

**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)

Hearing Date: April 15, 2024 at 10:00 a.m. (ET)

Objection Deadline: April 1, 2024 at 4:00 p.m. (ET)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE
RETENTION AND COMPENSATION OF CERTAIN PROFESSIONALS UTILIZED IN
THE ORDINARY COURSE OF BUSINESS EFFECTIVE AS OF THE PETITION DATE
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, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (i) authorizing, but not directing, the Debtors to retain the Ordinary Course Professionals (as defined below), effective as of the Petition Date (as defined below) without the necessity of a separate, formal retention application approved by this Court for each Ordinary Course Professional, (ii) authorizing, but not directing, the Debtors, in accordance with the OCP Procedures (as defined below), to compensate the Ordinary Course Professionals for postpetition services rendered without the necessity of additional approval by this Court or filing of fee applications, and (iii) granting related relief. In support of this Motion, the Debtors respectfully state as follows:

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.

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* 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.

2. The statutory predicates for the relief sought herein are sections 105(a), 327, 328, 330, and 363 of title 11 of chapter 11 of the United States Code (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 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 by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith 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 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 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* [D.I. 4] (the "First Day Declaration"), filed on the Petition Date and incorporated herein by reference.²

THE ORDINARY COURSE PROFESSIONALS

7. The Debtors customarily retain the services of various engineers, environmental consultants, attorneys, accountants, auditors, and other professionals to represent them in matters arising in the ordinary course of their business (collectively, the "Ordinary Course Professionals"). A non-exclusive list of the Ordinary Course Professionals identified by the Debtors (the "OCP List") is attached hereto as **Exhibit B** and incorporated herein by reference. The Ordinary Course Professionals provide services to the Debtors in a variety of discrete matters unrelated to these Chapter 11 Cases, including, but not limited to, general business, litigation, employment, and other legal matters as well as financial, environmental, and consulting services. Also, the Debtors utilize Ordinary Course Professionals on a regular basis who are familiar with the legal and business issues that arise in connection with the day-to-day operations of the Debtors' business.

RELIEF REQUESTED

8. By this Motion, pursuant to sections 105(a), 327, 328, 330 and 363 of the Bankruptcy Code, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**: (a) authorizing, but not directing, the Debtors to (i) retain Ordinary Course Professionals on a postpetition basis in accordance with the OCP Procedures, without the need for separate retention applications seeking separate orders approving the retention of each

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>.

Ordinary Course Professional, and (ii) compensate each of the Ordinary Course Professionals in accordance with the terms of the OCP Procedures set forth in this Motion and any order granting the Motion, without the need for each such professional to submit a fee application to the Court; (b) approving the retention of the Ordinary Course Professionals *nunc pro tunc* to the Petition Date; and (c) granting related relief. The Debtors request that they be permitted to employ the Ordinary Course Professionals effective as of the Petition Date or, in the case of Ordinary Course Professionals to be hired after the Petition Date, as of the date that each Ordinary Course Professional commences providing services to the Debtors, on terms substantially similar to those in effect prior to the Petition Date (to the extent such Ordinary Course Professional was rendering services prior to the Petition Date), but subject to the terms and procedures described below.

THE PROPOSED RETENTION AND COMPENSATION PROCEDURES

9. The Debtors propose the following procedures for the retention and compensation of the Ordinary Course Professionals (collectively, the “OCP Procedures”):

- (a) Within fourteen (14) calendar days of the later of (i) entry of the Proposed Order, or (ii) the date on which the Ordinary Course Professional commences postpetition services for the Debtors, such Ordinary Course Professional shall provide a declaration of disinterestedness, substantially in the form attached to the Motion as **Exhibit C** (each, a “Declaration of Disinterestedness”), to (x) the Debtors, Attn: Dean Vomero, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408; and (y) proposed counsel to the Debtors, Foley Hoag LLP, 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), and Gibbons P.C., 300 Delaware Avenue, Suite 1015, Wilmington, Delaware 19801, Attn: Katharina Earle, Esq. (kearle@gibbonslaw.com) and One Gateway Center, Newark, New Jersey 07102, Attn: Robert K. Malone, Esq. (rmalone@gibbonslaw.com).
- (b) The Debtors shall file the Declaration of Disinterestedness with the Court and serve it on: (i) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) Attn.: Jane Leamy (jane.m.leamy@usdoj.gov); (ii) counsel to the Senior Secured Noteholders

(as defined in the First Day Declaration), Greenberg Traurig, LLP, (x) One International Place, Suite 2000, Boston, MA 02110, Attn: Julia Frost-Davies (Julia.FrostDavies@gtlaw.com) and (y) 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801, Attn: Dennis Meloro (MeloroD@gtlaw.com); and (iii) counsel for any official committee appointed in these Chapter 11 Cases (collectively with the Debtors and proposed counsel to the Debtors, the “Notice Parties”).

- (c) Any party that wishes to object to the retention of an Ordinary Course Professional shall have fourteen (14) calendar days after the date of service of the Declaration of Disinterestedness (the “Objection Deadline”) to object to the retention of such Ordinary Course Professional. The objecting party shall file any such objection and serve such objection upon the Notice Parties and the respective Ordinary Course Professional on or before the Objection Deadline. If the parties are unable to reach a resolution of the objection, the matter shall be scheduled for hearing before the Court at the next omnibus hearing date, or other date otherwise agreeable to the relevant parties (subject to the Court’s availability).
- (d) No Ordinary Course Professional shall be paid any fees or expenses until the Objection Deadline has passed with no objections having been filed or, if an objection is filed on or before the Objection Deadline, such objection has been withdrawn, resolved, or overruled by order of the Court.
- (e) The Debtors shall be authorized, but not directed, to pay each Ordinary Course Professional, without further application to the Court, 100% of the postpetition fees and expenses incurred by such professional upon the submission to, and approval by, the Debtors, in consultation with counsel to any Official Committee of Unsecured Creditors and counsel to the Senior Secured Noteholders, of appropriate invoices setting forth in reasonable detail the nature of the services rendered, ***provided, however***, that for each Ordinary Course Professional, the total fees and expenses shall not exceed \$70,000.00 per month, calculated as an average over the prior rolling three-month period while the Chapter 11 Cases are pending or \$210,000.00 in the aggregate for any calendar quarter (the “OCP Cap”), ***provided, further***, that the Debtors reserve their rights to seek to increase the OCP Cap.
- (f) Any postpetition fees and expenses payable to an Ordinary Course Professional in excess of the applicable OCP Cap shall be subject to approval of the Court in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of the Court.
- (g) Within thirty (30) days of the close of each calendar quarter, beginning with the calendar quarter ending March 31, 2024, the Debtors shall file with the Court and serve on the Notice Parties a statement identifying the aggregate amounts paid to each Ordinary Course Professional in the reported quarter.

- (h) The Debtors' right to amend or supplement the OCP List, as necessary, is reserved. In the event that the Debtors amend or supplement the OCP List, the Debtors shall file a notice with the Court and serve it on the Notice Parties.
- (i) To the extent that any agreement between the Debtors and an Ordinary Course Professional provides for the indemnification by the Debtors of such Ordinary Course Professional in connection with the services that are the subject of the Motion (each such agreement, an "OCP Agreement"), the Ordinary Course Professional shall attach the OCP Agreement to the Declaration of Disinterestedness and, upon the retention of the Ordinary Course Professional in accordance with the OCP Procedures, the indemnification provisions set forth in the OCP Agreement are approved, subject to the following modifications during the pendency of the Chapter 11 Cases:
 - i. No Ordinary Course Professional shall be entitled to indemnification, contribution or reimbursement related to postpetition services provided under the OCP Agreement, unless such services and the indemnification, contribution or reimbursement therefor are approved by this Court.
 - ii. Notwithstanding anything to the contrary in an OCP Agreement, the Debtors shall have no obligation to indemnify an Ordinary Course Professional or provide contribution or reimbursement to the Ordinary Course Professional for any claim or expense related to such OCP Agreement that is (a) judicially determined, on a final basis, to have arisen from the Ordinary Course Professional's fraud, gross negligence or willful misconduct; (b) for a contractual dispute in which the Debtors allege a breach of the Ordinary Course Professional's contractual obligation under the OCP Agreement, unless this Court determines that indemnification, contribution, or reimbursement would be permissible; or (c) settled prior to a judicial determination as to the exclusions set forth in clauses (a) and (b) above, but determined by this Court, after notice and a hearing, to be a claim or expense for which the Ordinary Course Professional should not receive indemnity, contribution or reimbursement under the terms of the OCP Agreement, as modified by the Proposed Order.
 - iii. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (b) the entry of an order closing the Chapter 11 Cases, an Ordinary Course Professional believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors'

indemnification, contribution and/or reimbursement obligations under the OCP Agreement (as modified by the Proposed Order), including without limitation, the advancement of defense costs, the Ordinary Course Professional must file an application therefor in this Court, and the Debtors may not pay any such amounts to the Ordinary Course Professional before the entry of an order by this Court approving such payment. This subparagraph (iii) is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses by any Ordinary Course Professional for indemnification, contribution and/or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, the Ordinary Course Professionals. All parties in interest shall retain the right to object to any application by any Ordinary Course Professional for indemnification, contribution and/or reimbursement.

10. The OCP Procedures will not apply to any attorneys or other professionals retained, or to be retained, by the Debtors pursuant to separate orders of this Court.

11. Although some of the Ordinary Course Professionals may have an unsecured claim against the Debtors in respect of prepetition services rendered, the Debtors do not believe that any of the Ordinary Course Professionals have an interest materially adverse to the Debtors, their creditors, or any other parties in interest. By this Motion, the Debtors are not requesting authority to pay prepetition amounts owed to Ordinary Course Professionals.

BASIS FOR RELIEF

12. Section 327 of the Bankruptcy Code requires court approval for the employment of "professional persons," retained to represent or perform services of the estate. 11 U.S.C. § 327. In determining whether an entity is a "professional" within the meaning of section 327 of the Bankruptcy Code and, therefore, whether the entity must be retained by express approval of the Court, courts generally consider whether such entity is involved in the debtor's actual restructuring effort, rather than the debtor's ongoing business. *See, e.g., In re The Dairy Dozen-Milnor, LLP*, 441 B.R. 918, 922 (Bankr. D.N.D. 2010); *Comm. of Asbestos-Related Litigants v. Johns-Manville*

Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) (finding that “the phrase ‘professional persons’ . . . is a term of art reserved for those persons who play an intimate role in the reorganization of the debtor’s estate”). In making this determination, courts in the Third Circuit often consider the following factors:

- (a) Whether the entity controls, manages, administers, invests, purchases or sells assets that are significant to the debtor’s reorganization;
- (b) Whether the entity is involved in negotiating the terms of a plan of reorganization;
- (c) Whether the employment is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor’s business operations;
- (d) Whether the entity is given discretion or autonomy to exercise its own professional judgment in some part of the administration of the debtor’s estate;
- (e) The extent of the entity’s involvement in the administration of the debtor’s estate; and
- (f) Whether the entity’s services involve some degree of special knowledge or skill, such that the entity can be considered a professional within the ordinary meaning of the term.

In re Am. Tissue, Inc., 331 B.R. 169 (Bankr. D. Del. 2005) (citing *In re First Merchants Acceptance Corp.*, 1997 Bankr. LEXIS 2245, 1997 WL 873551 (D. Del. 1997)); *In re Seatrain Lines, Inc.*, 13 B.R. 980, 981 (Bankr. S.D.N.Y. 1981) (“For the purposes of section 327(a), ‘professional person’ is limited to persons in those occupations which play a central role in the administration of the debtor proceeding.”). These factors are considered in their totality and none of the factors alone is dispositive. *First Merchants*, 1997 Bankr. LEXIS 2245, at *3.

13. Considering the *First Merchants* factors, the Debtors believe that the Ordinary Course Professionals are not “professionals” within the meaning of 327(a) of the Bankruptcy Code and submit that the Ordinary Course Professionals’ employment relates only indirectly to the Debtors’ restructuring efforts. Specifically, the Ordinary Course Professionals will have limited

involvement, if any, in the administration of the Chapter 11 Cases. Instead, the Ordinary Course Professionals will provide services in connection with the Debtors' ongoing businesses, such services that are ordinarily provided by non-bankruptcy professionals. Nevertheless, the Debtors seek the relief requested in the Motion to establish clear mechanisms of retention and payment of the Ordinary Course Professionals to avoid any subsequent controversy related to such retention and payment.

14. The Ordinary Course Professionals are already familiar with the Debtors' business and affairs and continuation of their services is necessary in order to allow the Debtors to maintain and stabilize their operations, minimize duplication of efforts, and avoid costly on-boarding. Although the automatic stay and other issues in these Chapter 11 Cases may decrease the Debtors' need for certain Ordinary Course Professionals' services, some level of service will still be required.

15. While the Debtors anticipate that the Ordinary Course Professionals will wish to continue to provide services to the Debtors during these Chapter 11 Cases, many would not be in a position to do so if the Debtors cannot pay them on a regular basis. Without the knowledge, expertise, and familiarity that the Ordinary Course Professionals have, the Debtors unquestionably would incur additional and unnecessary expenses in educating and retaining replacement professionals. As such, the Debtors, their estates and creditors are best served by avoiding any such disruption in the ordinary course of operations.

16. Further, in light of the significant costs associated with the preparation of employment applications for professionals who will receive relatively modest fees, the Debtors submit that it would be impractical, inefficient, and costly for the Debtors and their legal advisors to prepare and submit individual applications and proposed retention orders for each Ordinary

Course Professional. As such, the relief requested herein will save the Debtors the expense and time associated with applying to the Court separately to retain each Ordinary Course Professional and will avoid incurring additional fees for the preparation and prosecution of retention applications during the Chapter 11 Cases.

17. Moreover, since the amount of fees owed to any such individual Ordinary Course Professional in respect of postpetition services is expected to be relatively modest, and will be subject to the caps set forth above, the relief requested herein will allow the Debtors to avoid additional costs that would be incurred by the Ordinary Course Professionals in connection with preparing and prosecuting numerous fee applications. Likewise, the OCP Procedures set forth above will relieve the Court, the U.S. Trustee and other interested parties of the burden of reviewing a multitude of fee applications involving relatively small amounts of fees and expenses.

18. The Debtors submit that the continued employment and compensation of the Ordinary Course Professionals is in the best interests of the Debtors' estates, their creditors, and other parties in interest. Accordingly, the Debtors request that they be permitted to employ and retain the Ordinary Course Professionals on terms substantially similar to those in effect prior to the Petition Date, but subject to the OCP Procedures set forth below, and in any order granting this Motion.

WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)

19. In order to effectively implement the foregoing, the Debtors seek a waiver of any notice requirements under Bankruptcy Rule 6004(a) and any stay of the effectiveness of the order authorizing the use, sale or lease of property of the estate under Bankruptcy Rule 6004(h), to the extent such provisions are applicable. The Debtors submit that ample cause exists to justify a

waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and stay apply.

RESERVATION OF RIGHTS

20. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

NOTICE AND NO PRIOR REQUEST

21. 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) the Ordinary Course Professionals; (d) counsel to UMB Bank, National Association in its capacity as Collateral Agent, Locke Lord LLP; (e) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP; (f) Berlin Biopower Investment Fund, LLC, with a copy to Murray Plumb & Murray; (g) Greenline CDF Subfund XVIII LLC, with a copy to Kutak Rock LLP, U.S. Bancorp Community Development Corporation and Leverage Law Group, LLC; (h) Public Service of New Hampshire d/b/a Eversource Energy, with a copy to Hunton Andrews

Kurth LLP; (i) the United States Attorney's Office for the District of Delaware; (j) the United States Attorney's Office for the District of New Hampshire; (k) the United States Environmental Protection Agency; (l) the Nuclear Regulatory Commission; (m) the United States Department of Energy; (n) the Federal Energy Regulatory Commission; (o) New Hampshire Department of Environmental Services; (p) New Hampshire Public Utilities Commission; (q) New Hampshire Site Evaluation Committee; (r) New Hampshire Department of Energy; (s) City of Berlin; (t) ISO New England, Inc.; (u) the United States Securities and Exchange Commission; (v) the Internal Revenue Service; and (w) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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

WHEREFORE, the Debtors respectfully request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein, and such other relief as may be just and proper.

Dated: March 18, 2024

/s/ Katharina Earle

Katharina Earle (No. 6348)

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

**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)

Hearing Date: April 15, 2024 at 10:00 a.m. (ET)

Objection Deadline: April 1, 2024 at 4:00 p.m. (ET)

NOTICE OF MOTION

TO: (A) THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (B) THE HOLDERS OF THE TWENTY (20) LARGEST UNSECURED CLAIMS AGAINST EACH DEBTOR; (C) THE ORDINARY COURSE PROFESSIONALS; (D) COUNSEL TO UMB BANK, NATIONAL ASSOCIATION IN ITS CAPACITY AS COLLATERAL AGENT, LOCKE LORD LLP; (E) COUNSEL TO THE DIP LENDERS AND THE SENIOR SECURED NOTEHOLDERS, GREENBERG TRAURIG, LLP; (F) BERLIN BIOPOWER INVESTMENT FUND, LLC, WITH A COPY TO MURRAY PLUMB & MURRAY; (G) GREENLINE CDF SUBFUND XVIII LLC, WITH A COPY TO KUTAK ROCK LLP, U.S. BANCORP COMMUNITY DEVELOPMENT CORPORATION AND LEVERAGE LAW GROUP, LLC; (H) PUBLIC SERVICE OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY, WITH A COPY TO HUNTON ANDREWS KURTH LLP; (I) THE UNITED STATES ATTORNEY’S OFFICE FOR THE DISTRICT OF DELAWARE; (J) THE UNITED STATES ATTORNEY’S OFFICE FOR THE DISTRICT OF NEW HAMPSHIRE; (K) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; (L) THE NUCLEAR REGULATORY COMMISSION; (M) THE UNITED STATES DEPARTMENT OF ENERGY; (N) THE FEDERAL ENERGY REGULATORY COMMISSION; (O) NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES; (P) NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION; (Q) NEW HAMPSHIRE SITE EVALUATION COMMITTEE; (R) NEW HAMPSHIRE DEPARTMENT OF ENERGY; (S) CITY OF BERLIN; (T) ISO NEW ENGLAND, INC.; (U) THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION; (V) THE INTERNAL REVENUE SERVICE; AND (W) ANY PARTY THAT HAS REQUESTED NOTICE PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that the above captioned debtors and debtors in possession (the “Debtors”) in these chapter 11 cases (the “Chapter 11 Cases”) filed the *Motion of the Debtors for Entry of an Order (I) Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Court of Business Effective as of the Petition Date and (II) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

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.

PLEASE TAKE FURTHER NOTICE that any objections or responses to the relief requested in the Motion must be filed on or before **April 1, 2024 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 and served upon, so as to be actually received by, the undersigned counsel for the Debtors on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion will be held on **April 15, 2024 at 10:00 a.m. (ET)** before the Honorable Laurie Selber Silverstein in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801 (the “Hearing”).

PLEASE TAKE FURTHER NOTICE that a copy of the Motion and all other pleadings filed in these Chapter 11 Cases are available, free of charge, from the website of the Court-appointed claims agent, Epiq: <https://dm.epiq11.com/case/burgess/info>.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 18, 2024

/s/ Katharina Earle
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BioPower, LLC and Berlin Station, LLC*

EXHIBIT A
(Proposed 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)

(Jointly Administered)

Re: D.I.

ORDER (I) AUTHORIZING THE RETENTION AND COMPENSATION OF CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS EFFECTIVE AS OF THE PETITION DATE AND (II) GRANTING RELATED RELIEF

Upon the *Motion of the Debtors for Entry of an Order (I) Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business Effective as of the Petition Date and (II) Granting Related Relief* (the "Motion");² 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) 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 it appearing that sufficient notice of the Motion has been given and that no further notice is necessary; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and upon the record herein; and after due deliberation thereon; and sufficient cause appearing therefore, it is hereby

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 have the meanings given to them in the Motion.

ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to retain and compensate the Ordinary Course Professionals in the ordinary course of business, in accordance with the terms of this Order, effective as of the Petition Date.
3. The following procedures (collectively, the “OCP Procedures”) are hereby approved in their entirety and shall apply to the retention and compensation of the Ordinary Course Professionals:
 - (a) Within fourteen (14) calendar days of the later of (i) entry of the Proposed Order, or (ii) the date on which the Ordinary Course Professional commences postpetition services for the Debtors, such Ordinary Course Professional shall provide a declaration of disinterestedness, substantially in the form attached to the Motion as **Exhibit C** (each, a “Declaration of Disinterestedness”), to (x) the Debtors, Attn: Dean Vomero, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408; and (y) proposed counsel to the Debtors, Foley Hoag LLP, 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), and Gibbons P.C., 300 Delaware Avenue, Suite 1015, Wilmington, Delaware 19801, Attn: Katharina Earle, Esq. (kearle@gibbonslaw.com) and One Gateway Center, Newark, New Jersey 07102, Attn: Robert K. Malone, Esq. (rmalone@gibbonslaw.com).
 - (b) The Debtors shall file the Declaration of Disinterestedness with the Court and serve it on: (i) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) Attn.: Jane Leamy (jane.m.leamy@usdoj.gov), (ii) counsel to the Senior Secured Noteholders, Greenberg Traurig, LLP, (A) One International Place, Suite 2000, Boston, Massachusetts 02110, Attn: Julia Frost-Davies (Julia.FrostDavies@gtlaw.com) and (B) 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801, Attn: Dennis Meloro (MeloroD@gtlaw.com), and (iii) counsel for any official committee appointed in these Chapter 11 Cases (collectively with the Debtors and proposed counsel to the Debtors, the “Notice Parties”).
 - (c) Any party that wishes to object to the retention of an Ordinary Course Professional shall have fourteen (14) calendar days after the date of service

of the Declaration of Disinterestedness (the “Objection Deadline”) to object to the retention of such Ordinary Course Professional. The objecting party shall file any such objection and serve such objection upon the Notice Parties and the respective Ordinary Course Professional on or before the Objection Deadline. If the parties are unable to reach a resolution of the objection, the matter shall be scheduled for hearing before the Court at the next omnibus hearing date, or other date otherwise agreeable to the relevant parties (subject to the Court’s availability).

- (d) No Ordinary Course Professional shall be paid any fees or expenses until the Objection Deadline has passed with no objections having been filed or, if an objection is filed on or before the Objection Deadline, such objection has been withdrawn, resolved, or overruled by order of the Court.
- (e) The Debtors shall be authorized, but not directed, to pay each Ordinary Course Professional, without further application to the Court, 100% of the postpetition fees and expenses incurred by such professional upon the submission to, and approval by, the Debtors, in consultation with counsel to the Official Committee of Unsecured Creditors and counsel to the Senior Secured Noteholders, of appropriate invoices setting forth in reasonable detail the nature of the services rendered, *provided, however*, that for each Ordinary Course Professional, the total fees and expenses shall not exceed \$70,000.00 per month, calculated as an average over the prior rolling three-month period while the Chapter 11 Cases are pending or \$210,000.00 in the aggregate for any calendar quarter (the “OCP Cap”), *provided, further*, that the Debtors reserve their rights to seek to increase the OCP Cap.
- (f) Any postpetition fees and expenses payable to an Ordinary Course Professional in excess of the applicable OCP Cap shall be subject to approval of the Court in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of the Court.
- (g) Within thirty (30) days of the close of each calendar quarter, beginning with the calendar quarter ending March 31, 2024, the Debtors shall file with the Court and serve on the Notice Parties a statement identifying the aggregate amounts paid to each Ordinary Course Professional in the reported quarter.
- (h) The Debtors right to amend or supplement the OCP List, as necessary, is reserved. In the event that the Debtors amend or supplement the OCP List, the Debtors shall file a notice with the Court and serve it on the Notice Parties.
- (i) To the extent that any agreement between the Debtors and an Ordinary Course Professional provides for the indemnification by the Debtors of such Ordinary Course Professional in connection with the services that are the subject of the Motion (each such agreement, an “OCP Agreement”), the

Ordinary Course Professional shall attach the OCP Agreement to the Declaration of Disinterestedness and, upon the retention of the Ordinary Course Professional in accordance with the OCP Procedures, the indemnification provisions set forth in the OCP Agreement are approved, subject to the following modifications during the pendency of the Chapter 11 Cases:

- i. No Ordinary Course Professional shall be entitled to indemnification, contribution or reimbursement related to postpetition services provided under the OCP Agreement, unless such services and the indemnification, contribution or reimbursement therefor are approved by this Court.
- ii. Notwithstanding anything to the contrary in an OCP Agreement, the Debtors shall have no obligation to indemnify an Ordinary Course Professional or provide contribution or reimbursement to the Ordinary Course Professional for any claim or expense related to such OCP Agreement that is (a) judicially determined, on a final basis, to have arisen from the Ordinary Course Professional's fraud, gross negligence or willful misconduct; (b) for a contractual dispute in which the Debtors allege a breach of the Ordinary Course Professional's contractual obligation under the OCP Agreement, unless this Court determines that indemnification, contribution, or reimbursement would be permissible; or (c) settled prior to a judicial determination as to the exclusions set forth in clauses (a) and (b) above, but determined by this Court, after notice and a hearing, to be a claim or expense for which the Ordinary Course Professional should not receive indemnity, contribution or reimbursement under the terms of the OCP Agreement, as modified by this Order.
- iii. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (b) the entry of an order closing the Chapter 11 Cases, an Ordinary Course Professional believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the OCP Agreement (as modified by this Order), including without limitation, the advancement of defense costs, the Ordinary Course Professional must file an application therefor in this Court, and the Debtors may not pay any such amounts to the Ordinary Course Professional before the entry of an order by this Court approving such payment. This subparagraph (iii) is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and

expenses by any Ordinary Course Professional for indemnification, contribution and/or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, the Ordinary Course Professionals. All parties in interest shall retain the right to object to any application by any Ordinary Course Professional for indemnification, contribution and/or reimbursement.

4. The notice requirement set forth in Rule 6004(a) is satisfied and this Order is immediately effective and enforceable notwithstanding Rule 6004(h), to the extent applicable.

5. The OCP Procedures shall not apply to any professionals retained or to be retained by the Debtors pursuant to a separate application and related order of this Court.

6. The Debtors are authorized to take any actions necessary to effectuate the relief granted pursuant to this Order.

7. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation, interpretation, and enforcement of this Order.

EXHIBIT B**Non-Exclusive List of Ordinary Course Professionals**

	<u>Ordinary Course Professional</u>	<u>Services</u>
1.	Black & Veatch Management Consulting, LLC	Engineering and Consulting Services
2.	TRC Environmental Corporation	Environmental Assessment
3.	Ward Damon	Law Firm
4.	Ingeniator Group	Engineering & Consulting Services
5.	Montagne Powers	Public Relations and Communications Consulting Services
6.	Dupont Group	Public Relations and Communications Consulting Services
7.	Daymark Energy Services	Energy Consulting Services
8.	Novogradac	Accounting and Auditing Services

EXHIBIT C

(Declaration)

**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)
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DECLARATION OF DISINTERESTEDNESS

I, [NAME], declare under penalty of perjury:

1. I am a POSITION of FIRM/COMPANY, located at STREET, CITY, STATE, ZIP CODE (the “Company”).

2. This declaration (the “Declaration”) is submitted in accordance with the *Order (I) Authorizing the Retention and Compensation of Certain Professional Utilized In the Ordinary Course of Business Effective as of the Petition Date and (II) Granting Related Relief [D.I.____]* (the “OCP Order”). Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the OCP Order.

3. The above-captioned debtors and debtors in possession (collectively, the “Debtors”) have requested that the Company provide _____ services (the “Services”) to the Debtors, and the Company has agreed to provide such Services.

4. The Services include, but are not limited to, the following: _____

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5. The Company may have performed services in the past, may currently perform services, and may perform services in the future, in matters unrelated to the above-captioned cases or persons that are parties in interest in the Debtors' Chapter 11 Cases. The Company does not perform services for any such person in connection with these Chapter 11 Cases, or have any relationship with any such person, their attorneys, or accountants that would be adverse to the Debtors or their estates.

6. As part of its customary practice, the Company is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties in interest in these Chapter 11 Cases.

7. Neither I, nor any principal, partner, director, or officer of, nor any professional employed by, the Company has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Company.

8. Neither I nor any principal, partner, director or officer of, or professional employed by, the Company, insofar as I have been able to ascertain, holds, or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Company is to be employed.

9. The Company's process of ascertaining whether it holds or represents an interest adverse to the Debtors, their estates, or any class of creditors or equity interest holders consists of the following: _____

10. Neither I nor any principal, partner, director or officer of, or professional employed by, the Company, insofar as I have been able to ascertain is a relative of the United States Bankruptcy Judge assigned to these chapter 11 cases, and the Company does not have a connection with the United States Bankruptcy Judge that would render the Company's retention in these Chapter 11 Cases improper. Further, the Company does not have any connection with the Office of the United States Trustee (the "U.S. Trustee") or any persons employed by the U.S. Trustee.

11. As of the Petition Date, the Company was owed \$_____ for prepetition services. [For non-legal firms: The Company has waived, or will waive, any prepetition claims against the Debtors' estates.]

12. I also understand the limitations on compensation and reimbursement of expenses under the OCP Order. Specifically, the Company understands that in the event the total fees and expenses of all ordinary course professionals exceeds \$70,000.00 per month, calculated as an average over the prior rolling three-month period while the Chapter 11 Cases are pending or \$210,000.00 in the aggregate for any calendar quarter (the "OCP Cap"), the Company will be required to file with the Court a fee application for approval of its fees and expenses for such month in accordance with Bankruptcy Code sections 330 and 331, the Bankruptcy Rules, the Local Rules and any applicable procedures or orders of the Court.

13. As of the Petition Date, the Company [was/was not] party to an agreement for indemnification with certain of the Debtors. [If there is such an agreement, the agreement is attached hereto as **Exhibit 1** (the "Agreement"). I have reviewed the OCP Order and understand

that the indemnification provisions set forth in the Agreement are subject, during the pendency of the Debtors' Chapter 11 Cases, to the modifications set forth in paragraph 3(i) of the OCP Order.]

14. The Company is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its retention, if the Company should discover any facts bearing on the matters described herein, the Company will supplement the information contained in this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____, 2024

[NAME]