

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

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

Chapter 11  
  
Case No. 24-10235 (LSS)  
(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR INTERIM AND FINAL ORDERS (I)  
AUTHORIZING THE DEBTORS TO (A) CONTINUE THEIR INSURANCE POLICIES  
AND (B) PAY ALL OBLIGATIONS WITH RESPECT THERETO; (II) AUTHORIZING  
CONTINUATION OF INSURANCE PREMIUM FINANCING ARRANGEMENTS;  
AND (III) 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 *Motion of the Debtors for Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Their Insurance Policies and (B) Pay All Obligations with Respect Thereto; (II) Authorizing Continuation of Insurance Premium Financing Arrangements; and (III) 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.

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

2. The statutory predicates for the relief sought herein are Sections 105(a), 362(d), 363(b), 364(c), and 503(b) of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), Rules 4001, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-1 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 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* (the “First Day Declaration”), filed contemporaneously with the Motion and incorporated herein by reference.<sup>2</sup>

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<sup>2</sup> 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>

**RELIEF REQUESTED**

7. By the Motion, the Debtors request, pursuant to Sections 105(a), 362(d), 363(b), and 503(b) of the Bankruptcy Code, Rules 4001, 6003, and 6004 of the Bankruptcy Rules, and Rule 4001-1 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, but not directing, the Debtors to (a) continue to maintain the Insurance Policies (as defined herein) and (b) honor the Insurance Obligations (as defined herein), including amounts owed to the Insurance Service Providers (as defined herein) or to make payments on or enter into insurance financing arrangement, in the ordinary course of business during the Chapter 11 Cases, including with respect to payment of any prepetition Insurance Obligations; (ii) authorizing the Banks (as defined herein) to receive, process, honor, and pay all checks presented for payment and electronic payment requests related to the foregoing to the extent directed by the Debtors in accordance with the Motion; (iii) authorizing the Banks to rely on the Debtors’ designation of any particular check or electronic payment request as appropriate pursuant to the Motion without any duty of further inquiry and without liability for following the Debtors’ instructions; and (iv) granting related relief.

8. The Debtors request authority to pay or finance prepetition obligations related to the Insurance Policies (as defined herein) (a) upon entry of the Proposed Interim Order, in an amount not to exceed \$0.3 million and (b) upon entry of the Proposed Final Order, in an amount not to exceed \$2.5 million. The proposed interim cap of \$0.3 million consists of approximately \$300,000.00 remaining on property insurance financing.

9. The relief requested herein will ensure that the Debtors maintain the Insurance Policies (as defined herein) in the ordinary course of business. Furthermore, the Debtors seek

authority to finance property insurance expiring in May 2024 in an amount not to exceed \$2.2 million. The Debtors estimate the first payment, if consistent with last year, will be due in June 2024.

### **THE DEBTORS' INSURANCE POLICIES**

#### **I. Overview**

10. In connection with the operation of their business, the Debtors, under the advisement and administration of CS Operations, Inc (“CS Operations”), a nondebtor affiliate of the Debtors, maintain various insurance policies providing coverage pertaining to, *inter alia*, commercial general liability, commercial property, automobile, crime, fiduciary, products and management liability, director and officer liability (the “D&O Policies”), workers’ compensation, and employment practices liability (collectively, the “Insurance Policies”) and incur premiums and other obligations related thereto (the “Insurance Obligations”).

11. As described further below, the Debtors generally obtain the Insurance Policies through arrangements with the Insurance Service Providers (as defined herein). The Debtors have procured the Insurance Policies through several different insurance carriers (collectively, the “Insurers”), including the Insurance Policies listed on **Exhibit C** hereto (the “Insurance Schedule”).<sup>3</sup> The Insurance Policies help limit the various risks associated with operating the Debtors’ business and are essential to the continued operation of the Debtors’ business in the Chapter 11 Cases. In addition, certain of the Insurance Policies are required by regulations, laws, and contracts that govern the Debtors’ commercial activities. The Debtors believe the Insurance

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<sup>3</sup> It is possible that certain of the Insurance Policies may have been inadvertently omitted from the Insurance Schedule. Consequently, the Insurance Schedule includes a non-exhaustive list of the Insurance Policies. In addition, the Debtors may, in the future, enter into new insurance policies not listed on the Insurance Schedule. To the extent the Debtors identify additional Insurance Policies not listed on the Insurance Schedule, the Debtors seek authority to continue such Insurance Policies uninterrupted and honor, in the Debtors’ discretion, the Insurance Obligations.

Policies provide coverage that is typical in scope and amount for businesses within the Debtors' industry.

12. The Insurance Policies generally require the Debtors to pay premiums based upon fixed or variable annual rates established by the Insurers (collectively, the "Insurance Premiums") at the beginning of the applicable policy period and certain policies are paid in quarterly installment. The Insurance Premiums are typically billed directly by the Insurers to the Insurance Service Providers (as defined herein) on or soon after a given insurance policy's period date, and are paid by the Debtors through the Insurance Service Providers. The Debtors pay the Insurance Premiums through lump sums on an annual basis, through monthly financing arrangements or under quarterly installments. The Debtors paid approximately \$2.1 million on account of the Insurance Premiums for policy year 2023 (including the Insurance Service Providers' Fees (as defined herein)).

13. By the Motion, the Debtors request authority, but not direction, to continue the Insurance Policies and honor the Insurance Obligations in the ordinary course of business, including authority to pay any amounts that may be due or owing or that come due or owing under the Insurance Policies, whether arising from the Debtors' prepetition or postpetition operations, throughout the Chapter 11 Cases. For the sake of clarity, the Debtors believe no prepetition amounts are owed on account of the Insurance Obligations, but seek to make installment payments in the ordinary course of business during the pendency of these Chapter 11 Cases.

## II. ***Insurance Service Providers***

14. In connection with maintaining the Insurance Policies, the Debtors employ Breckenridge Insurance ("Breckenridge") and Varney Agency ("Varney" and together with Breckenridge, the "Insurance Service Providers") to help them procure, negotiate, and evaluate the

Insurance Policies and process claims related thereto. The Insurance Service Providers are paid commissions on the Insurance Policies directly by the Insurers based on a predetermined percentage of premiums (the “Insurance Service Providers’ Fees”).

15. The Insurance Service Providers are intimately familiar with the Debtors, their insurance needs, and the Insurance Policies. The Insurance Service Providers therefore play a critical role in the procurement and renewal of the Insurance Policies.

16. By the Motion, the Debtors request authority, but not direction, to continue honoring their obligations to the Insurance Service Providers in the ordinary course of business, whether arising from the Debtors’ prepetition or postpetition operation, throughout the Chapter 11 Cases. For the sake of clarity, the Debtors believe no prepetition amounts are owed to the Insurance Service Providers.

### **BASIS FOR RELIEF REQUESTED**

#### **I. *Continuing the Insurance Policies and Paying Prepetition Insurance Obligations are Necessary to Comply with Various Legal Requirements and Guidelines***

17. Maintaining insurance coverage under the Insurance Policies on an uninterrupted basis is essential to the continued operation of the Debtors’ business and, in some cases, is required under the United States Trustee’s Operating Guidelines for Chapter 11 Cases (the “Operating Guidelines”), laws and regulations applicable to the Debtors’ business, the laws of the various states in which the Debtors operate, and the Debtors’ various contractual commitments. *See* Operating Guidelines § 3 (requiring maintenance of appropriate insurance coverage).

18. The Debtors believe that the ordinary course maintenance of their insurance coverage, including paying all prepetition Insurance Obligations, satisfying all postpetition commitments to the Insurers, renewing the Insurance Policies, entering into new insurance

arrangements, and paying the Insurance Service Providers' Fees, is necessary and essential to the Debtors' achievement of their chapter 11 objectives.

**II. *Continuing the Insurance Policies and Paying Prepetition Insurance Obligations is Warranted under Sections 363(b)(1) and 105(a) of the Bankruptcy Code***

19. The Court may authorize a debtor to pay certain prepetition obligations pursuant to Section 363(b) of the Bankruptcy Code, which provides, in pertinent part, that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Generally, the debtor is only required to “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under Section 363(b) of the Bankruptcy Code). Courts have consistently been reluctant to interfere with a debtor in possession’s use of property “unless it is shown that the bankrupt’s decision was one taken in bad faith or in gross abuse of the bankrupt’s related discretion.” *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985); *see also In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where 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.”). Cf. *In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of business judgment rule on the merits is a near-Herculean task.”).

20. Section 105(a) of the Bankruptcy Code empowers the Court to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the title.” 11 U.S.C. § 105(a). Section 105(a) operates “to facilitate the implementation of other Bankruptcy Code provisions,” and in so doing, “provides the bankruptcy court [with] broad authority to

‘exercise its equitable powers[.]’” *Ameriquest Mortgage Co. v. Nosek (In re Nosek)*, 544 F.3d 34, 43 (1st Cir. 2008) (internal citations omitted). Bankruptcy courts have interpreted this provision to authorize payments on prepetition claims where the payments are essential to the success of the debtor’s Chapter 11 objectives under what is commonly known as the “necessity of payment doctrine.” *See, e.g., In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (“Thus, the ‘necessity of payment’ doctrine … teaches no more than, if a payment of a claim which arose prior to reorganization is essential to the continued operation of the [debtor’s business] during reorganization, payment may be authorized even if it is made out of corpus.”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (holding that Section 105(a) “provides a statutory basis for payment of pre-petition claims” under necessity of payment doctrine); *In re Pers. Commc’n Devices, LLC*, 588 B.R. 661, 666 (Bankr. E.D.N.Y. 2018) (“[The necessity of payment] rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (“The appropriate standard … is commonly referred to as the ‘necessity of payment doctrine.’”).

21. The Debtors’ sound business judgment supports paying the prepetition Insurance Obligations because they are necessary costs of preserving the Debtors’ estate. Failure to pay these obligations could result in: (a) cancellation of the Insurance Policies; (b) the Debtors’ inability to obtain renewal of the Insurance Policies on terms that are competitive; and (c) violation of the Operating Guidelines, applicable laws and regulations, various contractual commitments, or the fiduciary duties of the Debtors as debtors in possession. Moreover, Section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public” is “cause” for mandatory conversion or dismissal of a chapter 11 case.

Each of these outcomes would be detrimental to the Debtors, their creditors, and their estates and would create unnecessary risks that far outweigh the cost of paying the prepetition Insurance Obligations.

22. Paying the prepetition Insurance Obligations is also necessary to maximize value of the Debtors' estates. Paying these obligations is necessary to avoid cancellation, default, alteration, assignment, attachment, lapse, or any form of impairment to the coverage, benefits, or proceeds provided under the Insurance Policies, and to maintain good relationships with the Insurers, the Insurance Service Providers, and local governments. If any of those risks were to materialize, they could cause substantial disruption and expose the Debtors to liabilities significantly greater than the amount of the obligations to be paid. Further, based on the Debtors' current circumstances, it is unlikely that the Debtors will be able to renew or replace their existing Insurance Policies on terms more favorable than those currently offered by the Insurers. The process of establishing new insurance policies would also be unduly time-consuming, burdensome and costly to the Debtor. Accordingly, continuation of the Insurance Policies is essential to the Debtors' operations and reorganization efforts.

23. For these reasons and pursuant to Sections 363(b)(1) and 105(a) of the Bankruptcy Code, the Debtors request authority, but not direction, to continue the Insurance Policies and honor the Insurance Obligations, including amounts owed to the Insurance Service Providers, in the ordinary course of business during the Chapter 11 Cases, including paying any prepetition Insurance Obligations.

**III. *Continuing the Insurance Policies, Paying Postpetition Insurance Obligations, and Renewing or Entering into new Insurance Policies is Warranted under Section 363(c) of the Bankruptcy Code***

24. The Court may authorize a debtor to continue insurance policies, pay postpetition obligations, renew insurance policies, or enter into new insurance policies pursuant to Section 363(c) of the Bankruptcy Code. Section 363(c) provides that a debtor in possession may “enter into transactions” in the ordinary course without notice or a hearing. *See* 11 U.S.C. § 363(c). In evaluating whether a transaction is in the ordinary course, a court must determine whether it is “of the sort commonly undertaken by companies in [the debtor’s] industry” and whether it subjects a hypothetical creditor “to economic risk of a nature different from those he accepted when he decided to extend credit.” *In re Roth Am., Inc.*, 975 F.2d 949, 952–53 (3d Cir. 1992).

25. Maintaining the Insurance Policies and honoring postpetition obligations arising thereunder and under the Insurance Service Providers’ agreements, including undertaking renewals of the Insurance Policies as they expire or entering into new insurance arrangements, are each the type of ordinary course transactions contemplated by Section 363(c) of the Bankruptcy Code. In the event, however, that the Court finds that any actions are not properly characterized as transactions in the ordinary course of the Debtors’ business, the Debtors respectfully request that the Court authorize the Debtors to take actions pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code as a sound exercise of their business judgment and necessary to preserve the Debtors’ estates.

**IV. *Continuing to Honor Obligations Under Premium Financing Arrangements is Warranted Under Section 364(c) of the Bankruptcy Code***

26. Insurance premium financing traditionally involves an advance by the finance company to the insurance company or its agent of the premium due for the full term of the insurance policy. “This advance is then repaid by the insured to the finance company in amortized

monthly installments which include an additional amount to cover financing charges. The financing company is secured in making this advance payment by obtaining the right to cancel the policy and to receive the return premium due upon cancellation if timely repayments are not made.” *Baker & Co. v. Preferred Mut. Ins. Co.*, 569 F.2d 1347, 1348 (5th Cir. 1978). The return premium due to the finance company upon cancellation is known as an unearned premium.

27. Security interests created by premium financing agreements have been recognized as creating secured claims in bankruptcy to the extent of the amount of unearned premiums financed pursuant to such agreements and, by extension, entry into purchase finance agreements constitutes the incurrence of secured credit. See *TIFCO, Inc. v. U.S. Repeating Arms Co. (In re U.S. Repeating Arms Co.)*, 67 B.R. 990, 994–95 (Bankr. D. Conn. 1986); *Drabkin v. A.I. Credit Corp. (In re Auto-Train Corp.)*, 9 B.R. 159, 164–66 (Bankr. D. D.C. 1981). Because the Debtors are required to maintain insurance coverage during these Chapter 11 Cases, the cancellation of any of the Insurance Policies due to any failure to honor premium financing arrangements would be particularly disastrous. Accordingly, the Debtors submit that continuing to honor obligations under premium financing agreements is necessary and appropriate.

28. Pursuant to section 364(c) of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured postpetition debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estate. See, e.g., *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (stating that with respect to postpetition credit, courts “permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties”); *In re Simasko Prod. Co.*, 47 B.R. 444, 448–49 (D. Colo. 1985) (authorizing interim financing agreement where debtors’ business judgment indicated financing was necessary and reasonable for the benefit of the estate). Given the prevailing practices in the

well-established industry for premium financing, the Debtors believe that it is highly unlikely they would be able to obtain financing for their premiums under the Insurance Policies absent a secured financing agreement. As a result, the Debtors submit that entry into premium financing arrangements and granting security interests to secure such obligations is appropriate under section 364(c) of the Bankruptcy Code.

**V. *Cause Exists to Authorize the Banks to Honor Checks and Electronic Fund Transfers Related to this Motion***

29. The Debtors further request that the Court authorize all applicable financial institutions (collectively, the “Banks”) (i) when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests relative to the relief requested herein, to the extent that the Debtors have sufficient funds on deposit in their accounts with the Banks, and (ii) to rely on the representations of the Debtors without any duty of further inquiry and without liability for following the Debtors’ instructions.

30. The Debtors anticipate having sufficient funds to pay the amounts on account of the Insurance Obligations and the Insurance Service Provider Fees in the ordinary course of business using unencumbered cash. In addition, under the Debtors’ existing cash management system, the Debtors can identify readily whether checks, ACH, or wire transfer requests are payments authorized by the relief requested in the Motion. The Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently.

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

31. 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.

32. 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 estate for the benefit of all stakeholders. Accordingly, 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.

33. 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 in order 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**

34. 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; or (f) 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**

35. Notice of the Motion has been or will be provided to (a) the U.S. Trustee (Attn: Jane M. Leamy); (b) the holders of the twenty (20) largest unsecured claims against each Debtor; (c) counsel to Deutsche Bank Trust Company Americas in its capacity as Collateral Agent, Hogan Lovells LLP; (d) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP; (e) Berlin Biopower Investment Fund, LLC, with a copy to Murray Plumb & Murray; (f) Greenline CDF Subfund XVIII LLC, with a copy to Kutak Rock LLP, U.S. Bancorp Community Development Corporation and Leverage Law Group, LLC; (g) Public Service of New Hampshire d/b/a Eversource Energy, with a copy to Hunton Andrews Kurth LLP; (h) the United States Attorney's Office for the District of Delaware; (i) the United States Attorney's Office for the District of New Hampshire; (j) the United States Environmental Protection Agency; (k) the Nuclear Regulatory Commission; (l) the United States Department of Energy; (m) the Federal Energy Regulatory Commission; (n) New Hampshire Department of Environmental Services; (o) New Hampshire Public Utilities Commission; (p) New Hampshire Site Evaluation Committee; (q) New Hampshire Department of Energy; (r) City of Berlin; (s) ISO New England, Inc.; (t) the United States Securities and Exchange Commission; (u) the Internal Revenue Service; (v) the Insurers; (w) the Insurance Service Providers; 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.

36. 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

/s/ Chantelle D. McClamb

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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.*<sup>1</sup>  
Debtors.

Chapter 11

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

**Re: D.I.**

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE TO  
MAINTAIN INSURANCE POLICIES AND PROGRAMS AND (B) HONOR ALL  
INSURANCE OBLIGATIONS; (II) AUTHORIZING CONTINUATION OF  
INSURANCE PREMIUM FINANCING ARRANGEMENTS;  
AND (III) GRANTING RELATED RELIEF**

Upon the *Motion of the Debtors for Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Their Insurance Policies and (B) Pay All Obligations with Respect Thereto; (II) Authorizing Continuation of Insurance Premium Financing Arrangements; and (III) Granting Related Relief* (the “Motion”);<sup>2</sup> 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

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

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

that no other further notice is necessary, except as set forth in the Motion with respect to entry of this Interim Order; and good cause appearing therefor; it is hereby

ORDERED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, to maintain the Insurance Policies in accordance with practices and procedures that were in effect before the commencement of the Chapter 11 Cases and to pay, in the ordinary course of business as such obligations become due, the Insurance Obligations (including, without limitation, amounts owed to the Insurance Service Providers), without regard to whether accruing or relating to the period before or after the Petition Date, *provided* that all payments on account of prepetition Insurance Obligations shall not exceed \$0.3 million in the aggregate.
3. The Debtors are authorized, but not directed, to renew, revise, extend, supplement, replace, modify or obtain new insurance coverage as needed, including through the purchase or renewal of new or existing Insurance Policies.
4. The Debtors are authorized, but not directed, to continue their insurance premium financing arrangements.
5. The Banks shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks or electronic funds transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' accounts, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.

6. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors before the Petition Date should be honored pursuant to this Interim Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

7. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of the Insurance Obligations as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored as a result of the commencement of the Chapter 11 Cases.

8. Subject to entry of a Final Order, and notwithstanding anything to the contrary in the financing agreements, in the event the Debtors default under the terms of the financing agreements, the finance company shall not cancel any insurance policy of the Debtors without first providing notice of such default in writing by overnight mail to the Debtors and their bankruptcy counsel, and at least five (5) business days to cure. If the Debtors fail to cure the default within that time, then the finance company may, in accordance with the terms of the financing agreements, and without further order of this Court, exercise any and all of its rights under the financing agreements.

9. Notwithstanding anything to the contrary in the financing agreements, the Debtors' filing of these bankruptcy cases shall not constitute a default under the financing agreements.

10. Absent further order of this Court upon notice, during the course of these bankruptcy cases, the Debtors shall not renew or enter into any new premium financing agreement upon any terms less favorable than those in the exiting financing agreements.

11. Nothing in the Motion or this Interim Order, nor any actions or payments made by the Debtors pursuant to this Interim Order, shall 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' properties; (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 365 of the Bankruptcy Code; or (f) 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 this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

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

13. 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.

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

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

16. 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, 25<sup>th</sup> 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.

17. 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.*<sup>1</sup>  
Debtors.

Chapter 11

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

**Re: D.I.**

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE TO  
MAINTAIN INSURANCE POLICIES AND PROGRAMS AND (B) HONOR ALL  
INSURANCE OBLIGATIONS; (II) AUTHORIZING CONTINUATION OF  
INSURANCE PREMIUM FINANCING ARRANGEMENTS;  
AND (III) GRANTING RELATED RELIEF**

Upon the *Motion of the Debtors for Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Their Insurance Policies and (B) Pay All Obligations with Respect Thereto; (II) Authorizing Continuation of Insurance Premium Financing Arrangements; and (III) Granting Related Relief* (the “Motion”);<sup>2</sup> 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

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

<sup>2</sup> 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, but not directed, to maintain the Insurance Policies in accordance with practices and procedures that were in effect before the commencement of the Chapter 11 Cases and to pay, in the ordinary course of business as such obligations become due, the Insurance Obligations (including, without limitation, amounts owed to the Insurance Service Providers), without regard to whether accruing or relating to the period before or after the Petition Date, *provided* that all payments on account of prepetition Insurance Obligations shall not exceed \$2.5 million in the aggregate.
3. The Debtors are authorized, but not directed, to renew, revise, extend, supplement, replace, modify or obtain new insurance coverage as needed, including through the purchase or renewal of new or existing Insurance Policies.
4. The Debtors are authorized, but not directed, to continue their insurance premium financing arrangements.
5. The Banks shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks or electronic funds transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' accounts, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.
6. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors before the Petition Date should be

honored pursuant to this Final Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

7. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of the Insurance Obligations as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored as a result of the commencement of the Chapter 11 Cases.

8. Notwithstanding anything to the contrary in the financing agreements, in the event the Debtors default under the terms of the financing agreements, the finance company shall not cancel any insurance policy of the Debtors without first providing notice of such default in writing by overnight mail to the Debtors and their bankruptcy counsel, and at least five (5) business days to cure. If the Debtors fail to cure the default within that time, then the finance company may, in accordance with the terms of the financing agreements, and without further order of this Court, exercise any and all of its rights under the financing agreements.

9. Notwithstanding anything to the contrary in the financing agreements, the Debtors' filing of these bankruptcy cases shall not constitute a default under the financing agreements.

10. Absent further order of this Court upon notice, during the course of these bankruptcy cases, the Debtors shall not renew or enter into any new premium financing agreement upon any terms less favorable than those in the exiting financing agreements.

11. Nothing in the Motion or this Final Order, nor any actions or payments made by the Debtors pursuant to this Final Order, shall 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' properties; (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 365 of the Bankruptcy Code; or (f) 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 this Final Order. Nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

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

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

14. 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**

Type of Coverage	Insurer	Policy Number	Current Policy Period	Total Annual Premium
Automobile Liability	Admiral Insurance Company	BEX09603030-05	1/1/24-1/1/25	\$55,770.00
Commercial General Liability - Primary	Westchester Fire Insurance Company	G24914173 013	1/1/24-1/1/25	\$33,500.00
Commercial General Liability	Great American Insurance Company	IMP E906665 01 00	10/30/23-10/30/24	\$9,806.00
Commercial – 1st Excess	Admiral Insurance Company	G27941199 008	1/1/23-1/1/24	\$66,500.00
Commercial – 2 <sup>nd</sup> Excess	RSUI Indemnity Company	NHA106143	1/1/24-1/1/25	\$40,800.00
Commercial		Fees and Charges	2/16/24-2/16/25	\$7,826.62
D&O – Primary	Zurich American Insurance Company	MPL 0232711-08	2/16/24-4/16/25	\$304,082.00
D&O – 1st Excess	Wesco Insurance Company	EUW 1880195-02	2/16/24-4/16/25	\$166,472.00
D&O – 2nd Excess	RSUI Indemnity Company	NHS704057	2/16/24-4/16/25	\$92,055.00
Pollution Coverage	Allied World	0306-9463	8/30/21-10/30/24	\$55,620.00
Property	HSB Specialty Insurance Co.	NHX0006900145	5/31/23-5/31/24	\$202,349.68

Type of Coverage	Insurer	Policy Number	Current Policy Period	Total Annual Premium
Property	Lloyd's of London	AGA200428/499/45 3/5	5/31/23- 5/31/24	\$951,645.36
Property	Swiss International	UTP 2000409-01	5/31/23- 5/31/24	\$135,660.99
Property	Zurich North America	PWG0443508000	5/31/23- 5/31/24	\$218,871.25
Property		Fees and Charges	5/31/23- 5/31/24	\$32,181.78
Workers' Compensation	Lumber Industries Self Insured Group Trust	280116114	1/1/24- 1/1/25	\$36,963.00