

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

In re BURGESS BIOPOWER, LLC, <i>et al.</i> ¹ Debtors.	Chapter 11 Case No. 24-10235 (LSS) (Jointly Administered) Hearing Date: To Be Scheduled If Necessary Objection Deadline: August 20, 2024 at 4:00 p.m. (ET)
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**DEBTORS' SECOND MOTION FOR ENTRY OF AN ORDER
PURSUANT TO BANKRUPTCY RULES 9006 AND 9027, (I) EXTENDING THE
TIME PERIOD WITHIN WHICH THE DEBTORS MAY REMOVE ACTIONS
PURSUANT TO 28 U.S.C. § 1452 AND (II) GRANTING RELATED RELIEF**

Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”), the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby submit this motion (the “Motion”) for entry of an order, pursuant to Rules 9006 and 9027 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (i) extending the period within which the Debtors may remove actions (“Actions”) pursuant to 28 U.S.C. § 1452 from the current deadline of August 7, 2024 (the “Removal Deadline”) by ninety (90) days, through and including November 5, 2024, and (ii) granting related relief. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1134, and the *Amended Standing Order of Reference* from the United States

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.

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 the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are Bankruptcy Rules 9006 and 9027.

3. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final order or judgment by the Court in connection with 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 February 9, 2024 (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 United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

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

6. On March 8, 2024, each of the Debtors filed their schedules of assets and liabilities and statement of financial affairs (the “Schedules and Statements”) [D.I.s 229-232]. On March 19, 2024, the U.S. Trustee conducted the statutory meeting of creditors under section 341 of the Bankruptcy Code.

7. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and information regarding the Debtors' business and capital structure is set forth in detail in the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [D.I. 4] (the "First Day Declaration"), filed on the Petition Date and incorporated herein by reference.²

8. On March 14, 2024, the Court entered the *Order (I) Establishing Deadlines for the Filing of Proofs of Claim, including for Claims Arising Under Section 503(b)(9) of the Bankruptcy Code; (II) Approving the Form and Manner of Notice Thereof; and (III) Granting Related Relief* [D.I. 267] (the "Bar Date Order"). Pursuant to the Bar Date Order, the deadline for filing proofs of claims (excluding governmental claims) in these Chapter 11 Cases was April 12, 2024 (the "General Bar Date").

9. Absent the relief requested herein, pursuant to Bankruptcy Rule 9027(a)(2), the Removal Deadline will expire after August 7, 2024. This is the Debtors' second request to extend the Removal Deadline by ninety (90) days, through and including November 5, 2024.³

RELIEF REQUESTED

10. By this Motion, the Debtors request entry of the Proposed Order, extending the Removal Deadline by ninety (90) days, through and including November 5, 2024, without prejudice to the rights of the Debtors and their estates to seek further extensions of the time within which to remove actions and related proceedings.

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

³ The Debtors have filed this Motion prior to the expiration of the Removal Deadline. Pursuant to Local Rule 9006-2, "if a motion to extend the time to take any action is filed before the expiration of the period prescribed by the [Bankruptcy] Code, the [Bankruptcy Rules], these Local Rules or Court order, the time shall automatically be extended until the Court acts on the motion, without the necessity for the entry of a bridge order." Del. Bankr. L.R. 9006-2. Accordingly, Local Rule 9006-2 automatically extends the Removal Deadline until the Court acts on the Motion, without the necessity for the entry of a bridge order.

BASIS FOR RELIEF

11. Section 1452 of title 28 of the United States Code and Bankruptcy Rule 9027 govern the removal of pending civil actions. Specifically, section 1452(a) provides:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

12. Bankruptcy Rule 9027(a)(2) sets forth the time period for filing notices to remove claims or causes of actions pending as of the Petition Date and provides:

If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

13. Similarly, Bankruptcy Rule 9027(a)(3) establishes the time period to remove actions commenced after the Petition Date and provides:

If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

Fed. R. Bankr. P. 9027(a)(3).

14. Bankruptcy Rule 9006(b)(1) permits the Court to extend unexpired time periods, such as the Removal Deadline, providing, in relevant part:

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order....

Fed. R. Bankr. P. 9006(b)(1).

15. The Court is authorized to grant the relief requested herein and extend the Removal Deadline. *See, e.g., Pacor, Inc. v. Higgins*, 743 F.2d 984, 996 n.17 (3d Cir. 1984) (“it is clear that the court may grant such an extension [of time to remove]” under Bankruptcy Rule 9006(b)), *overruled in part on other grounds by Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 134-35 (1995). *See also Jandous Elec. Constr. Corp. v. City of New York*, 106 B.R. 48, 50 (Bankr. S.D.N.Y. 1989) (finding that the period within which to file a motion to remove may be expanded pursuant to Bankruptcy Rule 9006); *Raff v. Gordon*, 58 B.R. 988, 991 (Bankr. E.D. Pa. 1986) (same).

16. Since the Petition Date, the Debtors focused their attention on, among other things, the formulation of a plan of reorganization and conducting a sale process. As the Court is aware, on April 11, 2024, the Debtors filed their *First Amended Joint Chapter 11 Plan for Burgess BioPower, LLC and Berlin Station, LLC* [D.I. 311] (the “Plan”) which constitutes a “toggle” plan pursuant to which the Debtors are simultaneously pursuing both a sale process and a plan that includes debt-for-equity swap by the Debtors’ DIP Lenders and Senior Lenders (each as defined in the Plan). The Debtors, in consultation with the Senior Lenders, have been pursuing a plan process that may involve a stand-alone plan or a plan sponsor. The Debtors and the Senior Lenders

have been working on the contours of an exit from Chapter 11, but have not yet finalized that plan and need additional time to do so.

17. The Debtors submit that extending the Removal Deadline is essential and in the best interests of the Debtors, their estates, and their creditors. Since the initiation of the Chapter 11 Cases, the Debtors and their professional advisors have devoted substantial effort towards maximizing the value of the Debtors' estates for the benefit of all stakeholders. In the approximately five months since the Petition Date, the Debtors have, among other things: (i) obtained successful resolution of their dispute with Eversource; (ii) entered into new operational arrangements to enable them to sell power on a merchant basis; (iii) solicited potential purchasers and plan sponsors; (iv) complied with all their reporting obligations including filing their Schedules and Statements and monthly operating reports; (v) obtained approval for their disclosure statement and solicited acceptances to their initial proposed plan; (vi) established bar dates and provided notice thereof to all parties; and (vii) handled the various other tasks related to the administration of the Debtors' bankruptcy estates and the Chapter 11 Cases.

18. As a result of the foregoing efforts and various others, the Debtors have been unable to devote sufficient time to review the Actions to determine if any should be removed pursuant to Bankruptcy Rule 9027(a). Further, the Debtors have not yet, but will need the opportunity to review the proofs of claims filed in these Chapter 11 Cases. Upon such review, the Debtors may become aware of Actions in connection with proofs of claims filed in these Chapter 11 Cases.

19. Accordingly, the Debtors submit that extending the Removal Deadline is in the best interests of the Debtors, their estates, and creditors. The extension sought will permit the Debtors to make more fully informed decisions concerning the removal of any Actions, and will assure that

the Debtors and their estates do not forfeit rights afforded to them under 28 U.S.C. § 1452. Furthermore, the Debtors submit that granting the extension requested herein will not prejudice the rights of its adversaries in the Actions because, in many (if not all) circumstances, such parties may not prosecute such Actions absent relief from the automatic stay. In addition, nothing herein will prejudice any party to any Action that the Debtors may ultimately attempt to remove from seeking the remand of such Action under 28 U.S.C. § 1452(b) at the appropriate time.

20. Accordingly, cause exists to extend the Removal Deadline by ninety (90) days, through and including November 5, 2024, and such extension is appropriate and in the best interest of the Debtors' estates, their creditors and all parties in interest.

NOTICE AND PRIOR REQUESTS

21. Notice of this Motion is being provided to: (a) the Office of the United States Trustee for the District of Delaware (attn.: Jane M. Leamy, Esq.); (b) all known parties to the Actions or their counsel, if known; and (c) all parties that have formally requested notice electronically via the Court's CM/ECF system pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that, in light of the nature of the relief requested, no further or other notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

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Dated: August 6, 2024

/s/ Katharina Earle

Katharina Earle (No. 6348)

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EXHIBIT A

(Proposed Order)

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

In re	Chapter 11
BURGESS BIOPOWER, LLC, <i>et al.</i> ¹	Case No. 24-10235 (LSS) (Jointly Administered)
Debtors.	Re: Docket No.:

**ORDER, PURSUANT TO BANKRUPTCY RULES 9006 AND 9027,
FURTHER EXTENDING THE PERIOD WITHIN WHICH THE DEBTORS MAY
REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for the entry of an order, pursuant to Bankruptcy Rules 9006 and 9027, extending the period within which the Debtors may remove Actions pursuant to 28 U.S.C. § 1452 through and including November 5, 2024; and this 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 as of February 29, 2012; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) venue is proper before the Court 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 it appearing that sufficient notice of the Motion has been given and that no further notice is necessary; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the

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

best interests of the Debtors' estates, their creditors, and all parties in interest; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.
2. The time period within which the Debtors may file notices of removal of the Actions is extended through and including November 5, 2024.
3. This Order shall be without prejudice to the rights of the Debtors or their successors to seek further extensions of the Removal Deadline.
4. Nothing in this Order shall be construed as modifying or terminating any stay applicable to any act, action or proceeding pursuant to section 362 of the Bankruptcy Code or the Plan.
5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
6. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation, implementation, and enforcement of this Order.