

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

In re

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

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING  
STIPULATION BY AND BETWEEN THE DEBTORS AND VICTOR W. DAHAR,  
TRUSTEE FOR THE BANKRUPTCY ESTATE OF CATE STREET CAPITAL, INC.**

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”), approving a stipulation between the Debtors and Victor W. Dahar, Trustee for the Bankruptcy Estate of Cate Street Capital, Inc. (the “CSC Trustee”), attached to the Proposed Order as **Exhibit 1** (the “Stipulation”).<sup>2</sup> In support of this Motion, the Debtors respectfully 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* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding

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

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation.

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 section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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 this 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**

### **A. The Chapter 11 Cases**

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 “Court”). Pursuant to the *Order Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedures (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [D.I. 92], the Chapter 11 Cases are jointly administered.

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

6. The Court set a bar date for filing claims against either Debtor (other than for governmental entities) of April 12, 2024 (the “Claims Bar Date”).

7. 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 on the Petition Date and incorporated herein by reference.<sup>3</sup>

**B. The Stipulation**

8. On April 10, 2024, the CSC Trustee filed Claim No. 5 against Burgess in the amount of \$3,000,000.00 for recovery in an adversary proceeding pending in the United States Bankruptcy Court for the District of New Hampshire, Case No. 21-01017-BAH (the “New Hampshire Adversary Proceeding”). On April 15, 2024, the CSC Trustee filed Claim No. 10015 against Burgess also in the amount of \$3,000,000.00 for recovery in the New Hampshire Adversary Proceeding.

9. Berlin, rather than Burgess, is the Debtor named as one of the defendants in the New Hampshire Adversary Proceeding, so Claim No. 5 and No. 10015 were filed against the incorrect Debtor. To resolve this error, the Debtors and the CSC Trustee have agreed to enter into this Stipulation, subject to approval by the Court.

10. Pursuant to the Stipulation, upon entry by the Court of an order approving the Stipulation (the “Stipulation Effective Date”), Claim No. 5 shall be withdrawn and expunged against Burgess, and shall be deemed filed against Berlin as if it were filed on April 10, 2024.

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<sup>3</sup> The First Day Declaration and other relevant case information are available on the following website maintained by the Debtors’ proposed claims and noticing agent, Epiq: <https://dm.epiq11.com/Burgess>

Neither the Debtors nor their estates shall object to Claim No. 5 as against Berlin on the grounds that it was filed after the Claims Bar Date.

11. On the Stipulation Effective Date, Claim No. 10015 shall be withdrawn and expunged against Burgess, and shall be deemed filed against Berlin as if it were filed on April 10, 2024. Neither the Debtors nor their estates shall object to Claim No. 10015 as against Berlin on the grounds that it was filed after the Claims Bar Date.

12. The Debtors and the CSC Trustee, respectively, reserve all rights related to Claim No. 5 and Claim No. 10015, including, without limitation, under the United States Bankruptcy Code (11 U.S.C. §§ 101-1532) as amended, and any other applicable laws, and all claims, rights and objections thereto are preserved. For the avoidance of doubt, Claim Nos. 5 and 10015 are not deemed allowed on the Stipulation Effective Date, and the Debtors reserve all rights to object to both such claims other than that they were not timely filed.

13. From and after entry of the Order approving this Stipulation, Epiq Corporate Restructuring, LLC is authorized to update the claims register to reflect the terms of the Order, including, among other things, the withdrawal of Claim No. 5 and Claim No. 10015 against Burgess, and the entry of a filing of Claim No. 5 and Claim No. 10015 against Berlin.

#### **RELIEF REQUESTED**

14. By this Motion, the Debtors seek entry of an order approving the Stipulation and granting such other and further relief as the Court deems just and necessary.

#### **BASIS FOR RELIEF**

15. It is well settled that in order to “minimize litigation and expedite the administration of a bankruptcy estate, ‘[c]ompromises are favored in bankruptcy.’” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed.

1993)). Pursuant to Rule 9019(a), a bankruptcy court may, after appropriate notice and a hearing, approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Key3Media Group, Inc.*, 336 B.R. 87, 92 (Bankr D. Del. 2005) (“[T]he bankruptcy court has a duty to make an informed, independent judgment that the compromise is fair and equitable.”). “Ultimately, the decision whether or not to approve a settlement agreement lies within the sound discretion of the Court.” *In re Nortel Networks, Inc.*, 522 B.R. 491, 510 (Bankr. D. Del. 2014).

16. In *Martin*, the United States Court of Appeals for the Third Circuit set forth a four-factor balancing test under which bankruptcy courts are to analyze proposed settlements. The factors the Court must consider are: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *Martin*, 91 F.3d at 393. Importantly, it is well-established that a settlement proponent need not convince the Court that a settlement is the best possible compromise, but only that the settlement falls “within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness.” *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008).

17. The Debtors respectfully submit that the Stipulation is fair and reasonable, is in the best interests of the Debtors’ estates and creditors, and should be approved pursuant to Bankruptcy Rule 9019 and Section 105(a) of the Bankruptcy Code. Indeed, the Stipulation is the product of good-faith discussion and arms’ length negotiations between the Debtors and the CSC Trustee to resolve the incorrect filing of Claim Nos. 5 and 10015. Withdrawing Claim Nos. 5 and 10015 and deeming them filed against Berlin will aid the Debtors in the claims reconciliation process. The

Debtors believe that the Stipulation represents a very favorable result for the Debtors' estate and falls well within the range of reasonableness under the *Martin* factors.

18. Accordingly, cause exists to support approval of the Stipulation.

**NOTICE AND NO PRIOR REQUEST**

19. 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 the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP; (d) the CSC Trustee; and (e) any party that has requested notice pursuant to Bankruptcy Rule 2002.

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

**WHEREFORE**, the Debtors respectfully request entry of an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, (i) approving the Stipulation, and (ii) granting other related relief.

Dated: May 6, 2024  
Wilmington, Delaware

/s/ Katharina Earle

Katharina Earle (No. 6348)  
**GIBBONS P.C.**  
300 Delaware Avenue, Suite 1015  
Wilmington, Delaware 19801  
Telephone: (302) 518-6300  
E-mail: kearle@gibbonslaw.com

-and-

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

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

Alison D. Bauer (admitted *pro hac vice*)  
William F. Gray, Jr. (admitted *pro hac vice*)  
Jiun-Wen Bob Teoh (admitted *pro hac vice*)  
**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 (admitted *pro hac vice*)  
Christian Garcia (admitted *pro hac vice*)  
**FOLEY HOAG LLP**  
155 Seaport Boulevard  
Boston, Massachusetts 02210  
Telephone: (617) 832-1000  
Email: ksl@foleyhoag.com  
cgarcia@foleyhoag.com

*Co-Counsel for Debtors Burgess 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.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Jointly Administered)

**ORDER APPROVING STIPULATION BY AND BETWEEN  
THE DEBTORS AND VICTOR W. DAHAR, TRUSTEE FOR THE  
BANKRUPTCY ESTATE OF CATE STREET CAPITAL, INC.**

Upon the *Debtors' Motion For Entry of an Order Approving the Stipulation By and Between the Debtors and Victor W. Dahar, Trustee for the Bankruptcy Estate of Cate Street Capital, Inc.* (the "Motion");<sup>2</sup> 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); and (c) the Court may enter a final order consistent with Article III of the United States Constitution; and upon the record herein; and after due deliberation thereon; and it appearing that sufficient notice of the Motion has been given and that no other or further notice is necessary; and good cause appearing therefor; it is hereby

ORDERED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Stipulation attached hereto as **Exhibit 1** is hereby approved.

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

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

3. On the Stipulation Effective Date, Claim No. 5 shall be withdrawn and expunged against Burgess, and shall be deemed filed against Berlin as if it were filed on April 10, 2024. Neither the Debtors nor their estates shall object to Claim No. 5 as against Berlin on the grounds that it was filed after the Claims Bar Date.

4. On the Stipulation Effective Date, Claim No. 10015 shall be withdrawn and expunged against Burgess, and shall be deemed filed against Berlin as if it were filed on April 10, 2024. Neither the Debtors nor their estates shall object to Claim No. 10015 as against Berlin on the grounds that it was filed after the Claims Bar Date.

5. Except as expressly set forth in paragraphs 3 and 4 above, the Debtors and the CSC Trustee, respectively, reserve all rights related to Claim No. 5 and Claim No. 10015, including, without limitation, under the Bankruptcy Code, and any other applicable laws, and all claims, rights and objections thereto are preserved; provided, however, that the CSC Trustee cannot assert any claim against Burgess. For the avoidance of doubt, Claim Nos. 5 and 10015 are not deemed allowed on the Stipulation Effective Date, and the Debtors reserve all rights to object to both such claims other than that they were not timely filed.

6. From and after entry of the Order approving this Stipulation, Epiq Corporate Restructuring, LLC is authorized to update the claims register to reflect the terms of the Order, including, among other things, the withdrawal of Claim No. 5 and Claim No. 10015 against Burgess, and the entry of a filing of Claim No. 5 and Claim No. 10015 against Berlin.

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

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

**Exhibit 1**  
**Stipulation**

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

In re

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

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Jointly Administered)

**STIPULATION BY AND BETWEEN THE DEBTORS AND VICTOR W. DAHAR,  
TRUSTEE FOR THE BANKRUPTCY ESTATE OF CATE STREET CAPITAL, INC.**

The undersigned counsel, respectively, for Burgess Biopower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”), and Victor W. Dahar, Trustee for the Bankruptcy Estate of Cate Street Capital, Inc. (the “CSC Trustee”), enter into this stipulation (the “Stipulation”). For purposes of this Stipulation, the Debtors and the CSC Trustee are each a “Party” and collectively, the “Parties.” The Parties hereby stipulate and agree as follows:

**RECITALS**

A. 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 “Court”). Pursuant to the *Order Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedures (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [D.I. 92], the cases are jointly administered. The Court set a bar date for filing

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

claims against either Debtor (other than for governmental entities) of April 12, 2024 (the “Claims Bar Date”).

B. On April 10, 2024, the CSC Trustee filed Claim No. 5 against Burgess in the amount of \$3,000,000.00 for recovery in an adversary proceeding pending in the United States Bankruptcy Court for the District of New Hampshire, Case No. 21-01017-BAH (the “New Hampshire Adversary Proceeding”). On April 15, 2024, the CSC Trustee filed Claim No. 10015 against Burgess also in the amount of \$3,000,000.00 for recovery in the New Hampshire Adversary Proceeding.

C. Berlin, rather than Burgess, is the Debtor named as one of the defendants in the New Hampshire Adversary Proceeding, so Claim No. 5 and No. 10015 were filed against the incorrect Debtor. To resolve this error, the Debtors and the CSC Trustee have agreed to enter into this Stipulation, subject to approval by the Court, as follows.

### **STIPULATION**

**NOW THEREFORE**, it is hereby stipulated and agreed to by and between the Parties as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby fully incorporated into and made an express part of this Stipulation.
2. Stipulation Effective Date. The Stipulation shall be effective upon the entry by the Court of an order (the “Order”) approving this Stipulation (the “Stipulation Effective Date”).
3. Withdrawn and Refiled Claim No. 5. On the Stipulation Effective Date, Claim No. 5 shall be withdrawn and expunged against Burgess, and shall be deemed filed against Berlin as if it were filed on April 10, 2024. Neither the Debtors nor their estates shall object to Claim No. 5 as against Berlin on the grounds that it was filed after the Claims Bar Date.

4. Withdrawn and Refiled Claim No. 10015. On the Stipulation Effective Date, Claim No. 10015 shall be withdrawn and expunged against Burgess, and shall be deemed filed against Berlin as if it were filed on April 10, 2024. Neither the Debtors nor their estates shall object to Claim No. 10015 as against Berlin on the grounds that it was filed after the Claims Bar Date.

5. Reservation of Rights. Except as expressly set forth in paragraphs 3 and 4 above, the Debtors and the CSC Trustee, respectively, reserve all rights related to Claim No. 5 and Claim No. 10015, including, without limitation, under the United States Bankruptcy Code (11 U.S.C. §§ 101-1532) as amended, and any other applicable laws, and all claims, rights and objections thereto are preserved; provided, however, that the CSC Trustee cannot assert any claim against Burgess. For the avoidance of doubt, Claim Nos. 5 and 10015 are not deemed allowed on the Stipulation Effective Date, and the Debtors reserve all rights to object to both such claims other than that they were not timely filed.

6. Claims Agent Authorization. From and after entry of the Order approving this Stipulation, Epiq Corporate Restructuring, LLC is authorized to update the claims register to reflect the terms of the Order, including, among other things, the withdrawal of Claim No. 5 and Claim No. 10015 against Burgess, and the entry of a filing of Claim No. 5 and Claim No. 10015 against Berlin.

7. This Stipulation and any order approving it shall be binding on the Parties and their successors and assigns.

8. The Parties participated collectively in the drafting of this Stipulation, and accordingly, the drafting of this Stipulation shall not to be attributed solely to any one Party.

9. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation.

Dated: May 6, 2024	
<b>BURGESS BIOPOWER LLC AND BERLIN STATION LLC</b>  <i>/s/ Kenneth S. Leonetti</i>  Kenneth S. Leonetti 155 Seaport Boulevard Boston, Massachusetts 02210 Telephone: (617) 832-1000 Email: ksl@foleyhoag.com  <i>Co-Counsel for Debtors Burgess BioPower, LLC and Berlin Station, LLC</i>	<b>VICTOR W. DAHAR, P.A.</b>  <i>/s/ Eleanor Dahar</i>  Eleanor Dahar 20 Merrimack Street Manchester, NY 03101 Telephone: (603) 622-6595 Email: vdaharpa@att.net  <i>Counsel to Victor W. Dahar as Chapter 7 Trustee for the Bankruptcy Estate of Cate Street Capital, Inc.</i>

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

In re

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

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Jointly Administered)

**Hearing Date: To Be Determined.**

**Objection Deadline: May 20, 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) COUNSEL TO THE DIP LENDERS AND THE SENIOR SECURED NOTEHOLDERS, GREENBERG TRAUIG, LLP; (D) THE CATE STREET CAPITAL CHAPTER 7 TRUSTEE; AND (E) 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 *Debtors’ Motion for Entry of an Order Approving Stipulation By and Between the Debtors and Victor W. Dahar, Trustee for the Bankruptcy Estate of Cate Street Capital, Inc.* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that any objections or responses to the relief requested in the Motion must be filed on or before **May 20, 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 a **date to be determined** 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>.

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



**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: May 6, 2024

/s/ Katharina Earle  
Katharina Earle (No. 6348)  
**GIBBONS P.C.**  
300 Delaware Avenue, Suite 1015  
Wilmington, Delaware 19801  
Telephone: (302) 518-6300  
E-mail: kearle@gibbonslaw.com

-and-

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

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

Alison D. Bauer (admitted *pro hac vice*)  
William F. Gray, Jr. (admitted *pro hac vice*)  
Jiun-Wen Bob Teoh (admitted *pro hac vice*)  
**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 (admitted *pro hac vice*)  
Christian Garcia (admitted *pro hac vice*)  
**FOLEY HOAG LLP**  
155 Seaport Boulevard  
Boston, Massachusetts 02210  
Telephone: (617) 832-1000  
Email: ksl@foleyhoag.com  
cgarcia@foleyhoag.com

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