set forth in the First Day Declaration, the Debtors are also seeking court approval of debtor in possession financing as well as use of cash collateral for all accounts.

17. CS Operations reconciles the Bank Accounts weekly and records all cash transactions into the Debtors' books and records.

18. By the Motion, the Debtors seek entry of the Proposed Orders authorizing the maintenance of the Bank Accounts and the continued use of the Cash Management System in the ordinary course of business consistent with prepetition practices but subject to certain modifications, if needed, as follows: Due to the time delay of receipt of funds inherent in the process of the Disbursement Requisition, the Debtors will experience a significant delay in accessing their funds – including most critically their post-petition financing – if those funds are routed through the DBTCA accounts, subject to the requisition process, and only then transferred to the M&T accounts. As an accommodation to the Debtors, and subject to appropriate orders confirming the automatic perfection and control of funds in the M&T accounts without the need for deposit account control agreements, the DIP Lenders have agreed, solely for purposes of the

interim debtor-in-possession financing pursuant any interim DIP financing order entered by this Court, to wire funds directly to the Berlin M&T Checking Account, the M&T account of the their Borrower, Berlin, for use by the Debtors for payments by Berlin and Burgess in accordance with the DIP Budget. Once these funds are deposited into the Berlin M&T Checking Account, the Debtor's CRO will have the ability to disburse funds from that account directly or transfer funds into the existing Burgess M&T Checking Account for other disbursements. This accommodation is solely for purposes of the Interim Cash Management Order and interim debtor-in-possession financing, and the Debtors anticipate working with their DIP Lenders and the DIP Agent to streamline the Cash Management System prior to the final hearing, at which time they expect a modified system to be proposed to the Court for approval.

II. *Company Credit Card*

19. As part of the Cash Management System and in addition to the Bank Accounts, the Debtors also have a credit card with M&T (the "Company Credit Card"), with a credit limit of \$20,000.00, which is billed and paid in full monthly. Key information regarding the Company Credit Card is attached hereto as **Exhibit D**. The Company Credit Card is used to pay certain automatic recurring payments, one-off vendor payments, filing fees for regulatory requirement reports, and other general business expenses incurred by personnel at the Facility to ensure important operating supplies and services required to operate the Facility are obtained timely. The expenses incurred on the Company Credit Card are essential to the operation of the Debtors' business. The Debtors typically charge less than \$5,000.00 per month on the Company Credit Card. The Debtors plan to leave the Company Credit Card in operation.

20. As of the Petition Date, the Debtors estimate that they have less than \$5,000.00 of unpaid obligations on the Company Credit Card. By the Motion, the Debtors seek authority to

continue using the Go Forward Credit Card and the remainder of the Company Credit Card (until discontinued) in the ordinary course of business consistent with prepetition practices.

III. *Existing Business Forms and Checks*

21. In the ordinary course of business, the Debtors use checks with their names printed thereon. In addition, the Debtors maintain pre-printed correspondence and business forms, including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, internal administrative forms and other business forms (collectively, along with the Debtors' checks, the "Business Forms"). To minimize administrative expense and delay, the Debtors request authority to continue to use the Business Forms substantially in the form existing immediately prior to the Petition Date, without reference to the Debtors' "debtor in possession" status.

BASIS FOR RELIEF REQUESTED

I. *The Debtors Should Be Authorized to Use the Cash Management System*

22. The Court may authorize a debtor pursuant to Section 363(c) of the Bankruptcy Code to "use property of the estate in the ordinary course of business without notice or a hearing." In addition, Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process or judgment that is necessary to carry out the provisions of this title." The purpose of these Sections is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without undue oversight by creditors or the Court. *See Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997).

23. The Cash Management System constitutes a customary and essential business practice that was created and implemented by the management of the Debtors in the exercise of their business judgment. The Cash Management System has been in place for some time, as such

the Debtors' business process, cash internal controls and information systems are designed to support the current process. Aside from the adjustments set forth herein meant to expedite funding of the DIP Facility proceeds on an interim basis, changing the current system will cause the Debtors to waste time and money which otherwise could be deployed to activities which will improve the overall return to creditors and to enable the Debtors to more efficiently comply with Court-required financial reporting.

24. The Cash Management System is a practical mechanism that allows the Debtors to transfer their funds between the Bank Accounts for payment of their obligations and decreases the burdens associated with managing their funds. The Cash Management System provides several important benefits, including the ability to (a) control and monitor corporate funds; (b) ensure cash availability; (c) provide third party review of disbursements, and (d) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate balance and presentment information.

25. The Debtors believe that the Bank Accounts, the Company Credit Card and mechanisms related to the Cash Management System are well-suited to the Debtors' business needs and operations. To require the Debtors to close the Bank Accounts and reestablish new accounts would not result in greater administrative controls and would require considerable and unnecessary time and expense to the Debtors' estates. Moreover, permitting the Debtors to continue using the Bank Accounts is essential to a smooth and orderly transition of the Debtors into chapter 11 and to avoid disruption of their business and operations, including the disruption that could result if checks written but not negotiated or cashed prior to the Petition Date were dishonored.

26. The continued use of a cash management system employed in the ordinary course of a debtor's prepetition business has been approved as a routine matter in a number of other cases in this District. *See, e.g., In re Lincoln Power, L.L.C.*, Case No. 23-10832 (LSS) (Bankr. D. Del. Apr. 27, 2023); *In re American Eagle Delaware Holding Company LLC*, Case No. 22-10028 (JKS) (Bankr. D. Del. Feb. 10, 2022); *In re BHCosmetics Holdings, LLC*, Case No. 22-10050 (CSS) (Bankr. D. Del. Feb. 7, 2022); *In re Alto Maipo Delaware LLC*, Case No. 21-11001 (JTD) (Bankr. D. Del. Dec. 17, 2021); *In re Sharity Ministries, Inc.*, Case No. 21-11001 (JTD) (Bankr. D. Del. Aug. 10, 2021); *In re Alex and Ani, LLC*, Case No. 21-10918 (CTG) (Bankr. D. Del. July 14, 2021); *In re The Collected Group, LLC*, Case No. 21-10663 (LSS) (Bankr. D. Del. Apr. 28, 2021); *In re Mallinckrodt PLC*, Case No. 21-12522 (JTD) (Bankr. D. Del. Nov. 19, 2020); *In re SFP Franchise Corp.*, 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 Things Remembered, Inc.*, Case No. 19-10234 (KG) (Bankr. D. Del. Feb. 26, 2019).

27. Courts have recognized that strict enforcement of the bank account closure requirements in certain cases does not serve the rehabilitative purposes of chapter 11. Accordingly, cases in this District have waived such requirements and replaced them with alternative procedures that provide the same protections. *See, e.g., In re Exide Technologies*, Case No. 02-11125 (Bankr. D. Del. Apr. 17, 2002) (permitting debtors to maintain existing bank accounts and cash management system); *In re W.R. Grace & Co.*, Case No. 01-01139 (Bankr. D. Del. Apr. 2, 2001) (same); *In re Waccamaw's HomePlace*, Case No. 01-00181 (Bankr. D. Del. Jan. 17, 2001) (same).³

³ The Debtors' proposed counsel has copies of each order and will make them available to the Court or to any party that requests them.

28. Indeed, courts in this District have noted that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part and rev’d in part*, 997 F.2d 1039 (3d Cir. 1993). The United States Court of Appeals for the Third Circuit has agreed, emphasizing that requiring a debtor to maintain separate accounts “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also Southmark Corp. v. Grosz (In re Southmark Corp.)*, 49 F.3d 1111, 1114 (5th Cir. 1995) (stating a cash management system allows a debtor “to administer more efficiently and effectively its financial operations and assets”).

29. The benefits associated with maintaining the Cash Management System will assist the Debtors in their efforts to maintain their operations pending the disposition of their assets and confirmation of a chapter 11 plan, making the relief requested herein appropriate under Sections 363(c) and 105(a) of the Bankruptcy Code.

II. *The Debtors Should be Permitted to Maintain the Bank Accounts*

30. The Debtors should be authorized to continue to fund their business and operations by payments made from the Bank Accounts listed on **Exhibit C** and should be exempt from certain of the Guidelines⁴ established by the United States Trustee for the District of Delaware (the “U.S.”).

⁴ The Guidelines were issued in order to assist the U.S. Trustee in supervising the administration of chapter 11 cases. The Guidelines require chapter 11 debtors to, unless the Court orders otherwise, *inter alia*:

- i. Close all existing bank accounts and open new accounts which must be designated debtor-in-possession bank accounts;
- ii. Establish and maintain separate debtor-in-possession accounts for the payment of taxes and separate debtor-in-possession accounts for cash collateral; and
- iii. Obtain and utilize new checks for all debtor-in-possession accounts which bear the designation “Debtor-in-Possession” and contain certain other information related to the chapter 11 case.

Trustee”). One provision of the Guidelines requires the Debtors to open new bank accounts and close all existing accounts. This requirement, designed to provide a clear line of demarcation between prepetition and postpetition claims and payments, helps protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date. The Guidelines also require that the Debtors open new bank accounts only in certain financial institutions designated as authorized depositories by the U.S. Trustee. The Debtors believe that the Cash Management System is designed to guard against the risk of making prepetition payments, absent further order of the Court, and that the funds in the Bank Accounts are adequately protected.

31. As part of the relief requested herein, the Debtors also seek waiver of the requirement to establish specific bank accounts for any tax payments. The Debtors believe that tax obligations, if any, can be paid most efficiently out of the Bank Accounts, that the U.S. Trustee can adequately monitor the flow of funds into, among, and out of the Bank Accounts, and that the creation of new debtor-in-possession accounts designated solely for tax obligations is unnecessary and inefficient.

32. The Debtors hereby require authority to maintain the Bank Accounts and utilize such accounts pursuant to the Cash Management System. The Debtors do not believe that allowing them to do so will prejudice any party-in-interest or the Debtors’ estates. If the relief requested herein is granted, the Debtors will not pay any debts incurred on their behalf before the Petition Date, unless specifically authorized by the Court.

33. If the Debtors were forced to close the Bank Accounts, the Debtors expect that disruption and confusion would result, which would negatively impact their operations. For instance, funds may be deposited into the wrong account, misapplied, held in limbo, or otherwise

delayed, thus negatively affecting the Debtors' relationships with parties who are necessary to the Debtors' efforts, and who already may be burdened by the commencement of the Chapter 11 Cases. As a result, the Debtors submit that maintenance of the Bank Accounts and the Cash Management System is warranted.

34. Subject to Section 553 of the Bankruptcy Code, all banks that maintain the Bank Accounts should be prohibited from offsetting, affecting, freezing, or otherwise impeding the Debtors' use of any funds deposited in the Bank Accounts on account of, or by reason of, any claim (as defined in Section 101(5) of the Bankruptcy Code) of any such bank against the Debtors that arose before the Petition Date, absent further order of the Court.

35. Both as part of the Motion and in other motions that have been concurrently filed, the Debtors are requesting authority to pay, in their sole discretion, certain prepetition obligations. With respect to certain of these obligations, the Debtors may have issued checks prior to the Petition Date that have yet to clear the banking system. The Debtors intend to inform the banks which such checks should be so honored. Therefore, the Debtors request that the banks be authorized and directed to rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored. The Debtors further request that the Orders specify that the banks shall not have any liability to any party for relying on such representations. This relief is reasonable and appropriate because the banks are not in a position to independently verify or audit whether a particular prepetition check may be honored in accordance with an order by the Court or otherwise.

III. *The Debtors Should be Permitted to Continue Using the Business Forms*

36. Rule 2015-2(a) of the Local Rules provides:

Where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks without

the designation “Debtor-in-Possession” and use its existing bank accounts. However, once the debtor’s existing checks have been used, the debtor shall, when reordering checks, require the designation “Debtor-in-Possession” and the corresponding bankruptcy number on all such checks.

Pursuant to Rule 2015-2(a) of the Local Rules, the Debtors seek an order authorizing them to use all correspondence and the Business Forms existing immediately before the Petition Date without reference to the Debtors’ status as “debtors-in-possession.” As of the Petition Date, the Debtors had a large stock and variety of the Business Forms that they used in the ordinary course of business. Reprinting the Business Forms to indicate that the Debtors are “debtors in possession” would impose an unnecessary burden and expense on the Debtors. The Debtors believe that the parties with whom the Debtors do business shortly will become aware that they are chapter 11 debtors-in-possession.

IV. *Waiver of Section 345(b) of the Bankruptcy Code Is Appropriate*

37. Section 345(a) of the Bankruptcy Code governs a debtor’s deposits during its bankruptcy case and authorizes deposits of money as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” For deposits or investments that are not “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States,” Section 345(b) of the Bankruptcy Code requires debtors to obtain from the entity with which such money is deposited a bond in favor of the United States and secured by the undertaking of an adequate corporate surety.

38. The Debtors seek an order waiving the requirements of Section 345(b) of the Bankruptcy Code on an interim basis and permitting the Debtors to maintain their deposits in the Bank Accounts in accordance with existing deposit practices until such time as it obtains the Court’s approval to deviate from the Guidelines under Section 345(b) of the Bankruptcy Code on

a more final basis. The Debtors' existing deposit practices are significantly less burdensome and more appropriately tailored to their business needs than the practices otherwise required under the Bankruptcy Code and the Guidelines. The Debtors submit that strict compliance with these requirements would be overly burdensome and restrictive, to the detriment of the Debtors' estates and creditors.

39. Maintaining the deposits in strict compliance with the requirements of Section 345(b) would, in some cases, be inconsistent with the requirement of Section 345(a) of the Bankruptcy Code that deposits be maintained in a manner that "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." It is for this reason that in 1994, Congress amended Section 345 of the Bankruptcy Code to allow the requirements of subsection (b) to be waived or modified if a court so orders "for cause." As the legislative history indicates, Congress believed that strict application of Section 345(b) of the Bankruptcy Code could "needlessly handcuff larger, more sophisticated debtors." 140 Cong. Rec. H 10, 767 (Oct. 4, 1994). All of the Bank Accounts are maintained for operational and not investment purposes. On occasion, the balances in the Bank Accounts may exceed the current limits of governmental insurance. Therefore, these accounts may be subject to the bonding or collateralization requirements of Section 345(b) of the Bankruptcy Code and the Guidelines unless those requirements are waived.

40. As discussed, the Burgess M&T Checking Account and the Berlin M&T Checking Account are maintained by M&T. These bank accounts are insured by the Federal Deposit Insurance Corporation ("FDIC") and therefore comply with Section 345(b) of the Bankruptcy Code.

41. Out of an abundance of caution, however, to the extent that the Bank Accounts do not strictly comply with Section 345(b) of the Bankruptcy Code, the Debtors submit that cause exists to grant a limited waiver of any such noncompliance as set forth herein on an interim basis given that funds are deposited with M&T, a bank being administered by FDIC. Courts may waive compliance with Section 345 of the Bankruptcy Code and the Guidelines for “cause.” In determining whether “cause” exists for a waiver, the Court considers the “totality of the circumstances,” including the following factors: (a) sophistication of the debtor’s business; (b) the size of the debtor’s business operations; (c) the amount of the investments involved; (d) the bank’s ratings of the financial institutions where debtor in possession funds are held; (e) the complexity of the case; (f) the safeguards in place within the debtor’s own business of insuring the safety of the funds; (g) the debtor’s ability to reorganize in the face of a failure of one or more of the financial institutions; (h) the benefit to the debtor; (i) the harm, if any, to the estate; and (j) the reasonableness of the debtor’s request for relief from the requirements in Section 345(b) of the Bankruptcy Code in light of the overall circumstances of the case. *See In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

42. “Cause” exists here because, *inter alia*, DBTCA and M&T are highly rated, reputable banks that are subject to supervision by national banking regulators; the Debtors have internal safeguards in place to ensure the safety of the funds in the Bank Accounts and retains the right to close accounts with the bank and establish new accounts as needed; and requiring the Debtors to transfer the funds in the Bank Accounts to a designated authorized depository would place an unnecessary administrative burden on the Debtors that would divert the attention of the Debtors’ management away from the Chapter 11 Cases. The Debtors submit that, on balance, the

benefits of a waiver would far outweigh any potential harm to the estates from noncompliance with Section 345(b) of the Bankruptcy Code.

43. The Debtors submit that it would be in the best interests of the estates' creditors to continue following the existing deposit practices, notwithstanding the requirements of Section 345(b) of the Bankruptcy Code and the Guidelines. The Debtors further submit that their deposit practices are commercially reasonable and appropriate, and consistent with the intent of Section 345 of the Bankruptcy Code.

44. The Court has granted similar relief on an interim basis. *See, e.g., In re Lincoln Power, L.L.C.*, Case No. 23-10832 (LSS) (Bankr. D. Del. Apr. 27, 2023); *In re Sharity Ministries, Inc.*, Case No. 21-11001 (JTD) (Bankr. D. Del. Aug. 10, 2021); *In re Things Remembered, Inc.*, Case No. 19-10234 (KG) (Bankr. D. Del. Feb. 26, 2019); *In re ADT Corp.*, Case No. 18-12221 (KJC) (Bankr. D. Del. Oct. 24, 2018); *In re VER Techs. Holdco LLC*, Case No. 18-10834 (KG) (Bankr. D. Del. May 4, 2018); *In re EV Energy Partners, L.P.*, Case No. 18-10814 (CSS) (Bankr. D. Del. Apr. 25, 2018); *In re PES Holdings, LLC*, Case No. 18-10122 (KG) (Bankr. D. Del. Jan. 23, 2018). The Debtors submit that cause for a similar waiver exists in this case.⁵

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

45. Rule 6003(b) of the Bankruptcy Rules 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” before 21 days after

⁵ The Debtors' proposed counsel has copies of each order and will make them available to the Court or to any party that requests them.

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

46. For the reasons described above and in the First Day Declaration, the relief requested herein is necessary for the Debtors to operate their business in the ordinary course and maximize the value of their estates for the benefit of all stakeholders. The Debtors believe that the relief requested herein is necessary to avoid immediate and irreparable harm and Rule 6003(b) of the Bankruptcy Rules is therefore satisfied.

47. 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. 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.

NOTICE AND NO PRIOR REQUEST

48. 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) each of the banks holding the Bank Accounts set forth in **Exhibit C** hereto; and (w) any party that has requested notice pursuant to Rule 2002 of the Bankruptcy Rules. As the Motion is seeking "first day" relief, the Debtors will serve copies of the Motion and any order entered in response of the 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.

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

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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

/s/ Chantelle D. McClamb
Chantelle D. McClamb (No. 5978)
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-and-

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*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 THE MAINTENANCE OF BANK ACCOUNTS AND CONTINUED USE OF EXISTING BUSINESS FORMS AND CHECKS, (II) AUTHORIZING THE CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (III) GRANTING LIMITED RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(B), AND (IV) GRANTING RELATED RELIEF

Upon the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Maintenance of Bank Accounts and Continued Use of Existing Business Forms and Checks, (II) Authorizing the Continued Use of Existing Cash Management System, (III) Granting Limited Relief from the Requirements of Bankruptcy Code Section 345(b), and (IV) 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;

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.

and it appearing that sufficient notice of the Motion has been given and that no other further notice is necessary, except as set forth in the Motion with respect to entry of this Interim Order and notice of the Final Hearing (as defined below); 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 maintain and use the Cash Management System, subject to modifications herein.
3. The Debtors are authorized to maintain and use the Bank Accounts in the name and with the account numbers existing immediately prior to the Petition Date and shall not be required to establish a specific new bank account for tax payments.
4. The Debtors shall retain authority to close or otherwise modify certain of their accounts and open new debtor in possession accounts, or otherwise make changes to the Cash Management System as they deem necessary to facilitate the Chapter 11 Cases and their operations. The Debtors are authorized to open any new bank accounts or close any existing bank accounts as they may deem necessary and appropriate in their sole discretion; *provided*, however, that the Debtors shall give notice within fifteen (15) days of opening or closing any bank account to the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), counsel to the Senior Secured Noteholders, and any statutory committees appointed in the Chapter 11 Cases; *provided*, further, however, that the Debtors shall open any such new bank account at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to immediately execute such an agreement. The banks are authorized to honor the Debtors' directions with respect to the opening and closing of any bank accounts and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions; *provided* that the

banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

5. The Debtors are authorized to deposit funds in and withdraw funds from the Bank Accounts by all usual means, subject to the same access rights and limitations existing prior to the Petition Date, including, but not limited to, checks, wire transfers, automated clearinghouse transfers, electronic funds transfers, and other debts and to treat the Bank Accounts for all purposes as debtor in possession accounts and to transfer funds between Debtors if required.

6. The Debtors are authorized, but not directed, to continue using the Company Credit Card in the ordinary course of business consistent with their prepetition practices. All authorized prepetition charges and fees are authorized to be paid in an amount not to exceed \$6,000.

7. The Debtors are authorized, but not directed, to continue to use their pre-printed checks, correspondence, and business forms and checks, including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, and other business forms, substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' debtor in possession status, *provided* that once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor In Possession" and the corresponding bankruptcy case number on all checks; *provided*, further, that, with respect to checks which the Debtors or their agents print themselves, the Debtors or their agents shall begin printing the "Debtor In Possession" legend on such items within ten (10) business days of the date of entry of this Interim Order.

8. The banks listed on **Exhibit C** to the Motion are hereby authorized and directed to continue to service and administer the Bank Accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course of business, and to receive, process,

honor and pay any and all checks, drafts, wires or ACH transfers drawn on the Bank Accounts by the holders or makers thereof (collectively, the “Disbursements”). In no event shall any of the banks be required to honor overdrafts or to pay any check, wire or other debit against any of the Bank Accounts that is drawn against uncollected funds.

9. The banks are authorized to debit the Bank Accounts in the ordinary course of business, consistent with past practice, without the need for further order of this Court, for: (a) all checks drawn on the Bank Accounts that are cashed at such bank’s counters or exchanged for cashier’s checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of the Bank Accounts with such bank prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any bank as service charges for the maintenance of the Cash Management System.

10. The banks are authorized, without further order of this Court, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, merchant services, or other electronic transfers of any kind, regardless of whether such returned items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

11. Subject to the provisions of this Order, the banks listed on Exhibit C to the Motion are authorized to and shall rely on the representations of the Debtors as to which Disbursements are authorized to be honored or dishonored, whether or not such Disbursements are dated, drawn, or issued prior to, on, or subsequent to the Petition Date, and whether or not the banks believe the

payment is authorized by an order of the Court. The banks shall not be deemed in violation of this Order and shall have no liability for relying on such representations by the Debtors or honoring any Disbursements that is subject to this Order either (a) at the direction of the Debtors to honor such prepetition Disbursement, (b) in the good faith belief that this Court has authorized such prepetition Disbursement to be honored, or (c) as a result of a mistake made despite implementation of reasonable customary handling procedures. To the extent that the Debtors direct that any Disbursement be dishonored or the banks inadvertently dishonor any Disbursements, the Debtors may issue replacement Disbursements consistent with the orders of this Court.

12. Any existing deposit, treasury management, and merchant services agreements between or among the Debtors, the banks, and other parties shall continue to govern the postpetition cash management relationship between the Debtors and the banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect unless otherwise ordered by the Court, and the Debtors and the banks may, without further order of this Court, agree to and implement changes to the cash management procedures in the ordinary course of business, consistent with past practice, including, without limitation, the opening and closing of bank accounts, subject to the terms and conditions of this Order.

13. The Debtors are authorized, but not directed, to pay, and the banks are authorized to and may continue to charge, deduct and collect from the applicable Bank Accounts, in each case, without further order of this Court, all customary and usual prepetition and postpetition fees, expenses, and charges arising from or related to the Bank Accounts.

14. Subject to Section 553 of the Bankruptcy Code, all banks that maintain the Bank Accounts are prohibited from offsetting, affecting, freezing, or otherwise impeding the Debtors' use of any funds in the Bank Accounts on account of, or by reason of, any claim (as defined in Section 101(5) of the Bankruptcy Code) of any such bank against the Debtors that arose before the Petition date, absent further order of the Court.

15. Without limiting the foregoing, prepetition agreements existing between the Debtors and the banks shall continue to govern the postpetition cash management relationship between the Debtors and the banks, and all of the provisions of such agreements, including the termination, fee provisions, rights, benefits, collateral, and offset rights, and remedies afforded under such agreements shall remain in full force and effect absent further order of the Court or, with respect to any such agreement with the banks (including, for the avoidance of doubt, any rights the banks have to use funds from the Bank Accounts to remedy any overdraft of another Bank Account or other cash management obligations, whether prepetition or postpetition, to the extent permitted under the applicable agreement), unless the Debtors and the banks agree otherwise, and any other legal rights and remedies afforded to the banks under applicable law shall be preserved.

16. In connection with the ongoing utilization of the Cash Management System, the Debtors shall continue to maintain detailed records in the ordinary course of business with respect to all transfers so that all transactions (including any intercompany transactions) may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

17. To the extent applicable, the Debtors' time to comply with Section 345(b) of the Bankruptcy Code is hereby extended for a period of thirty (30) days from the date of this Interim

Order (the “Extension Period”), provided, however, that such extension is without prejudice to the Debtors’ right to request a further extension of the Extension Period or a waiver of the requirements of Section 345(b) in these Chapter 11 Cases.

18. With respect to banks at which the Debtors hold the Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen (15) days of the date of entry of this Interim Order the Debtors shall (a) contact each bank, (b) provide the bank with each of the Debtors’ employer identification numbers, and (c) identify each of the Bank Accounts held at such banks as being held by a debtor in possession in a bankruptcy case.

19. For Banks at which the Debtors hold Bank Accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause such Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days of the date of this Interim Order, or the Debtors will transfer funds from such Banks to a bank account held at a bank that is a party to a Uniform Depository Agreement with the U.S. Trustee.

20. Nothing herein further authorizes the Debtors to make transfers or loans to non-debtor affiliates absent further order of the Court.

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

22. 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.

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

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

25. 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. (cmclamb@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); (f) counsel to Deutsche Bank Truste Company Americas in its capacity as collateral agent, depositary and lessee depositary; and (g) 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.

26. The 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) AUTHORIZING THE MAINTENANCE OF BANK ACCOUNTS AND CONTINUED USE OF EXISTING BUSINESS FORMS AND CHECKS, (II) AUTHORIZING THE CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (III) GRANTING LIMITED RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(B), AND (IV) GRANTING RELATED RELIEF

Upon the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Maintenance of Bank Accounts and Continued Use of Existing Business Forms and Checks, (II) Authorizing the Continued Use of Existing Cash Management System, (III) Granting Limited Relief from the Requirements of Bankruptcy Code Section 345(b) and (IV) 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;

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.

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

ORDERED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. The Debtors are authorized, but not directed, to maintain and use the Cash Management System, subject to modifications herein.
3. The Debtors are authorized, but not directed, to maintain and use the Bank Accounts in the name and with the account numbers existing immediately prior to the Petition Date and shall not be required to establish a specific new bank account for tax payments.
4. The Debtors shall retain authority to close or otherwise modify certain of their accounts and open new debtor in possession accounts, or otherwise make changes to the Cash Management System as they deem necessary to facilitate the Chapter 11 Cases and their operations. The Debtors are authorized to open any new bank accounts or close any existing bank accounts as they may deem necessary and appropriate in their sole discretion; *provided*, however, that the Debtors shall give notice within fifteen (15) days of opening or closing any bank account to the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), counsel to the Senior Secured Noteholders, and any statutory committees appointed in the Chapter 11 Cases; *provided*, further, however, that the Debtors shall open any such new bank account at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to immediately execute such an agreement. The banks are authorized to honor the Debtors' directions with respect to the opening and closing of any bank accounts and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions; *provided* that the

banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

5. The Debtors are authorized to deposit funds in and withdraw funds from the Bank Accounts by all usual means, subject to the same access rights and limitations existing prior to the Petition Date, including, but not limited to, checks, wire transfers, automated clearinghouse transfers, electronic funds transfers, and other debts and to treat the Bank Accounts for all purposes as debtor in possession accounts and to transfer funds between Debtors if required.

6. The Debtors are authorized, but not directed, to continue using the Company Credit Card in the ordinary course of business consistent with their prepetition practices. All authorized prepetition charges and fees are authorized to be paid.

7. The Debtors are authorized, but not directed, to continue to use their pre-printed checks, correspondence, and business forms and checks, including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, and other business forms, substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' debtor in possession status, *provided* that once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor In Possession" and the corresponding bankruptcy case number on all checks; *provided*, further, that, with respect to checks which the Debtors or their agents print themselves, the Debtors or their agents shall begin printing the "Debtor In Possession" legend on such items within ten (10) business days of the date of entry of this Final Order.

8. The banks listed on **Exhibit C** to the Motion are hereby authorized and directed to continue to service and administer the Bank Accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course of business, and to receive, process,

honor and pay any and all checks, drafts, wires or ACH transfers drawn on the Bank Accounts by the holders or makers thereof (collectively, the “Disbursements”). In no event shall any of the banks be required to honor overdrafts or to pay any check, wire or other debit against any of the Bank Accounts that is drawn against uncollected funds.

9. The banks are authorized to debit the Bank Accounts in the ordinary course of business, consistent with past practice, without the need for further order of this Court, for: (a) all checks drawn on the Bank Accounts that are cashed at such bank’s counters or exchanged for cashier’s checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of the Bank Accounts with such bank prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any bank as service charges for the maintenance of the Cash Management System.

10. The banks are authorized, without further order of this Court, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, merchant services, or other electronic transfers of any kind, regardless of whether such returned items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

11. Subject to the provisions of this Order, the banks listed on Exhibit C to the Motion are authorized to and shall rely on the representations of the Debtors as to which Disbursements are authorized to be honored or dishonored, whether or not such Disbursements are dated, drawn, or issued prior to, on, or subsequent to the Petition Date, and whether or not the banks believe the

payment is authorized by an order of the Court. The banks shall not be deemed in violation of this Order and shall have no liability for relying on such representations by the Debtors or honoring any Disbursements that is subject to this Order either (a) at the direction of the Debtors to honor such prepetition Disbursement, (b) in the good faith belief that this Court has authorized such prepetition Disbursement to be honored, or (c) as a result of a mistake made despite implementation of reasonable customary handling procedures. To the extent that the Debtors direct that any Disbursement be dishonored or the banks inadvertently dishonor any Disbursements, the Debtors may issue replacement Disbursements consistent with the orders of this Court.

12. Any existing deposit, treasury management, and merchant services agreements between or among the Debtors, the banks, and other parties shall continue to govern the postpetition cash management relationship between the Debtors and the banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect unless otherwise ordered by the Court, and the Debtors and the banks may, without further order of this Court, agree to and implement changes to the cash management procedures in the ordinary course of business, consistent with past practice, including, without limitation, the opening and closing of bank accounts, subject to the terms and conditions of this Order.

13. The Debtors are authorized, but not directed, to pay, and the banks are authorized to and may continue to charge, deduct and collect from the applicable Bank Accounts, in each case, without further order of this Court, all customary and usual prepetition and postpetition fees, expenses, and charges, including, without limitation, indemnification obligations, arising from or related to the Bank Accounts.

14. Subject to Section 553 of the Bankruptcy Code, all banks that maintain the Bank Accounts are prohibited from offsetting, affecting, freezing, or otherwise impeding the Debtors' use of any funds in the Bank Accounts on account of, or by reason of, any claim (as defined in Section 101(5) of the Bankruptcy Code) of any such bank against the Debtors that arose before the Petition date, absent further order of the Court.

15. Without limiting the foregoing, prepetition agreements existing between the Debtors and the banks shall continue to govern the post-petition cash management relationship between the Debtors and the banks, and all of the provisions of such agreements, including the termination, fee provisions, rights, benefits, collateral, and offset rights, and remedies afforded under such agreements shall remain in full force and effect absent further order of the Court or, with respect to any such agreement with the banks (including, for the avoidance of doubt, any rights the banks have to use funds from the Bank Accounts to remedy any overdraft of another Bank Account or other cash management obligations, whether prepetition or postpetition, to the extent permitted under the applicable agreement), unless the Debtors and the banks agree otherwise, and any other legal rights and remedies afforded to the banks under applicable law shall be preserved.

16. In connection with the ongoing utilization of the Cash Management System, the Debtors shall continue to maintain detailed records in the ordinary course of business with respect to all transfers so that all transactions (including any intercompany transactions) may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

17. To the extent applicable, the Debtors' time to comply with Section 345(b) of the Bankruptcy Code is hereby extended for a period of thirty (30) days from the date of this Final

Order (the “Extension Period”), provided, however, that such extension is without prejudice to the Debtors’ right to request a further extension of the Extension Period of the waiver of the requirements of Section 345(b) in these Chapter 11 Cases.

18. With respect to banks at which the Debtors hold the Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen (15) days of the date of entry of this Final Order the Debtors shall (a) contact each bank, (b) provide the bank with each of the Debtors’ employer identification numbers, and (c) identify each of the Bank Accounts held at such banks as being held by a debtor in possession in a bankruptcy case.

19. To the extent applicable, for Banks at which the Debtors hold Bank Accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith effort to cause such Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within forty-five (45) days of the date of this Final Order, or to transfer funds from such Banks to a bank account held at a bank that is a party to a Uniform Depository Agreement with the U.S. Trustee.

20. Nothing herein further authorizes the Debtors to make transfers or loans to non-debtor affiliates absent further order of the Court.

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

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

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

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

25. The 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**List of Bank Accounts**

Bank Name	Debtor Entity	Currency	Account Type / Account Name	Account Number
Deutsche Bank Trust Company Americas	Burgess BioPower, LLC	USD	Revenue Account	SX7590-001
			Subaccount: Revenue Account	SX7590-001.1
			Subaccount: Maintenance Revenue A/C	SX7590-001.2
			Subaccount: Cumulative Reduction Fund	SX7590-001.3
Deutsche Bank Trust Company Americas	Berlin Station, LLC	USD	Issuer Account	SX7590
			Subaccount: Funding Account	SX7590.1
			Subaccount: Issuer Account	SX7590.4
			Subaccount: Debt Service Reserve A/C	SX7590.5
			Subaccount: Loss Proceeds Reinvestment A/C	SX7590.6
M&T Bank	Burgess BioPower, LLC	USD	Checking	5859
M&T Bank	Berlin Station, LLC	USD	Checking	1322

EXHIBIT D**Company Credit Card**

Company Credit Card Account Name	Last Four Digits of Account Number	Holder Name	Spending Limit
M&T Bank Burgess BioPower LLC	4720	David Walker (Plant Manager)/Burgess BioPower, LLC	\$20,000.00