

**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) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES; (II) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES; (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT; AND (IV) 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 Entry of Interim and Final Order (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services; (II) Determining Adequate Assurance of Payment for Future Utility Services; (III) Establishing Procedures for Determining Adequate Assurance of Payment; and (IV) Granting Related Relief* (the “Motion”). In support of this Motion, the Debtors state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* of the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding within the

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.

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) and 366 of Title 11 of chapter 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(m) 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 Local Rule 9013-1(f), the Debtors consent to the entry of final orders or judgments by the Court if it is 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 operate their business and manage their properties as debtors in possession, pursuant to Bankruptcy Code Sections 1107(a) and 1108. As of the date of this Motion, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

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

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

THE DEBTORS' UTILITIES

7. In connection with the operation of their businesses and management of their properties, the Debtors historically obtained water, electricity, internet, and other similar services (collectively, the "Utility Services") from a number of utility providers or their brokers (collectively, the "Utility Providers"). A list of the names, addresses, and average monthly bill for each Utility Provider is attached hereto as **Exhibit C**.³

8. The Debtors paid, on average, approximately \$200,000.00 per month, for Utility Services.⁴ Notwithstanding the foregoing, the Debtors reserve the right, in their discretion, to not pay the proposed Adequate Assurance Deposit (defined below) for a particular Utility Provider and to instead permit the Utility Provider to cease providing the respective Utility Service. The Debtors estimate that the prepetition amount due for Utility Services is approximately \$300,000.00. The Debtors estimate that their cost for Utility Services during the postpetition period will average approximately \$250,000.00 per month, which reflects an above-average demand for electricity.

PROPOSED ADEQUATE ASSURANCE AND ADEQUATE ASSURANCE PROCEDURES

9. The Debtors, in their sole discretion and in the ordinary course of business, may pay certain prepetition and postpetition obligations to their Utility Providers in a timely manner. Cash held by the Debtors and cash generated in the ordinary course of business will provide

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

³ The relief requested herein is for all Utility Providers providing Utility Services to the Debtors and is not limited to those listed on **Exhibit C**.

⁴ The Debtors do not admit by virtue of this Motion that any of those parties designated as a Utility Provider herein or on **Exhibit C** is, indeed a "utility" as used in Section 366 of the Bankruptcy Code, and reserves all rights with respect to the same.

sufficient liquidity to pay the Debtors' Utility Service obligations in accordance with their prepetition practice.

10. To provide additional assurance of payment, if requested by any provider, the Debtors propose to deposit \$100,000.00 (the "Adequate Assurance Deposit"), which represents approximately 50% of the average monthly cost of the Utility Services, calculated based on the Debtors' average monthly cost of Utility Services over the twelve-month period preceding the Petition Date, into a segregated account to be established by the Debtors (the "Adequate Assurance Account").

11. The Adequate Assurance Deposit will be held by the Debtors in the Adequate Assurance Account in the amount set forth for each Utility Provider in the amount set forth for such Utility Provider. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future Utility Services in accordance with their prepetition practices (collectively, the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance to the Utility providers, in full satisfaction of Section 366 of the Bankruptcy Code.

12. In the event that an entity believes that it is a Utility Provider and seeks to make a request for adequate assurance of future payment (each, an "Adequate Assurance Request"), the Debtors request that they do so pursuant to the following procedures (the "Adequate Assurance Procedures"):

- a. Any Utility Provider that objects to the Debtors' Proposed Adequate Assurance must serve an Adequate Assurance Request so that it is actually received by the following parties (collectively, the "Notice Parties"): (i) the Debtors, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408, Attn: Dean Vomero; (ii) Foley Hoag, 1301 Avenue of the Americas, 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); (iii) 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); and (iv) 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).

- b. Any Adequate Assurance Request must: (i) be made in writing; (ii) identify the location for which the Utility Services are provided and the account number for the location; (iii) include information regarding any security deposits paid by the Debtors; (iv) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (v) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- c. Upon the Notice Parties' receipt of an Adequate Assurance Request, the Debtors shall have 21 days from the receipt of the Adequate Assurance Request (the "Resolution Period") to negotiate with the Utility Provider to resolve the Utility Provider's Adequate Assurance Request.
- d. Unless and until a Utility Provider serves an Adequate Assurance Request on the Notice Parties, such Utility Provider shall be (i) deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code and (ii) prohibited from discontinuing, altering or refusing service to, or discriminating against, the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- e. Without further order of the Court but with the consent of the Senior Secured Noteholders, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Adequate Assurance Request if the Debtors, in consultation with the Senior Secured Noteholders, determine that the Adequate Assurance Request is reasonable.
- f. If the Debtors determine, in consultation with the Senior Secured Noteholders, that the Adequate Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, the Debtors, during or immediately after the

Resolution Period, will request a hearing (a “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to Section 366(c)(3) of the Bankruptcy Code.

- g. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing or discontinuing service to the Debtors on account of (i) unpaid charges for prepetition services; (ii) a pending Adequate Assurance Request; and/or (iii) any objections filed in response to the Proposed Adequate Assurance.
- h. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) shall be returned to the Debtors, less any amounts owed on account of unpaid, postpetition Utility Services, by no later than ten (10) business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these Chapter 11 Cases, (ii) the Debtors obtain the affected Utility Company’s consent; or (iii) the Debtors file a notice with the Court and serve upon the affected Utility Company a notice of the Debtors’ intent to return the Adequate Assurance Deposit and receive no response thereto.

13. The Adequate Assurance Procedures set forth a streamlined process for Utility Providers to address potential concerns with respect to the Proposed Adequate Assurance, while at the same time allowing the Debtors to administer their chapter 11 estates uninterrupted. The Adequate Assurance Procedures permit a Utility Provider to object to the Proposed Adequate Assurance by serving an Adequate Assurance Request upon the specified notice parties. The Debtors, in their discretion, may then resolve any Adequate Assurance Request by mutual agreement with the Utility Provider and without further order of the Court. If the Adequate Assurance Request cannot be resolved by mutual agreement, the Debtors may seek Court resolution of the Adequate Assurance Request.

14. To the extent that the Debtors identify new Utility Providers not listed on **Exhibit C**, the Debtors will serve such Utility Provider a copy of the Court’s order regarding

Utility Services, including the Adequate Assurance Procedures. The Debtors request that the terms of that order and the Adequate Assurance Procedures apply to any subsequently identified Utility Provider. The Debtors shall supplement **Exhibit C** to list any subsequently identified Utility Provider and increase the amount in the Adequate Assurance Account by an amount equal to the cost of two weeks of Utility Service provided by such Utility Provider. Any supplement to **Exhibit C** shall be filed with this Court and served on subsequently identified Utility Providers.

15. Unless complying with the Adequate Assurance Procedures, the Debtors request that the Utility Providers, including subsequently added Utility Providers, be forbidden from altering, refusing, or discontinuing service or requiring additional assurance of payment other than the Proposed Adequate Assurance, pending entry of a final order approving the relief requested herein.

RELIEF REQUESTED

16. Because uninterrupted Utility Services are critical to the Debtors' ongoing operation, by this Motion and pursuant to Sections 105(a) and 366 of the Bankruptcy Code, the Debtors seek the entry of the Proposed Interim Order, attached hereto as **Exhibit A**, and the Proposed Final Order, attached hereto as **Exhibit B**, (a) prohibiting their Utility Providers from altering, refusing or discontinuing services; (b) deeming Utility Providers adequately assured of future performance; (c) establishing procedures for determining adequate assurance of future payment, and (d) granting related relief.

BASIS FOR RELIEF

17. Section 366 of the Bankruptcy Code provides that utility companies may not alter, refuse, or discontinue service to a debtor during the first twenty days of a bankruptcy case. *See* 11 U.S.C. §366. Section 366(b) provides that, after the initial twenty-day period, a utility may alter,

refuse or discontinue service if the debtor has not, within that initial time period “furnishe[d] adequate assurance of payment, in the form of a deposit or other security.” *Id.* §366(b).

18. Section 366(c)(2) of the Bankruptcy Code provides that a utility may alter, refuse or discontinue service, if within 30 days following the petition date, such utility has not received adequate assurance of payment that is satisfactory to the utility. *Id.* §366(c)(2). Section 366 is therefore designed to not only provide utility companies with adequate assurance that debtors will be able to pay for post-petition services, but also to protect debtors from utility service cutoffs. *See* H.R. Rep. No. 95-595, at 350 (1978) *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6306.

19. Section 366(c)(1)(A) of the Bankruptcy Code defines “adequate assurance of payment” as “(i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.” 11 U.S.C. 366(c)(1)(A). The Bankruptcy Code only specifies the form of assurance deemed to be adequate, and is silent on the amount of assurance to be provided, leaving such amount to the discretion of the bankruptcy courts.

20. Although assurance of payment must be “adequate,” it need not constitute an absolute guaranty of a debtor’s ability to pay. *See, e.g., In re Great Atl. & Pac. Tea Co.*, No. 11-cv-1338, 2011 WL 5546954, at *5 (Bankr. S.D.N.Y. Nov. 14, 2011) (“Courts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full.”); *In re Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires ... ‘adequate assurance’ of payment. The statute does not require an absolute guarantee of payment” (citations omitted)).

21. In determining whether a given assurance of payment is “adequate,” courts should examine the totality of the circumstances to make an informed decision as to whether a utility provider will be subject to an unreasonable risk of nonpayment. *See In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981); *In re Adelpia Bus. Solutions Inc.*, 280 B.R. 63, 82-83 (Bankr. S.D.N.Y. 2002). Courts have recognized that in making the determination, “a bankruptcy court must focus upon the need of the utility for assurance, and ... require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646, 650 (2d Cir. 1997) (internal quotations omitted).

22. Further, the Court has the authority to grant the relief requested herein pursuant to Section 105(a) of the Bankruptcy Code, which provides that the Court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §105(a).

23. The Debtors’ Utility Providers are adequately assured against any risk of nonpayment for future services. Section 366(c)(1) of the Bankruptcy Code provides that a cash deposit, which the Debtors propose to make, constitutes an acceptable form of adequate assurance of payment. Specifically, the Debtors propose to make the Adequate Assurance Deposit equal to 50% of the Debtors’ average costs for the Utility Services. Moreover, the Debtors propose to protect the Utility Providers further by establishing the Adequate Assurance Procedures set forth herein, whereby any Utility Provider can request additional adequate assurance in the event that it believes there are facts and circumstances with respect to the provision of postpetition Utility Services to the Debtors that would merit greater protection.

24. Any loss of Utility Services could result in the immediate disruption of the Debtors' business, damage to the Debtors' relationships with their customers and vendors, and a loss of good will. Such an interruption would significantly interfere with the Debtors' efforts to sustain their business and satisfy their obligations to creditors. It is therefore critical that the Utility Services continue uninterrupted.

25. On the other hand, granting the relief requested herein will not prejudice the Utility Providers. They will be adequately protected by the Adequate Assurance Deposit, a cash deposit, on account of postpetition Utility Services, have the ability seek additional relief under the Adequate Assurance Procedures if they believe there is a basis therefor, and be paid postpetition for postpetition Utility Services.

26. Finally, the relief requested herein, including the Adequate Assurance Procedures, is similar to the relief granted in this district in recent chapter 11 cases. *See, e.g., In re Lincoln Power, L.L.C.*, Case No. 23-10382 (LSS) (Bankr. D. Del. Apr. 27, 2023); *In re Pear Therapeutics, Inc.*, Case No. 23-10428 (TMH) (Bankr. D. Del. Apr. 27, 2023); *In re Performance Powersports Group Investor, LLC*, Case No 23-10047 (LSS) (Bankr. D. Del. Feb. 9, 2023); *In re Quanergy Systems, Inc.*, Case No. 22-11305 (CTG) (Bankr. D. Del. Jan. 11, 2023); *In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. Feb. 21, 2019); *In re Bonanza Creek Energy, Inc.*, Case No 17-10015(KJC) (Bankr. D. Del. Jan 5, 2017).

27. Based on the foregoing, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, is in the best interests of the Debtors' estates and creditors, and is not prejudicial to the rights of any Utility Provider.

BANKRUPTCY RULES 6003 AND 6004

28. Rule 6003 of the Bankruptcy Rules provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting ... (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” Fed. R. Bankr. P. 6003. As set forth above, it is imperative that the Utility Providers continue to provide services to the Debtors in the ordinary course of business. Failure to do so would likely result in immediate and irreparable harm to the Debtors’ operations and disrupt the Debtors’ ability to administer their chapter 11 estates. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support granting the relief requested herein.

29. In order to effectively implement the foregoing, the Debtors seek a waiver of the notice requirements and the stay of the order authorizing the use, sale or lease of property of the estate under Bankruptcy Rules 6004(a) and 6004(h), to the extent such provisions are applicable.

RESERVATION OF RIGHTS

30. Nothing contained in this Motion or any actions taken by the Debtors pursuant to the relief granted in the Interim Order or Final Order 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 Interim Order or Final Order will be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

NOTICE AND NO PRIOR REQUEST

31. 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; (w) the Utility Providers; and (y) any party that has requested notice pursuant to Bankruptcy Rule 2002.

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.

32. 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, enter the Proposed Orders, substantially in the form attached hereto, and grant 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)
GIBBONS P.C.
300 Delaware Avenue, Suite 1015
Wilmington, Delaware 19801
Telephone: (302) 518-6300
E-mail: cmclamb@gibbonslaw.com

-and-

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

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

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

-and-

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

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

EXHIBIT A

Interim Order

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

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

Re: D.I.

INTERIM ORDER (I) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES; (II) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES; (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT; AND (IV) GRANTING RELATED RELIEF

Upon the *Motion of the Debtors for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services; (II) Determining Adequate Assurance of Payment for Future Utility Services; (III) Establishing Procedures for Determining Adequate Assurance of Payment; 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; and

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

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 will serve a copy of the Motion and this Interim Order upon each Utility Provider identified on Exhibit C to the Motion, within two (2) business days after entry of this Interim Order by the Court.
3. Until such time as this Court enters a final order on the Motion, or the Court orders otherwise, all Utility Providers are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.
4. Subject to the terms herein, within ten (10) business days after the date of the entry of this Interim Order, the Debtors shall establish a segregated account funded by the Adequate Assurance Deposit for the purpose of providing the Utility Providers with adequate assurance of payment for postpetition Utility Services to the Debtors.
5. The following Adequate Assurance Procedures are hereby approved on an interim basis:
 - a. Any Utility Provider that objects to the Debtors' Proposed Adequate Assurance must serve an Adequate Assurance Request so that it is actually received by the following parties (collectively, the "Notice Parties"): (i) the Debtors, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408, Attn: Dean Vomero; (ii) Foley Hoag, 1301 Avenue of the Americas, 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); (iii) 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); and (iv) 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).

- b. Any Adequate Assurance Request must: (i) be made in writing; (ii) identify the location for which the Utility Services are provided and the account number for the location; (iii) include information regarding any security deposits paid by the Debtors; (iv) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (v) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- c. Upon the Notice Parties' receipt of an Adequate Assurance Request, the Debtors shall have 21 days from the receipt of the Adequate Assurance Request (the "Resolution Period") to negotiate with the Utility Provider to resolve the Utility Provider's Adequate Assurance Request.
- d. Unless and until a Utility Provider serves an Adequate Assurance Request on the Notice Parties, such Utility Provider shall be (i) deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code and (ii) prohibited from discontinuing, altering or refusing service to, or discriminating against, the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- e. Without further order of the Court but with the consent of the Senior Secured Noteholders, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Adequate Assurance Request if the Debtors, in consultation with the Senior Secured Noteholders, determine that the Adequate Assurance Request is reasonable.
- f. If the Debtors determine, in consultation with the Senior Secured Noteholders, that the Adequate Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, the Debtors, during or immediately after the

Resolution Period, will request a hearing (a “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to Section 366(c)(3) of the Bankruptcy Code.

- g. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing or discontinuing service to the Debtors on account of (i) unpaid charges for prepetition services; (ii) a pending Adequate Assurance Request; and/or (iii) any objections filed in response to the Proposed Adequate Assurance.
- h. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) shall be returned to the Debtors, less any amounts owed on account of unpaid, postpetition Utility Services, by no later than ten (10) business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these Chapter 11 Cases, (ii) the Debtors obtain the affected Utility Company’s consent; or (iii) the Debtors file a notice with the Court and serve upon the affected Utility Company a notice of the Debtors’ intent to return the Adequate Assurance Deposit and receive no response thereto.

6. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

7. The Debtors will cause a copy of this Interim Order, including the Adequate Assurance Procedures, to be served on any subsequently identified Utility Providers and, as soon as possible, increase the aggregate amount in the Adequate Assurance Account by an amount equal to the cost of two weeks of Utility Services provided by such subsequently identified Utility Provider. The Debtors shall supplement Exhibit C to the Motion with the information for any subsequently identified Utility Provider and such supplement shall be filed with the Court and served on subsequently identified Utility Providers.

8. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (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. The Debtors expressly reserve their rights to contest the extent, validity or perfection of any asserted claims and liens and to seek avoidance of any such liens.

9. 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); 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.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective upon its entry.

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

14. The Court retains jurisdiction with respect to all matters arising from or relating 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) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES; (II) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES; (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT; AND (IV) GRANTING RELATED RELIEF

Upon the *Motion of the Debtors for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services; (II) Determining Adequate Assurance of Payment for Future Utility Services; (III) Establishing Procedures for Determining Adequate Assurance of Payment; 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; and

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.

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 will serve a copy of this Final Order upon each Utility Provider identified prior to the entry of this Final Order no later than three (3) business days after entry of this Final Order by the Court.
3. All Utility Providers are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.
4. The following Adequate Assurance Procedures are hereby approved on a final basis:
 - a. Any Utility Provider that objects to the Debtors' Proposed Adequate Assurance must serve an Adequate Assurance Request so that it is actually received by the following parties (collectively, the "Notice Parties"): (i) the Debtors, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408, Attn: Dean Vomero; (ii) Foley Hoag, 1301 Avenue of the Americas, 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); (iii) 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); and (iv) 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).
 - b. Any Adequate Assurance Request must: (i) be made in writing; (ii) identify the location for which the Utility Services are provided and

the account number for the location; (iii) include information regarding any security deposits paid by the Debtors; (iv) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (v) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

- c. Upon the Notice Parties' receipt of an Adequate Assurance Request, the Debtors shall have 21 days from the receipt of the Adequate Assurance Request (the "Resolution Period") to negotiate with the Utility Provider to resolve the Utility Provider's Adequate Assurance Request.
- d. Unless and until a Utility Provider serves an Adequate Assurance Request on the Notice Parties, such Utility Provider shall be (i) deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code and (ii) prohibited from discontinuing, altering or refusing service to, or discriminating against, the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- e. Without further order of the Court but with the consent of the Senior Secured Noteholders, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Adequate Assurance Request if the Debtors, in consultation with the Senior Secured Noteholders, determine that the Adequate Assurance Request is reasonable.
- f. If the Debtors determine, in consultation with the Senior Secured Noteholders, that the Adequate Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, the Debtors, during or immediately after the Resolution Period, will request a hearing (a "Determination Hearing") before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to Section 366(c)(3) of the Bankruptcy Code.
- g. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing or discontinuing service to the Debtors on account of (i) unpaid charges for prepetition services; (ii) a pending Adequate Assurance Request; and/or (iii) any objections filed in response to the Proposed Adequate Assurance.

h. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) shall be returned to the Debtors, less any amounts owed on account of unpaid, postpetition Utility Services, by no later than ten (10) business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these Chapter 11 Cases, (ii) the Debtors obtain the affected Utility Company's consent; or (iii) the Debtors file a notice with the Court and serve upon the affected Utility Company a notice of the Debtors' intent to return the Adequate Assurance Deposit and receive no response thereto.

5. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

6. The Debtors will cause a copy of this Final Order, including the Adequate Assurance Procedures, to be served on any subsequently identified Utility Providers and, as soon as possible, increase the aggregate amount in the Adequate Assurance Account by an amount equal to the cost of two weeks of Utility Services provided by such subsequently identified Utility Provider. The Debtors shall supplement **Exhibit C** to the Motion with the information for any subsequently identified Utility Provider and such supplement shall be filed with the Court and served on subsequently identified Utility Providers.

7. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (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. The Debtors expressly reserve their rights to contest the extent, validity or perfection of any asserted claims and liens and to seek avoidance of any such liens.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective upon its entry.

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

11. The Court retains jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Final Order.

EXHIBIT C

Utility	Address	Account No.	Nature of Service	Average Monthly Cost
2 Way Communications Services, Inc.	19 Durham St, Portsmouth, NH 03801	N/A	Radio	\$2,850.01
American Telesis	200 E. 7th St, Suite 414 Loveland, CO 80537	N/A	Internet	\$3,308.52
Berlin Water Works	55 Willow Street Berlin, NH 03570	1405 383403	Water	\$55,028.15
Consolidated Communications (Fairpoint)	121 South 17 th St., Mattoon IL 61938	15009856251	Network	\$1,138.56
Eversource	300 Cadwell Dr, Springfield, MA, 01104	56349686022 6944000356036 56497386052 56497446096 56748207081 56835095050 56349686022 56497386052 56497446096 56748207081 8005540-03-9-6 56835095050	Electric	\$52,911.21

Irving Energy Distribution and Marketing	58 Chenell Dr. Ste 1, Concord, NH 03301	310078	Heat	\$34,264.73
Milan Container Company	2935 White Mountain Highway, North Conway, NH 03860	N/A	Excavation	\$315.00
Sequoia Technologies Group, LLC	25 Community Lane, Peterborough, NH 03458	N/A	Information Technology	\$3,009.40
Spectrum Business Internet		8358310010014280	Internet	\$99.99
Total:				\$152,925.57