

**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)

(Jointly Administered)

Re: Docket No.:

**ORDER AUTHORIZING THE DEBTORS'
ENTRY INTO, AND PERFORMANCE OF THEIR OBLIGATIONS UNDER,
THE SECOND AMENDMENT TO SENIOR SECURED SUPERPRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

Upon the Certification of Counsel (the "Certification of Counsel"),² and the *Second Amendment to the Senior Secured Superpriority Debtor-In-Possession Credit Agreement* (the "Second Amendment") entered into between BERLIN STATION, LLC, a Delaware limited liability company ("Borrower"), BURGESS BIOPOWER, LLC, a Delaware limited liability company (the "Guarantor"), the Lenders party hereto, UMB BANK, NATIONAL ASSOCIATION ("UMB"), as administrative agent for the Secured Parties (in such capacity, the "Administrative Agent"), and UMB, as collateral agent for the Secured Parties (in such capacity, the "Collateral Agent"); and this Court having jurisdiction to consider the Certification of Counsel and the Second Amendment 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*; and it appearing that sufficient notice of the Second Amendment has been given; and after due deliberation and sufficient cause appearing therefor;

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 not otherwise defined herein are to be given the meanings ascribed to them in the Certification of Counsel.

IT IS HEREBY ORDERED THAT:

1. The Debtors' entry into, and performance of their obligations under, the Second Amendment, a copy of which is attached hereto as **Exhibit 1**, is hereby **APPROVED**.
2. The terms and conditions of the Final DIP Order [D.I. 263] remain in full force and effect.
3. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions, necessary to implement and effectuate the relief granted in this Order.
4. This Order is without prejudice to the Debtors' right to seek further amendments of the DIP Credit Agreement or other DIP Documents pursuant to the terms thereof.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
6. The Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Dated: September 30th, 2024
Wilmington, Delaware


LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

**SECOND AMENDMENT TO SENIOR SECURED SUPERPRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

THIS SECOND AMENDMENT TO SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this “Agreement”), dated as of September 25, 2024 and effective as of the Effective Date (as defined below), is by and among BERLIN STATION, LLC, a Delaware limited liability company (“Borrower”), BURGESS BIOPOWER, LLC, a Delaware limited liability company (the “Guarantor”), the Lenders party hereto, UMB BANK, NATIONAL ASSOCIATION (“UMB”), as administrative agent for the Secured Parties (in such capacity, the “Administrative Agent”), and UMB, as collateral agent for the Secured Parties (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, pursuant to that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement dated as of February 28, 2024, by and among the Borrower, the Guarantor, the lenders from time to time party thereto (the “Lenders”), Administrative Agent, and Collateral Agent, as amended by the First Amendment to Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of August 26, 2024 (as so amended and as the same may be further amended, restated, supplemented, or otherwise modified from time to time before the date hereof, the “Existing Credit Agreement”; the Existing Credit Agreement, as amended by this Agreement, the “Credit Agreement”), the Lenders have agreed to make certain extensions of credit to the Borrower, subject to the terms and conditions set forth therein;

WHEREAS, the Borrower and the Guarantor requested that Administrative Agent, Collateral Agent, and the Lenders amend the Existing Credit Agreement in the manner set forth below, and, subject to the terms and conditions set forth herein, Administrative Agent, Collateral Agent, and the Lenders party hereto have agreed to such amendment.

NOW, THEREFORE, in consideration of the agreements herein contained and other good and valuable consideration, the parties hereto hereby agree as follows:

**PART I
DEFINITIONS**

SUBPART 1.1. Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Credit Agreement.

**PART II
AMENDMENTS**

SUBPART 2.1. Amendments Existing Credit Agreement. The Existing Credit Agreement is hereby amended as follows:

(a) Section 1.01 (Defined Terms) of the Existing Credit Agreement is hereby amended by deleting the terms, “September 25, 2024”, appearing in the definition of “Maturity Date” and replacing such terms with the terms, “October 11, 2024”.

(b) Section 1.01 (Defined Terms) of the Existing Credit Agreement is hereby amended by inserting the following new definitions of “Second Amendment” and “Second Amendment Effective Date”, in appropriate alphabetical order:

““Second Amendment” means the Second Amendment to Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of the Second Amendment Effective Date, by and among the Borrower, the Guarantor, the Lenders party thereto, the Administrative Agent and the Collateral Agent.”

““Second Amendment Effective Date” means September 25, 2024.”

(c) Section 7.20 (Use of Proceeds) of the Existing Credit Agreement is hereby amended and restated in its entirety to read as follows:

“Notwithstanding anything to the contrary contained in any Loan Document, none of the proceeds of the Loans and none of the Obligations, the cash collateral, the Collateral or the Carve-Out may be used for the following purposes: (i) to object, contest or raise any defense to, the validity or priority of the Prepetition Indebtedness or the Prepetition Senior Secured Note Documents, the Obligations, the Loan Documents or the liens, security interests or claims granted under the Interim DIP Order, the Final DIP Order, this Agreement, the other Loan Documents or the Prepetition Senior Secured Note Documents, (ii) investigate, initiate or prosecute any claims and defenses or causes of action against any of the Administrative Agent, the Collateral Agent, the Lenders, the Prepetition Noteholders, the Prepetition Secured Parties, or their respective agents, affiliates, representative, attorneys, or advisors under or relating to the Prepetition Indebtedness, the Prepetition Senior Secured Note Documents, the Prepetition Collateral, the Collateral, the Obligations or the Loan Documents, (iii) prevent, hinder or otherwise delay the Collateral Agent’s or any Lender’s assertion, enforcement or realization on the cash collateral or the Collateral in accordance with the Loan Documents, (iv) seek to modify any of the rights granted to the Collateral Agent, the Lenders, the Prepetition Noteholders or the Prepetition Secured Parties hereunder or under the Loan Documents or the Prepetition Senior Secured Note Documents, in each of the foregoing cases without such parties’ prior written consent, (v) seek to sell or otherwise dispose of the Collateral (other than as permitted under Section 7.05) without the prior written consent of the Collateral Agent and the Lenders, (vi) pay any amount on account of any claims arising prior to the Petition Date, to fund acquisitions, capital expenditures, capital lease, or any other expenditure, unless such payments or expenditures are (A) approved by an order of the Bankruptcy Court and (B) in accordance with this Agreement and any relevant DIP Budget, (vii) to pay Past Due O&M Obligations and Past Due PMA Obligations as defined in that certain Motion for Interim and Final Orders (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief filed with the Bankruptcy Court on the Petition Date; provided that, notwithstanding the foregoing to the contrary, advisors to a Committee, if any, may investigate (but not prosecute) the Prepetition Indebtedness and the Prepetition Liens to the extent and in the manner set forth in the applicable DIP Order, or (viii) solely with respect to any cash funded pursuant to a draw request on or after the Second Amendment Effective Date, any purpose whatsoever except (A) payments of reimbursable obligations of advisors to the Agents or Lenders (including legal counsel thereto) in accordance with Section 11.04(a) or (b) of this Agreement, as otherwise provided in this Agreement and DIP Orders, and (B) Professional Fees of the Loan Parties that have been and are approved by the Bankruptcy Court and are expressly permitted to be paid pursuant to the DIP Orders.”

PART III
CONDITIONS PRECEDENT

SUBPART 3.1. Conditions Precedent. The effectiveness of the terms and provisions of this Agreement (other than the terms and provisions of Part IV, which will be effective immediately upon the execution of this Agreement) shall not become effective until the satisfaction of each of the following conditions precedent (the date on which each such condition shall have been satisfied, the “Effective Date”):

- (a) This Agreement shall have been executed and delivered by the Administrative Agent, the Collateral Agent, the Lenders, and each Loan Party.
- (b) Administrative Agent, Collateral Agent, and the Lenders shall have received payment of all fees and expenses payable by the Loan Parties in accordance with Subpart 4.8 hereof.

PART IV
MISCELLANEOUS

SUBPART 4.1. No Additional Obligations. Each Loan Party acknowledges and agrees that the execution, delivery and performance of this Agreement shall not create (nor shall such Loan Party rely upon the existence of or claim or assert that there exists) any obligation of any of Administrative Agent, Collateral Agent, or Lenders to consider or agree to any other amendment with respect to the Credit Agreement or any other instrument or agreement to which Administrative Agent, Collateral Agent, or any Lender is a party (collectively, an “Additional Consent or Amendment”), and in the event that Administrative Agent, Collateral Agent, and the Lenders subsequently agree to consider any requested Additional Consent or Amendment, neither the existence of this Agreement nor any other conduct of Administrative Agent, Collateral Agent, or the Lenders related hereto, shall be of any force or effect on the Lenders’ consideration or decision with respect to any such requested Additional Consent or Amendment, and the Lenders shall not have any obligation whatsoever to consider or agree to any such Additional Consent or Amendment.

SUBPART 4.2. Acknowledgments and Stipulations. To induce Administrative Agent, Collateral Agent, and the Lenders party hereto to enter into this Agreement, each Loan Party acknowledges, stipulates and agrees that (a) all of the Obligations are legal, valid and binding obligations of such Loan Party to Administrative Agent, Collateral Agent, and Lenders without any defense, deduction, offset or counterclaim (and, to the extent such Loan Party had any defense, deduction, offset or counterclaim on the date hereof, the same is hereby waived by such Loan Party); (b) the Loan Documents executed by each Loan Party (including, without limitation, this Agreement and the Credit Agreement after giving effect to this Agreement) are legal, valid and binding obligations of such Loan Party enforceable against such Loan Party in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors’ rights generally; (c) no Liens other than Permitted Liens exist on any property or asset now owned by any Loan Party or any of its Subsidiaries; and (d) each of the recitals contained at the beginning of this Agreement is true and correct. Without limiting the generality of any of the foregoing, each Loan Party hereby acknowledges, confirms and agrees that Collateral Agent has, and will continue to have, valid, enforceable and perfected first-priority continuing liens (subject only Permitted Liens arising by operation of law) upon and security interests in the Collateral heretofore granted to Collateral Agent, for the benefit of the Secured Parties, pursuant to the Credit Agreement and the other Loan Documents or otherwise granted to or held by Agent, for the benefit of Collateral Agent and the other Secured Parties.

SUBPART 4.3. No Waivers; Reservation of Rights.

(a) Agent and Lenders have not waived, are not by this Agreement waiving, and have no intention of waiving, any Events of Default which may be continuing on the date hereof or any Events of Default which may occur after the date hereof, and Agent and Lenders have not agreed to forbear with respect to any of their rights or remedies concerning any Events of Default occurring at any time.

(b) Agent and Lenders reserve the right, in their sole and absolute discretion, to exercise any or all of their rights and remedies under the Credit Agreement and the other Loan Documents as a result of any Events of Default occurring at any time. Agent and Lenders have not waived any of such rights or remedies, and nothing in this Agreement, and no delay on their part in exercising any such rights or remedies, may or will be construed as a waiver of any such rights or remedies.

SUBPART 4.4. No Novation. This Agreement and the Credit Agreement shall not extinguish the Obligations under the Existing Credit Agreement or any guarantee thereof. Nothing expressed or implied in this Agreement, the Credit Agreement or any other document contemplated hereby shall be construed as a release or other discharge of any Loan Party under the Existing Credit Agreement or any Loan Document from any of its obligations and liabilities thereunder, and except as expressly provided, such obligations are in all respects continuing with only the terms being modified as provided in this Agreement. This Agreement and the Credit Agreement shall not constitute a novation of the Existing Credit Agreement or any other Loan Document.

SUBPART 4.5. Cross-References. References in this Agreement to any Part or Subpart are, unless otherwise specified, to such Part or Subpart of this Agreement.

SUBPART 4.6. References in Other Credit Documents. At such time as this Agreement shall become effective pursuant to the terms of Subpart 4.1, all references in the Existing Credit Agreement (including without limitation the Schedules thereto) to the “Agreement,” and all references in the other Loan Documents to the “Credit Agreement,” shall be deemed to refer to the Credit Agreement.

SUBPART 4.7. Reserved.

SUBPART 4.8. Fees and Expenses. Without limitation of any of their obligations under the Credit Agreement, the Loan Parties agree to pay all fees and expenses incurred by Administrative Agent, Collateral Agent, and the Lenders in connection with this Agreement and the transactions contemplated hereby or other arising in connection herewith in accordance with Section 11.04(a) of the Credit Agreement.

SUBPART 4.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Delivery of a signature page hereto by facsimile transmission or by other electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

SUBPART 4.10. Governing Law. This Agreement shall be deemed to be made pursuant to the laws of the State of New York with respect to agreements made and to be performed wholly in the State of New York and shall be construed, interpreted, performed and enforced in accordance therewith.

SUBPART 4.11. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Continued on following page.]

Each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

BORROWER:

BERLIN STATION, LLC

DocuSigned by:
By: Dean Vomero
Name: Dean Vomero
Title: Chief Restructuring Officer

GUARANTOR:

BURGESS BIOPOWER, LLC

DocuSigned by:
By: Dean Vomero
Name: Dean Vomero
Title: Chief Restructuring Officer

**UMB BANK, NATIONAL ASSOCIATION, as
Administrative Agent**

By: 

Name: Joshua James

Title: Vice President

**UMB BANK, NATIONAL ASSOCIATION, as
Collateral Agent**

By: 

Name: Joshua James

Title: Vice President

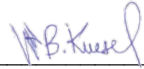
**ATHENE ANNUITY AND LIFE COMPANY
(F/K/A AVIVA LIFE AND ANNUITY COMPANY)**

as a Lender

By: Apollo Insurance Solutions Group LP, its
investment adviser

By: Apollo Capital Management, L.P., its sub adviser


By: Apollo Capital Management GP, LLC, its General
Partner

By:  _____

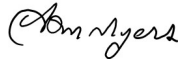
Name: William Kuesel

Title: Vice President

PACIFIC LIFE INSURANCE COMPANY,
as a Lender

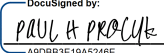
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By: 
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Name: Jason T. Todd
Title: Vice President

ROYAL NEIGHBORS OF AMERICA,
as a Lender

By: 
Name: Tom Myers
Title: Chief Financial Officer & Treasurer

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
as a Lender

By: PGIM, Inc., as investment manager

By: 
DocuSigned by:
AND08B3E10A5248E
Vice President



PRUCO LIFE INSURANCE COMPANY,
as a Lender

By: PGIM, Inc., as investment manager

By:  DocuSigned by:
PAUL H. PROCYK
A9DB83E19A5246F
Vice President

**PRUDENTIAL LEGACY INSURANCE COMPANY
OF NEW JERSEY,**
as a Lender

By: PGIM, Inc., as investment manager

By: DocuSigned by:

A9DBB3E19AS246E...
Vice President 