

**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)

**Requested Hearing Date: February 27, 2024 at 2:00 p.m. (ET)**  
**Requested Objection Deadline: At the Hearing**

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE  
SETTLEMENT BY AND AMONG THE DEBTORS, SENIOR SECURED LENDERS,  
AND PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, DOING BUSINESS AS  
EVERSOURCE 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"), approving a settlement (the "Settlement"), the terms of which are set forth in that certain Settlement Term Sheet, dated as of February 23, 2024, by and among the Debtors, the Debtors' senior secured lenders in their capacity as prepetition and proposed debtor-in-possession lenders and any agents thereto (in such capacities, the "Lenders"), and Public Service Company of New Hampshire d/b/a Eversource ("PSNH," and, together with the Debtors and the Lenders, the "Parties"), attached hereto as **Exhibit B** (the "Settlement Term Sheet").<sup>2</sup> In support of this Motion, the Debtors respectfully state as follows:

---

<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> The Parties will enter into a long-form settlement agreement (the "Settlement Agreement") based on the terms set forth in the Settlement Term Sheet, and file the Settlement Agreement in advance of the February 27, 2024 hearing.

**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 and legal predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code, §§ 101 *et seq.* (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 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**

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 Procedure (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [D.I. 92], the Chapter 11 Cases are being jointly administered.

5. The Debtors are authorized to operate their business and manage their properties as debtors in possession, pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. As of

the date of the Motion, no trustee, examiner, or statutory committee has been appointed in the 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.<sup>3</sup>

7. The Debtors filed the following pleadings to which PSNH objected:

- A. *Debtors' Motion for Interim and Final Orders (I) Approving Entry Into New Lead Market Participant Agreement and (II) Granting Related Relief* [D.I. 18];
- B. *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Reject the Power Purchase Agreement and Option Agreement with Public Service Company of New Hampshire (d/b/a Eversource Energy) Nunc Pro Tunc to the Petition Date and (II) Granting Related Relief* [D.I. 22];
- C. *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief* [D.I. 11];
- D. *Motion for Interim and Final Orders (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief* [D.I. 17]; and
- E. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [D.I. 33] (Collectively, A-E the "Debtors' Motions").

---

<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 Corporate Restructuring, LLC: <https://dm.epiq11.com/Burgess>.

8. On February 12, 2024, PSNH filed a *Motion of Public Service Company of New Hampshire, Pursuant to 28 U.S.C. § 1412 and Federal Rule of Bankruptcy Procedure 1014(a), to Transfer Venue of Bankruptcy Proceedings to United States Bankruptcy Court for the District of New Hampshire* [D.I. 39] (as supplemented on February 20, 2024, D.I. 112) (the “Motion to Transfer Venue”), to which the Debtors and Lenders (and others) objected. The Debtors’ Motions and the Motion to Transfer Venue are referred to herein collectively as the “Contested Motions.” It is intended that the Contested Motions be resolved in a manner that is in form and substance satisfactory to PSNH, the Debtors and the Lenders.

9. Absent approval of the Settlement, the Parties intend to litigate the panoply of issues set forth in the Contested Motions and other pleadings that could be filed. To avoid the expense and uncertainty of protracted litigation, the Parties desire to settle their disputes according to the terms and conditions of the Settlement Term Sheet, as will be further reflected in the Settlement Agreement that will be filed with the Court in advance of the hearing scheduled to be heard on February 27, 2024.

### **RELIEF REQUESTED**

10. By this Motion, the Debtors seek entry of an order (i) approving the Settlement and (ii) granting related relief. The key terms of the Settlement are as follows:<sup>4</sup>

A. **Settlement Payments.**

1. With respect to all prepetition amounts (through February 8, 2024), PSNH shall be entitled to retain all funds with no right to clawback by the Debtors or their estates or any Chapter 7 Trustee. Debtors agree that

---

<sup>4</sup> The summary of the Settlement provided herein is not intended to be a comprehensive recitation of all the terms and conditions of the Settlement. The summary is qualified in its entirety by the Settlement Term Sheet and forthcoming Settlement Agreement, and to the extent that there is any inconsistency between the summary provided herein and the Settlement Term Sheet or Settlement Agreement, the Settlement Agreement shall control. Capitalized terms used but not otherwise defined in this summary of the Settlement shall have the meanings ascribed to such terms in the Settlement Term Sheet and Settlement Agreement (as applicable).

PSNH can offset/net/recoup the excess Cumulative Reduction against all charges up through and including February 8, 2024.

2. Effective the Petition Date through February 29, 2024, PSNH will pay the Debtors in full in cash for all energy delivered and pro rata capacity at the contract price of \$84.65/mWh for energy and \$336,000/month for capacity without offset/recoupment or any reduction (the "February Payment").

3. In addition to the February Payment, PSNH shall tender a payment to the Debtors in an amount equal to the difference between \$3,350,000 and the February Payment in full and final settlement of any and all claims and causes of action that the Debtors have or may have against PSNH of any kind that existed as of the date of the Settlement.

**B. Releases.**

1. The Debtors, on their respective behalf and on behalf of their respective estates, agree to release any and all claims and causes of action against PSNH known or unknown that existed as of the date of the Settlement, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code or for purported violations of Section 362 of the Bankruptcy Code; provided that nothing therein will limit, release or otherwise discharge: (a) any objections or defenses the Debtors may have to any claim filed by PSNH pursuant to paragraph 7 of the Settlement Term Sheet, (b) any rights, defenses, claims and causes of action against PSNH arising in, under or related to the Interconnection Agreement or

with respect to utility service provided by PSNH, or (c) any obligations under the Settlement.

2. The Lenders agree to release any and all claims and causes of action against PSNH known or unknown that existed as of the date of the Settlement, including, without limitation, any claims or rights under the PPA, the Option Agreement, the ROFR, or the Subordination Agreement; provided that nothing therein will limit, release or otherwise discharge any obligations under the Settlement.

3. PSNH agrees to release any and all claims against the Debtors, their estates and the Lenders (and all of their respective predecessors, successors and assigns, affiliates, officers, directors, shareholders, professionals, employees, members, agents and investment advisors) known or unknown that existed as of the date of the Settlement, including, without limitation, any claims or rights under the PPA, the Option Agreement, the ROFR, or the Subordination Agreement, or any easements granted in connection with the PPA, the Option Agreement, the ROFR or the Subordination Agreement, with certain exceptions as set forth in the Settlement Term Sheet.

C. **Transfer of Lead Market Participant (“LMP”)**. PSNH will continue to serve as the Debtors’ LMP through February 29, 2024 and will cooperate on a timely basis with the transfer of the LMP to be effective March 1, 2024.

- D. **Resolution of Objections.** PSNH will withdraw with prejudice the objections it filed to the Debtors' pleadings set forth in Paragraph 7 and the Motion to Transfer Venue. This Court shall retain exclusive jurisdiction to oversee the Settlement, the Chapter 11 Cases and all matters arising in, under, or related thereto.

**BASIS FOR RELIEF**

11. 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).

12. 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).

13. The Debtors respectfully submit that the Settlement 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. Among other reasons, the Settlement avoids costly litigation, the outcome of which is uncertain, between and among the Parties concerning the transition of the LMP, the prepetition history concerning the PPA and the Option Agreement, and potential stay violations. Most importantly, it provides the Debtors with a path to obtain crucially needed funds from PSNH and allows the Debtors to sell energy into the ISO-NE grid and sell RECs to third parties without disruption. Indeed, the Settlement is the product of good-faith discussion and arms’ length negotiations among the Parties to reach a global resolution of various disputes in these Chapter 11 Cases. The Debtors believe that the Settlement represents a very favorable result for the Debtors’ estates and falls well within the range of reasonableness under the *Martin* factors.

14. Accordingly, cause exists to support approval of the Settlement as set forth in the Settlement Term Sheet and Settlement Agreement.

**WAIVER OF RULE 6004(h)**

15. Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise.” For the reasons set forth herein, the Debtors respectfully request that the Court waive the fourteen (14) day stay period, to the extent such stay is applicable.

**NOTICE AND NO PRIOR REQUEST**

16. 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 Deutsche Bank Trust Company Americas in its capacity as Collateral Agent, Hogan Lovells LLP; (d) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP; (e) Berlin Biopower Investment Fund, LLC, with a copy to Murray Plumb & Murray; (f) Greenline CDF Subfund XVIII LLC, with a copy to Kutak Rock LLP, U.S. Bancorp Community Development Corporation and Leverage Law Group, LLC; (g) Public Service of New Hampshire d/b/a Eversource; (h) the United States Attorney's Office for the District of Delaware; (i) the United States Attorney's Office for the District of New Hampshire; (j) the United States Environmental Protection Agency; (k) the Nuclear Regulatory Commission; (l) the United States Department of Energy; (m) the Federal Energy Regulatory Commission; (n) New Hampshire Department of Environmental Services; (o) New Hampshire Public Utilities Commission; (p) New Hampshire Site Evaluation Committee; (q) New Hampshire Department of Energy; (r) City of Berlin; (s) ISO New England, Inc.; (t) the United States Securities and Exchange Commission; (u) the Internal Revenue Service; (v) the New Hampshire Department of Justice, Civil Law Bureau (v) the New Hampshire Department of Justice, Civil Law Bureau and (w) any party that has requested notice pursuant to Bankruptcy Rule 2002.

17. 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 Settlement, and (ii) granting other related relief.

Dated: February 24, 2024

/s/ Chantelle D. McClamb

Chantelle D. McClamb (No. 5978)  
Katharina Earle (No. 6348)  
**GIBBONS P.C.**  
300 Delaware Avenue, Suite 1015  
Wilmington, Delaware 19801  
Telephone: (302) 518-6300  
E-mail: cmcclamb@gibbonslaw.com  
          kearle@gibbonlaw.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@gibbsonlaw.com

*Proposed 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

*Proposed 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)

**Re: D.I.**

**ORDER (I) APPROVING THE SETTLEMENT BY AND AMONG THE DEBTORS,  
SENIOR SECURED LENDERS, AND PUBLIC SERVICE COMPANY OF NEW  
HAMPSHIRE, DOING BUSINESS AS EVERSOURCE AND  
(II) GRANTING RELATED RELIEF**

Upon consideration of the *Debtors' Motion for Entry of an Order (I) Approving the Settlement By and Among the Debtors, Senior Secured Lenders, and Public Service Company of New Hampshire, Doing Business as Eversource and (II) Granting Related Relief* (the "Motion");<sup>2</sup> and upon the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings*; 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 these Chapter 11 Cases 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 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; upon the Court having determined that the Settlement was negotiated and entered into in good faith and is within the sound business judgement of the Debtors; and it appearing that the legal

---

<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 used but not defined herein shall have the meanings ascribed to them in the Motion.

and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion is fair, equitable and in the best interests of the Debtors and their estates, and good cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Settlement, including the Settlement Agreement filed at Dkt No. [●], is authorized and approved in its entirety in all respects.
3. All of the terms of the Settlement, including the releases, are deemed binding on the parties to the Settlement Agreement pursuant to the terms thereof, and all other parties in interest in the Chapter 11 Cases, and no party may take any action to impede, impair or delay the Settlement or the consummation thereof. Nothing in this Order shall modify or impair the United States of America's rights and defenses of setoff and recoupment, if any.
4. The terms and conditions of the Settlement, as evidenced by the Settlement Agreement are incorporated into this Order as if fully set forth herein and the failure to specifically include or reference any particular term or provision thereof in this Order shall not diminish or impair the effectiveness of such term or provision.
5. The Motion to Transfer Venue is withdrawn with prejudice and the objections set forth in paragraph 7 of the Motion are withdrawn, and in any event, overruled.
6. The Debtors, PSNH, and the Lenders are each authorized, but not directed, to take any and all actions as may be necessary or appropriate to effectuate and implement the terms and provisions of the Settlement.
7. The stay provided for in Bankruptcy Rule 6004(h) is hereby waived and this Order is effective immediately upon its entry.

8. The Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of the Settlement, this Order and the Chapter 11 Cases.

**EXHIBIT B**

**Settlement Term Sheet**

**SETTLEMENT AGREEMENT TERM SHEET**

1. The Parties to this Settlement are the Debtors and Public Service Company of New Hampshire d/b/a Eversource (“PSNH”)<sup>1</sup>, with the Debtors’ senior secured lenders, in their capacity as pre-petition and DIP lenders and any agent thereto (collectively, the “Lenders”) to sign in connection with mutual releases.
2. With respect to all prepetition amounts (through February 8, 2024), PSNH shall be entitled to retain all funds with no right to clawback by the Debtors or their estates or any Chapter 7 Trustee. Debtors agree that PSNH can offset/net/recoup the excess Cumulative Reduction against all charges up through and including February 8, 2024.
3. Effective February 9, 2024 (the “Petition Date”) through February 29, 2024, PSNH will pay the Debtors in full via wire transfer for all energy delivered and pro rata capacity at the contract price of \$84.65/mWh for energy and \$336,000/month for capacity without offset/recoupment or any reduction (the “February Payment”).
4. In addition to the February Payment, PSNH shall tender a payment to the Debtors in an amount equal to the difference between \$3,350,000 and the February Payment in full and final settlement of any and all claims and causes of action that the Debtors have or may have against PSNH, their respective affiliates, officers, directors, shareholders, professionals, employees, agents of any kind that existed as of the date of this settlement, and agree to release any and all claims and causes of action against PSNH known or unknown that existed as of the date of the settlement, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code or for purported violations of Section 362 of the Bankruptcy Code; provided that nothing herein will limit, release or otherwise discharge: (a) any objections or defenses the Debtors may have to any claim filed by PSNH pursuant to paragraph 7 herein, (b) any rights, defenses, claims and causes of action against PSNH arising in, under or related to the Interconnection Agreement or with respect to utility service provided by PSNH, or (c) any obligations under this Settlement. The Debtors shall provide PSNH with bank account information for the payments set forth in this Agreement no later than March 1, 2024. As long as the foregoing account information is provided to PSNH by March 1, 2024, the payment set forth in this paragraph and the February Payment shall be made on or before March 11, 2024. In any event, all payments shall be made as promptly as practicable.
5. PSNH will continue to serve as the Debtors’ LMP through February 29, 2024, and PSNH will cooperate on a timely basis with the transfer of the LMP to be effective March 1, 2024. The Parties understand and agree that for such transfer to be effective March 1, 2024, the transfer process with ISO-NE needs to be commenced by the parties at least 2.5 business days prior to March 1, 2024. Regardless of the timing of LMP transition from PSNH, on and after March 1, 2024, PSNH shall pay over to the Debtors, without offset/recoupment or any reduction, any amounts on account of energy or capacity of the Debtors received via the ISO-NE market settlement system for Berlin Station.
6. In connection with Court approval and as consideration for the releases contained in the following paragraph, the Lenders agree to release any and all claims and causes of action against PSNH known or unknown that existed as of the date of the settlement, including without limitation any claims or rights under the PPA, the Option Agreement, the ROFR, or the Subordination Agreement; provided that nothing herein will limit, release or otherwise discharge any obligations under this Settlement.
7. PSNH agrees to release any and all claims against the Debtors, their estates and the Lenders (and all of their respective affiliates, officers, directors, shareholders, professionals, employees, members,

---

<sup>1</sup> PSNH confirms that it is NOT a governmental entity.

agents and investment advisors) known or unknown that existed as of the date of the settlement, including without limitation any claims or rights under the PPA, the Option Agreement, the ROFR, or the Subordination Agreement, or any easements granted in connection with the PPA, the Option Agreement, the ROFR or the Subordination Agreement; provided that nothing herein will limit, release or otherwise discharge:

- a. Any rejection damage claim against Debtor Berlin Station, LLC for the rejection of the PPA, which shall only be a general unsecured claim and shall be treated in accordance with the Proposed Plan (the "Plan") attached to the Restructuring Support Agreement (the "RSA");
- b. Any unsecured prepetition claim for utility service provided by PSNH to the Debtors;
- c. Claims for unpaid prepetition charges, if any, under the Interconnection Agreement; and
- d. Any obligations arising under this Settlement.

(The claims delineated subparagraphs (a) – (d) above and in paragraph 8 below, the "Retained Claims"). PSNH agrees it shall at no time transfer or assign any of the Retained Claims.

8. PSNH does not waive any post-petition claims it has or may have for the provision of post-petition utility service to the Debtors or post-petition charges, if any, under the Interconnection Agreement. If the Interconnection Agreement is assumed or assigned, PSNH shall be entitled to any cure claims (it being expressly agreed that any claim arising under the PPA or the Option Agreement or the rejection of the PPA and the Option Agreement, whether for setoff, recoupment, netting, or otherwise under any legal theory shall not be a component of any cure claim). Other than the foregoing right to assert a cure claim, PSNH shall agree to the Debtors' assumption and/or assumption and assignment of the Interconnection Agreement.

9. PSNH and the Debtors will reasonably cooperate to obtain any approvals needed by the Debtors and/or their agents to effectuate the transfer of the Lead Market Participant as contemplated by Paragraph 5 of this agreement.

10. PSNH has no obligation to purchase any more RECs from the Debtors, and the Debtors have no obligation to transfer or sell any RECs to PSNH. The Debtors can sell fourth quarter 2023 and first quarter RECs to whomever they want.

11. The United States Bankruptcy Court for the District of Delaware shall retain exclusive jurisdiction to oversee this settlement, the bankruptcy cases and all matters arising in, under, or related thereto.

12. PSNH shall withdraw all objections to any motions filed by the Debtors as of the date of the settlement and shall withdraw its motion to transfer venue, shall not object to, vote to reject, or otherwise impede or delay consummation of, the RSA or Plan or any other plan, agreement in respect of sale of the Debtors' assets, or other transaction that is consistent with the material terms of this settlement. PSNH shall not file pleadings in the Bankruptcy Court in any way inconsistent with the terms of this Settlement, including that it shall not appeal, or seek stay, reconsideration or modification of, the orders entered by the court approving the rejection and LMP motions.

13. The Parties and the Lenders will cooperate to obtain Bankruptcy Court approval of the provisions of this agreement on an expedited basis, and otherwise cooperate to implement the terms of this agreement.

**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)

Requested Hearing Date: February 27, 2024 at 2:00 p.m. (ET)  
Objection Deadline: At the Hearing

**TO:** (a) the Office of 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 Deutsche Bank Trust Company Americas in its capacity as Collateral Agent, Hogan Lovells LLP; (d) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP; (e) Berlin Biopower Investment Fund, LLC, with a copy to Murray Plumb & Murray; (f) Greenline CDF Subfund XVIII LLC, with a copy to Kutak Rock LLP, U.S. Bancorp Community Development Corporation and Leverage Law Group, LLC; (g) Public Service of New Hampshire d/b/a Eversource; (h) the United States Attorney's Office for the District of Delaware; (i) the United States Attorney's Office for the District of New Hampshire; (j) the United States Environmental Protection Agency; (k) the Nuclear Regulatory Commission; (l) the United States Department of Energy; (m) the Federal Energy Regulatory Commission; (n) New Hampshire Department of Environmental Services; (o) New Hampshire Public Utilities Commission; (p) New Hampshire Site Evaluation Committee; (q) New Hampshire Department of Energy; (r) City of Berlin; (s) ISO New England, Inc.; (t) the United States Securities and Exchange Commission; (u) the Internal Revenue Service; (v) the New Hampshire Department of Justice, Civil Law Bureau 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") filed the *Debtors' Motion for Entry of an Order (I) Approving the Settlement By and Among the Debtors, Senior Secured Lenders, and Public Service Company of New Hampshire, Doing Business as Eversource and (II) Granting Related Relief* (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

**PLEASE TAKE FURTHER NOTICE** that a hearing on the Motion was requested to be held on **February 27, 2024 at 2:00 p.m. (ET)** (the "Hearing") before the Honorable Laurie Selber Silverstein, in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE** that any objections or responses to the relief requested in the Motion **may be heard at the Hearing** and may be filed with the United States

---

<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.

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 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 Corporate Restructuring, LLC : <https://dm.epiq11.com/case/burgess/>.

**PLEASE TAKE FURTHER NOTICE THAT THE SETTLEMENT PROPOSED IN THE MOTION INCLUDES CERTAIN RELEASE PROVISIONS, WHICH ARE SUMMARIZED IN THE MOTION AND BELOW.**

- **The Debtors, on their respective behalf and on behalf of their respective estates, agree to release any and all claims and causes of action against PSNH known or unknown that existed as of the date of the Settlement, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code or for purported violations of Section 362 of the Bankruptcy Code; provided that nothing therein will limit, release or otherwise discharge: (a) any objections or defenses the Debtors may have to any claim filed by PSNH pursuant to paragraph 7 of the Settlement Term Sheet, (b) any rights, defenses, claims and causes of action against PSNH arising in, under or related to the Interconnection Agreement or with respect to utility service provided by PSNH, or (c) any obligations under the Settlement.**
- **The Lenders agree to release any and all claims and causes of action against PSNH known or unknown that existed as of the date of the Settlement, including, without limitation, any claims or rights under the PPA, the Option Agreement, the ROFR, or the Subordination Agreement; provided that nothing therein will limit, release or otherwise discharge any obligations under the Settlement.**
- **PSNH agrees to release any and all claims against the Debtors, their estates and the Lenders (and all of their respective predecessors, successors and assigns, affiliates, officers, directors, shareholders, professionals, employees, members, agents and investment advisors) known or unknown that existed as of the date of the Settlement, including, without limitation, any claims or rights under the PPA, the Option Agreement, the ROFR, or the Subordination Agreement, or any easements granted in connection with the PPA, the Option Agreement, the ROFR or the Subordination Agreement, with certain exceptions as set forth in the Settlement Term Sheet.**

Dated: February 24, 2024  
Wilmington, Delaware

/s/ Chantelle D. McClamb  
Chantelle D. McClamb (No. 5978)  
Katharina Earle (No. 6348)  
**GIBBONS P.C.**  
300 Delaware Avenue, Suite 1015

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

Wilmington, Delaware 19801  
Telephone: (302) 518-6300  
E-mail: cmclamb@gibbonslaw.com  
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

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

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

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