

**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)

**AMENDED² MOTION OF THE DEBTORS FOR ENTRY OF AN
ORDER EXTENDING THE EXCLUSIVE PERIOD DURING WHICH
ONLY THE DEBTORS MAY FILE A CHAPTER 11 PLAN**

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”), pursuant to section 1121(d) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9006-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), extending, by ninety (90) days, (i) the period during which the Debtors have the exclusive right to file a chapter 11 plan (the “Exclusive Filing Period”) from June 10, 2024 to September 8, 2024 and (ii) solicit acceptances of a chapter 11 plan (the “Exclusive Solicitation Period”) and together with the

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

² The Debtors file this amended motion for the sole purpose of correcting misstated dates in connection with their pending request for a ninety (90) day extension of the Exclusive Periods. *See Motion of the Debtors for Entry of an Order Extending the Exclusive Period During Which Only the Debtors May File a Chapter 11 Plan* [D.I. 377] (the “Prior Motion”). Specifically, this amended motion clarifies that the ninety (90) day extension of the Exclusive Filing Period is up through and including **September 8, 2024** and not October 8, 2024, as inadvertently referenced in the Prior Motion. This amended motion is otherwise the same in all respects as the Prior Motion.

Exclusive Filing Period, the “Exclusive Periods”) from August 7, 2024 to November 5, 2024. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the 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 the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are section 1121(d) of the Bankruptcy Code, Bankruptcy Rule 9006(b)(1), and Local Rule 9006-2.

3. Pursuant to Local Rule 9013-1(f), 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 “Court”).³

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.

³ 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.

As of the date of this Motion, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases [*see* D.I. 277].

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. 229-232]. On March 19, 2024, the U.S. Trustee conducted the statutory meeting of creditors under section 341 of the Bankruptcy Code.

7. **Claims Adjudication Process.** 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”).

8. Since the passing of the General Bar Date, the Debtors initiated the claims adjudication process, which is ongoing, and have reviewed and reconciled certain filed claims. For example, on May 30, 2024, the Court entered the *Order Approving Stipulation By and Between the Debtors and Victor W. Dahar, Trustee for the Bankruptcy Estate of Cate Street Capital, Inc.* [D.I. 367], which, among other things, expunged certain claims filed by Victor W. Dahar, Trustee for the Bankruptcy Estate of Cate Street Capital, Inc., against Burgess, and deemed such claims as filed against Berlin.

9. **Asset Sales.** On March 25, 2024, the Court entered the *Order (I) Approving Bid Procedures Relating to the Sale of All or Substantially All of the Debtors’ Assets, (II) Scheduling a Hearing to Consider the Sale, (III) Approving the Form and Manner of Notice of Sale By Auction, (IV) Establishing Procedures for the Assumption and/or Assumption and Assignment of Contracts*

and Leases and Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief [D.I. 288] (the “Bid Procedures Order”), which, *inter alia*, established bidding procedures and scheduled a hearing to consider the sale of all or substantially all of the Debtors’ assets for May 21, 2024 at 10:00 a.m. (ET) (the “Sale Hearing”).

10. Since the entry of the Bid Procedure Order, the Debtors have conducted a robust marketing process and solicited bids for all or substantially all of their assets. Additionally, pursuant to the Bid Procedures Order, the Debtors have identified certain executory contracts and unexpired leases that may be assumed and/or assumed and assigned in connection with a sale [D.I. 290, 332]. While the Debtors adjourned the scheduled auction for their assets [D.I. 344], the Debtors continue to engage in negotiations with stakeholders and potential bidders or plan proponents. As reflected in notices filed with the Court [D.I. 348, 372], the Sale Hearing was rescheduled to June 6, 2024 at 2:00 p.m. (ET) and subsequently to June 18, 2024 at 2:00 p.m. (ET). If there is a sale (as opposed to the Stand-Alone Plan option set out in the proposed Plan), it will likely be pursuant to the Plan.

11. **Plan and Disclosure Statement.** On March 11, 2024, the Debtors filed the *Joint Chapter 11 Plan for Burgess BioPower, LLC and Berlin Station, LLC* (as amended, modified or supplemented, the “Plan”) [D.I. 250], which constitutes a “toggle” plan pursuant to which the Debtors are simultaneously pursuing both a sale process and a plan that includes a debt-for-equity swap by the Debtors’ DIP Lenders and Senior Lenders (each as defined in the Plan), and the *Disclosure Statement for the Joint Plan of Reorganization of Burgess BioPower, LLC and Berlin Station, LLC Pursuant to Chapter 11 of the Bankruptcy Code* (as amended, modified or supplemented, the “Disclosure Statement”) [D.I. 251].

12. Concurrently therewith, the Debtors filed the *Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Joint Plan of Reorganization of Burgess BioPower, LLC and Berlin Station, LLC; (C) Approving the Form and Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates with Respect Thereto; and (E) Granting Related Relief* [D.I. 252] ("Disclosure Statement Motion"). To address informal comments by parties in interest, on April 11, 2024, the Debtors filed an amended Plan and an amended Disclosure Statement [D.I. 311, 312], and simultaneously, submitted to the Court a revised order to approve the Disclosure Statement Motion [D.I. 313].

13. On April 15, 2024, the Court entered the *Order (A) Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Joint Plan of Reorganization of Burgess BioPower, LLC and Berlin Station, LLC; (C) Approving the Form and Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates with Respect Therewith; (D) Scheduling Certain Dates with Respect Thereto; and (E) Granting Related Relief* [D.I. 320], which, among other things, scheduled a hearing to consider confirmation of the Plan for May 21, 2024 at 10:00 a.m. (ET) (the "Confirmation Hearing").

14. As reflected in notices filed with the Court [D.I. 349, 372], the Confirmation Hearing was rescheduled to June 6, 2024 at 2:00 p.m. (ET) and subsequently to June 18, 2024 at 2:00 p.m. (ET).

15. Although the Debtors have solicited the Plan and received unanimous approval thereof from voting classes [*see* D.I. 351], the Debtors, in consultation with their DIP Lenders and Senior Lenders, continue to pursue a value maximizing transaction for the benefit of creditors. The Debtors request an extension of the Exclusive Periods because the current Exclusive Filing

Period expires on June 10, 2024, approximately one (1) week before the rescheduled Confirmation Hearing and Sale Hearing on June 18, 2024. The Debtors believe a ninety (90) day extension of the Exclusive Periods is warranted under the circumstances to give the Debtors sufficient runway to finalize negotiations with potential buyers or plan proponents, and seek confirmation and effectiveness of a plan.

RELIEF REQUESTED

16. By this Motion, the Debtors request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, extending by ninety (90) days (a) the Exclusive Filing Period from June 10, 2024 to September 8, 2024 and (b) the Exclusive Solicitation Period from August 7, 2024 to November 5, 2024, without prejudice to the Debtors' right to seek further extensions of the Exclusive Periods.⁴

BASIS FOR RELIEF

17. Section 1121(d) of the Bankruptcy Code contemplates extensions of a debtor's exclusive period for "cause." Specifically, section 1121(d) of the Bankruptcy Code provides, "on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section." 11 U.S.C. § 1121(d)(1). Section 1121(d) of the Bankruptcy Code further limits the extension of the exclusive filing period to eighteen (18) months after the petition date and the extension of the solicitation period to twenty (20) months after the petition date. 11 U.S.C. § 1121(d)(2).

⁴ The Debtors have filed this Motion prior to the expiration of the Exclusive Periods. 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 Exclusive Periods until the Court acts on the Motion, without the necessity for the entry of a bridge order.

18. The Bankruptcy Code does not define the term “cause” for purposes of an extension request under section 1121(d) of the Bankruptcy Code. In determining what constitutes “cause,” courts have looked to the legislative history of section 1121(d), which indicates that it is to be viewed flexibly “in order to allow the debtor to reach an agreement” with its creditors. H.R. Rep. No. 595, 95th Cong., 1st Sess. 232 (1977); *see also In re McLean Indus., Inc.*, 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987); *In re Public Serv. Co. of N.H.*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (“[T]he legislative intent . . . [is] to promote maximum flexibility.”). Congress did not intend that the 120-day and 180-day exclusive periods be a hard and fast limit. *See In re Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996) (noting that Congress intended courts to have flexibility in dealing with extensions of exclusivity); *Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297 (W.D. Tenn. 1987) (“The hallmark of [section 1121(d)] is flexibility.”). Rather, Congress intended that the exclusive periods be of an adequate length, given the circumstances, for a debtor to formulate, negotiate and draft a viable plan without the disruptions that would occur with the filing of competing plans of reorganization. *See Geriatrics Nursing Home v. First Fidelity Bank, N.A.*, 187 B.R. 128, 133 (D.N.J. 1995) (“The opportunity to negotiate its plan unimpaired by competition, the court held, is meant to allow the debtor time to satisfy all creditors and win support for its restructuring scheme and thus ensure its survival as a business.”).

19. The decision to extend the exclusive periods for a debtor is committed to the sound discretion of the Court and should be based upon the facts and circumstances of a particular case. *See First Am. Bank of New York v. Southwest Gloves and Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986); *203 N. LaSalle Street P’ship v. Bank of Am., N.A.*, 1999 U.S. Dist. LEXIS 19425, at *12 (N.D. Ill. 1999); *In re Mid-State Raceway, Inc.*, 323 B.R. 63, 68 (Bankr. N.D.N.Y. 2005); *In re Reetz*, 61 B.R. 412, 414 (Bankr. W.D. Wis. 1986). Courts consider a variety of factors in

determining whether “cause” exists to warrant an extension of the exclusive periods, including: (a) the size and complexity of the case; (b) the debtor’s progress in resolving issues facing the estate; and (c) whether an extension of time will harm the debtor’s creditors. *See, e.g., In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409–10 (Bankr. E.D.N.Y. 1989) (listing factors); *In re Dow Corning Corp.*, 208 B.R. 661, 664–65 (Bankr. E.D. Mich. 1997) (citing *In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996)). Good faith progress and the need for additional time to continue such progress are particularly significant factors in support of extending the exclusive periods under section 1121(d) of the Bankruptcy Code. *See Express One Int’l*, 194 B.R. at 101; *In re Pine Run Trust, Inc.*, 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986).

20. Given the discretion afforded to the Court in determining “cause” and the Debtors’ substantial progress in these Chapter 11 Cases, including the solicitation of the Plan and pursuit of a value maximizing sale of the Debtors’ assets, the Debtors submit that each of these factors have been met and, therefore, cause exists to extend the Exclusive Periods.

21. First, this case is of a meaningful size and complexity. The Debtors have over \$100 million in pre-petition secured debt, and needed to negotiate and obtain DIP financing at the beginning of the case. Also at the beginning of the case, the Debtors and their professionals were consumed by an intensive and fast moving litigation with Eversource. At the same time, the Debtors negotiated, drafted, and filed a proposed plan, which plan featured a “toggle” between a sale and a restructuring. Over the course of the last two months, the Debtors have been focused on soliciting potential buyers and/or plan proponents and negotiating with those entities. The Debtors’ business and capital structure are sufficiently complex that these discussions have taken some time.

22. Second, the Debtors and their professionals have made significant progress in moving the Chapter 11 Cases towards a successful completion, including (i) prepared and filed their Schedules and Statements; (ii) prepared and filed monthly operating reports; (iii) responded to numerous creditor inquiries and demands; (iv) retained professionals; (v) resolved their dispute with Eversource; (vi) obtained DIP financing; (vii) obtained approval for bidding procedures for the sale of substantially all of their assets; (viii) established bar dates and provided notice thereof to all parties; (ix) filed the Plan and Disclosure Statement; (x) obtained approval of the Disclosure Statement for solicitation purposes, (xi) solicited the Plan and (xii) handled the various other tasks related to the administration of the Debtors' bankruptcy estates and the Chapter 11 Cases.

23. The requested extension of the Exclusive Periods is reasonable given the Debtors' progress to date and the current posture of the Chapter 11 Cases. Accomplishing the foregoing tasks has been a resource-intensive process for the Debtors and their professionals during the months that the Chapter 11 Cases have been pending. Despite the progress that the Debtors have made, the Debtors, to preserve their exclusive rights under section 1121 of the Bankruptcy Code, request an extension of the Exclusive Periods as a precautionary measure. Allowing the expiration of the Exclusive Periods at this stage could interfere with the substantial progress that the Debtors have made in the months following the Petition Date.

24. Third, creditors will not be harmed by the extension of the Exclusive , and this is the Debtors' first motion to extend the Exclusive Periods. The Debtors are not seeking an extension of the Exclusive Periods to delay administration of the Chapter 11 Cases, but rather to allow the Debtors to continue to maximize the value of their estates and proceed through the sale and/or confirmation process. Under the circumstances described herein, the extension aligns with the intent and purpose of section 1121 of the Bankruptcy Code and should be granted. Therefore,

the Debtors submit that sufficient cause exists to extend the Exclusive Filing Period through and including September 8, 2024 and the Exclusive Solicitation Period through and including November 5, 2024.

NOTICE AND PRIOR REQUESTS

25. 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) counsel for the DIP Lenders and Senior Secured Lenders; 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.

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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.

Dated: June 11, 2024

/s/ Katharina Earle

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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 EXTENDING THE EXCLUSIVE PERIOD
DURING WHICH ONLY THE DEBTORS MAY FILE A
CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order, pursuant to section 1121(d) of the Bankruptcy Code, Bankruptcy Rule 9006, and Local Rule 9006-2, extending the exclusive period during which the Debtors have the exclusive right to file a chapter 11 plan (the “Exclusive Filing Period”) by ninety (90) days through and including September 8, 2024, and extending the period during which the Debtors have the exclusive right to solicit acceptances of a chapter 11 plan (the “Exclusive Solicitation Period” and together with the Exclusive Filing Period, the “Exclusive Periods”) by ninety (90) days through and including November 5, 2024; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that no other or further notice need be provided under the circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, and their creditors and other parties in interest; 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 shall have the meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.
2. The Exclusive Filing Period is hereby extended through and including September 8, 2024, pursuant to section 1121(d) of the Bankruptcy Code.
3. The Exclusive Solicitation Period is hereby extended through and including November 5, 2024, pursuant to section 1121(d) of the Bankruptcy Code.
4. This Order is without prejudice to the Debtors' right to seek further extensions of the Exclusive Periods.
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.