

## **PSNH SETTLEMENT OF BURGESS/BERLIN STATION BANKRUPTCY CLAIMS**

### **1. Background**

Burgess and Berlin Station filed Chapter 11 bankruptcy petitions on Friday, February 9, 2024, without notice to PSNH. The debtors' motions and other papers filed on February 9 made it clear that they had been planning for the bankruptcies, including the termination of the PPA, since mid-October 2023. Over the February 10-11 weekend, a team of PSNH attorneys and outside counsel drafted opposition papers and the motion to change venue to New Hampshire which were filed on February 13. The debtors were surprised and frustrated that they could not just have their motions granted without objection. An initial hearing was authorized by the bankruptcy judge for February 13, only two business days after the filing, and PSNH appeared at that hearing in Delaware. The court set February 21 for a full hearing on all motions.

On February 21<sup>st</sup>, only seven business days after the bankruptcy filings, the Bankruptcy Court Judge, over PSNH's objection, granted the Burgess companies' motion to reject the PPA<sup>1</sup> and related Purchase Option Agreement. The Judge, however, saved for a later date a final determination of the effective date of rejection. The Debtors were seeking a February 9<sup>th</sup> rejection date to impair certain of PSNH's rights and PSNH argued for a later effective date for PPA rejection to preserve certain rights and seek to maximize customer value.

Under applicable bankruptcy law, the Court would have the discretion to grant the rejection effective as of the February 9<sup>th</sup> petition if it concluded that the equities weighed in favor of such retroactive rejection. It seems likely that the Judge would have granted such retroactive relief, based on an apparent pro-debtor perspective and the lack of opposition on such short notice.

The Burgess companies also sought to force PSNH out of the Lead Market Participant ("LMP") role with ISO-NE it holds to operate under the PPA with respect to regional wholesale market participation and related market settlements. The Court did not grant that motion, for technical reasons, on February 21<sup>st</sup>, but would likely have granted that relief on an emergency basis this week, in the absence of the parties' settlement.

The Burgess companies also stated in pleadings and on the record that they would be seeking return of the \$3.6 million portion of the recoupment/netting taken in January 2024 by PSNH against payment of the third quarter 2023 RECs, and that they would contest the recoupment/netting of the Excess Cumulative Reduction ("ECR") against January 2024 energy and capacity charges. They also stated they would challenge the recoupment/netting of the ECR against (1) February 1-8, 2024 (pre-petition) energy and capacity charges, and (2) February 9-29, 2024 (post-petition) energy and capacity charges. Additionally, the Burgess companies threatened potential actions against PSNH on other grounds.

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<sup>1</sup> The "PPA" is the Amended and Restated Power Purchase Agreement, as amended, between the Company and Berlin Station, LLC.

## **2. Settlement Terms**

In the absence of guidance from the Court, the parties eventually agreed to a February 29<sup>th</sup> effective date for the PPA rejection to effectuate the settlement, and the transfer of the LMP role to the Debtors' affiliate or designee. That decision raised a number of transitional issues that were necessary to address through further determinations.

In addition, the Debtors' claims and actions, as well as indications from the Court to side with the Debtors' attempts to reorganize their business, represent significant risks that PSNH would not be able to retain – and the Debtors would be able to recapture for their bankruptcy estates – the additional ECR recoupment/netting that PSNH took against pre-petition capacity and REC charges, and potentially even the ECR netting against energy charges. While PSNH believes it has strong legal arguments supporting its actions in connection with all such netting and recoupment for the benefit of its customers, any unfavorable ruling would require substantial litigation and probably an appeal to the U.S. District Court in Delaware, with no assurance of ultimate success in retaining the benefits obtained by PSNH for its customers.

Under the settlement terms, PSNH will: (1) retain *all* of the approximately \$9.87 million in amounts netted or to be netted against prepetition (prior to February 9) Energy, Capacity, and Quarter 3 2023 REC charges; (2) be released from all further obligations to purchase overmarket RECs under the PPA, including those for December 2023<sup>2</sup> and January and February 2024; (3) be permitted to file a rejection damages (unsecured) claim in the Debtors' bankruptcy for the remaining \$164 million in Cumulative Reduction, with respect to the now-rejected PPA and Purchase Option Agreement.

In return, PSNH will: (1) continue serving as LMP for the power plant under the PPA through February 29, 2024; (2) cooperate with transferring the LMP role to an affiliate or designee of Debtors, effective March 1, 2024; (3) continue purchasing Energy and pro rata Capacity at PPA contract prices (without any ECR recoupment/netting against any portion of those payments, in view of automatic bankruptcy stay concerns), in the estimated amount of \$2,208,233 for the period February 9-29, 2024 (the "February Payment"); and (4) pay an additional amount to the Debtors equal to the difference between the February Payment and \$3,350,000, in full and final settlement of any and all claims the Debtors and/or Lenders may have against PSNH, including all avoidance/clawback actions to undo the significant benefits PSNH has already obtained for its customers.

Through the Debtors' release of all of these claims, PSNH will avoid potential losses and damages that would have the effect of significantly decreasing net customer benefits, as well as substantial ongoing litigation costs. PSNH will also be able to file an unsecured claim for pre-petition utility service provided to the Debtors, in addition to an unsecured claim for unpaid pre-petition charges, if any, under the Interconnection Agreement ("IA") with Burgess, the latter of which must be paid in full if the Debtors assume the IA, as they currently intend.

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<sup>2</sup> RECs produced during October and November 2023 would not be subject to any purchase obligation under the PPA because the 400,000 annual cap on REC purchases was exceeded during August 2023 and the applicable PPA Operating Year ended on November 30, 2023.

### **3. Customer Net Benefits of Settlement**

PSNH personnel have prepared an analysis and estimation of the respective benefits and costs to customers of the approved settlement terms, which demonstrate that customers benefit in the short-term from the settlement. That short-term benefits analysis is attached to this settlement terms summary.

In the near-term, the settlement enables PSNH to retain amounts netted from payments otherwise due to Burgess for its energy and capacity production in December 2023, January 2024, and February 2024 through February 8<sup>th</sup> (i.e., the day before the Debtors' bankruptcy filing), and for RECs produced during the third quarter of 2023, in the total amount of approximately \$9.87 million. In addition, PSNH would receive the benefit of energy market settlements and capacity market credit for the period from February 9-29, 2024, in the total amount of approximately \$1.0 million. PSNH would also avoid potentially having to purchase overmarket RECs for other periods, having a value of approximately \$2.3 million. All of those benefits to customers would be at risk if bankruptcy litigation were to proceed in the absence of settlement. Accordingly, the net near-term benefits of the settlement to PSNH customers is estimated to be approximately \$10 million, as shown in the attached analysis.

In addition, there are likely significant long-term benefits to customers from PPA termination as implemented through the settlement, as demonstrated in the response to Record Request RR-009(2) filed with the NHPUC on February 20, 2024 and as described in testimony during the NHPUC hearing held on February 21, 2024. That long-term analysis shows that above-market purchases of Energy, Capacity, and RECs would have continued throughout the full remaining term of the PPA, even if netting of current and future ECR balances against payments under the PPA were to have continued.

PSNH will be prepared, at the appropriate time, to demonstrate how the net near-term customer benefits of the PPA rejection settlement will flow through the Stranded Cost Recovery Charge reconciling rate mechanism. It is anticipated that the NHPUC and other parties in the SCRC docket will have questions regarding the settlement in the context of the bankruptcy cases, given the complexity of those matters, as well as the effects of these developments on customer rates in the near-term and over the longer-term. PSNH looks forward to answering those questions and addressing related concerns.

## SETTLEMENT TERMS SHORT-TERM BENEFITS TO CUSTOMERS

Short-term net benefits to PSNH Customers (millions of \$\$)				
Benefits to PSNH customers			Costs to PSNH customers	
Netted & recouped from payments due to Burgess for its December energy, capacity, and Q3 2023 REC production	\$5.96	-	\$2.2	Estimated February 9th - 29th energy & capacity payment at PPA rates
Netted & recouped from payments due to Burgess for its January energy and capacity	\$3.28		\$1.1	Full and final settlement (Difference between \$3.35 million and February 9th-29th payment)
Netted & recouped from payments due to Burgess for its February 1st-8th energy and capacity	\$0.63			
Estimated February 9th - 29th energy and capacity at market value	\$1.0			
Estimated avoided over-market cost of December '23, January '24, and February '24 REC purchases	\$2.3			
<b>Total</b>	<b>\$13.2</b>		<b>\$3.35</b>	
-				
<b>Net benefits to PSNH customers</b>			<b>\$10</b>	

Notes: REC = Renewable Energy Certificate, Q3 REC Production = RECs minted from July through September 2023 generation

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “**Agreement**”) is made and entered into as of February 26, 2024, by and among Burgess BioPower, LLC and Berlin Station, LLC (together with Burgess BioPower, LLC, the “**Debtors**”), as debtors and debtors in possession in the Chapter 11 Cases (as defined below) and Public Service Company of New Hampshire d/b/a Eversource (“**PSNH**”), and, solely with respect to Paragraphs 5, 10.b, and 11, The Prudential Insurance Company of America, Pruco Life Insurance Company, Prudential Legacy Insurance Company of New Jersey, Pacific Life Insurance Company, Pacific Life & Annuity Company, Aviva Life and Annuity Company and Royal Neighbors of America (collectively, the “**Lenders**”).<sup>1</sup> PSNH and the Debtors are referred to herein as the “**Parties**”.

### RECITALS

A. On February 9, 2024 (the “**Petition Date**”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

B. The Debtors’ bankruptcy cases are being jointly administered in the Court, styled *In re Burgess BioPower, LLC, et al.*, Case No. 24-10235 (LSS) (Bankr. D. Del.) (collectively, the “**Chapter 11 Cases**”).

C. On the Petition Date, the Debtors filed, among others, the following pleadings:

- i. *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] (the “**Critical Vendors Motion**”);
- ii. *Debtors’ 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] (the “**Shared Services Motion**”);
- iii. *Debtors’ Motion for Interim and Final Orders (I) Approving Entry into a New Lead Market Participant Agreement and (II) Granting Related Relief* [D.I. 18] (the “**LMP Motion**”);
- iv. *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*

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<sup>1</sup> The Lenders include such entities in their capacities as (i) the prepetition Senior Secured Noteholders (as defined in the First Day Declaration (as defined below)) and (ii) the proposed DIP Lenders (as defined in the DIP Motion (as defined below)).

*Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [D.I. 33] (the “**DIP Motion**”); and

- v. *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] (the “**Rejection Motion**”, together with the Critical Vendors Motion, Shared Services Motion, LMP Motion and DIP Motion, the “**Debtors’ Motions**”).

D. Also on the Petition Date, the Debtors filed the Restructuring Support Agreement (the “**RSA**”), which was annexed as Exhibit M to 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**”),<sup>2</sup> along with the proposed chapter 11 plan annexed to the RSA as Exhibit A (as may be amended, the “**Plan**”).

E. PSNH objected to the relief sought in the Debtors’ Motions [D.I. 44, 46, 84, 110, 140].

F. On February 12, 2024, PSNH filed the *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**”). The Debtors’ Motions and the Motion to Transfer Venue are referred to herein collectively as the “**Contested Motions**”.

G. On February 20, 2024, the State of New Hampshire filed a Motion to Join the Motion to Transfer Venue [D.I. 136] (the “**Venue Joinder**”).

H. The Debtors and Senior Secured Noteholders, among others, objected to the relief sought in the Motion to Transfer Venue [D.I. 118, 119] and disputed PSNH’s objections to the relief requested in the Debtors’ Motions [D.I. 113, 114, 124, 125].

I. On February 21, 2024, the Court held a hearing to consider, among other things, the relief sought in the Rejection Motion and the LMP Motion.

J. At the conclusion of the hearing, the Court granted, in part, both the Rejection Motion and the LMP Motion. The Debtors will submit orders to the Court reflecting the relief granted at the February 21, 2024 hearing.

K. Following the conclusion of the February 21, 2024 hearing, PSNH, the Debtors, and the Lenders continued to engage in negotiations to resolve, fully and finally, all of the Contested Motions.

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the First Day Declaration.

L. At a status conference on February 23, 2024, the Parties and the Lenders announced that they had reached consensual resolution of the Contested Motions and would present that resolution to the Court at a hearing set for February 27, 2024.

M. The Parties have negotiated this settlement at arms' length to provide for a comprehensive and consensual resolution of the various issues related to the Contested Motions as well as certain potential claims that have been or could be asserted by and among the Parties and the Lenders.

N. After consideration of the merits of the claims and the objections, the Parties have each determined in their business judgment that this Agreement is in each of their respective best interests as continued litigation will be expensive, may be timely, involving further discovery and expert opinions on various issues and matters, and the results are uncertain.

O. The Lenders have reviewed this settlement and do not object to it.

### **SETTLEMENT**

**NOW, THEREFORE**, in consideration of the mutual undertakings set forth below, the Parties agree as follows:

1. Recitals. The Recitals are incorporated herein by reference.
2. Pre-Petition Delivery of Products to PSNH.
  - a. PSNH shall be entitled to retain the \$3,685,958.55 in funds that PSNH netted against the ECR (as defined below) on or about January 22 and 23, 2024 on account of the RECs (as defined in the PPA) and Capacity (as defined in the PPA) reflected in the January 23, 2024 invoice, with no right by the Debtors or their estates to clawback such funds from PSNH.
  - b. PSNH shall be entitled to apply the Excess Cumulative Reduction (as defined in the PPA, the "ECR") to offset all prepetition charges owed by PSNH to the Debtors for Energy.
  - c. PSNH shall be entitled to apply the ECR to offset all prepetition charges owed by PSNH to the Debtors for Capacity; provided, however, that the *pro rata* portion of Capacity for the period February 9, 2024 through and including February 29, 2024 (the "**Post-Petition Period**") shall be treated as a postpetition charge and paid pursuant to Paragraph 3.
3. Post-Petition Delivery of Products to PSNH.
  - a. PSNH shall pay the Debtors in full via wire transfer (collectively, the "**February Payment**"): (i) for all Energy delivered during the Post-Petition Period at the PPA price of \$84.65 per mWh, and

(ii) [\$231,724.18] for the *pro rata* portion of Capacity for the Post-Petition Period, in each case, without offset, netting, recoupment or any reduction.

- b. 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 (the “**Additional Payment**”, and together with the February Payment, the “**Settlement Payment**”)
- c. The Debtors shall provide PSNH with wire transfer instructions for the Settlement Payment no later than March 1, 2024. As long as the relevant wire transfer instructions are provided to PSNH by March 1, 2024, the Settlement Payment shall be made on or before March 11, 2024. In any event, the Settlement Payment shall be made as promptly as practicable.

4. Transition of LMP.

- a. PSNH will continue to serve as the Debtors’ Lead Market Participant (as such term is defined in the LMP Motion, the “**LMP**”) through February 29, 2024. For the avoidance of doubt, Lead Market Participant shall include PSNH serving as the Lead Market Participant pursuant to the ISO New England Inc. (“**ISO-NE**”) Transmission, Markets and Services Tariff on file with the Federal Energy Regulatory Commission (as amended from time to time).
- b. PSNH and the Debtors will cooperate on a timely basis with the transfer of the LMP status to the Debtors’ designee 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 two-and-a-half business days prior to March 1, 2024
- c. Regardless of the timing of the LMP transition from PSNH to the new LMP, on and after March 1, 2024, PSNH shall pay over to the Debtors, without offset, recoupment, netting 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, LLC.

5. Releases.

- a. Releases by the Debtors. Upon entry of an order by the Court approving this Agreement in form and substance acceptable to the Parties and the Lenders (the “**9019 Order**”), receipt of the Settlement Payment and transfer of the LMP as set forth in Paragraph 4 of this Agreement, the Debtors, on behalf of themselves and their estates, shall be deemed to have released PSNH (together with its affiliates, officers, directors, shareholders, professionals, employees, and agents) and any successors or permitted assigns (together, the “**PSNH Parties**”) from any and all claims and causes of action that the Debtors or their estates have or may have

against the PSNH Parties of any kind that existed as of the date of this Agreement, 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 the PSNH Parties on account of any Retained Claim (as defined below), (b) any rights, defenses, claims and causes of action against the PSNH Parties arising in, under or related to the LGIA, or with respect to utility service provided by the PSNH Parties, or (c) any obligations under this Agreement.

- b. Releases by the PSNH Parties. Upon entry of the 9019 Order, PSNH (on behalf of itself and the PSNH Parties) shall be deemed to have released any and all claims and causes of action that the PSNH Parties have or may have against the Debtors, their estates, the Lenders (and all of the Debtors' and the Lenders' respective affiliates, officers, directors, shareholders, professionals, employees, members, agents (including any administrative and collateral agents), and investment advisors, and any successors or permitted assigns), known or unknown, in respect of the Debtors or their assets, that existed as of the date of entry of this Agreement, including, without limitation, any claims or rights under the PPA, the Option Agreement, the right of first refusal in the PPA (the "**ROFR**"), or the Subordination Agreement, dated as November 19, 2013 between PSNH and Deutsche Bank Trust Company Americas (the "**Subordination Agreement**"), 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 the following (the following, collectively, the "**Retained Claims**"):
- i. Any rejection damage claim against Debtor Berlin Station, LLC for the rejection of the PPA and the Option Agreement, which rejection shall be deemed to be effective as of February 29, 2024, and which such claim shall only be a general unsecured claim and shall be treated in accordance with the Plan; provided, further, that, other than the foregoing rejection damages claim, PSNH shall have no claim under or related to the PPA and/or the Option Agreement, including any administrative expense claim for the Post-Petition Period;
  - ii. Any unsecured prepetition claim for utility service provided by PSNH to the Debtors;
  - iii. Claims for unpaid prepetition charges, if any, under the LGIA; and
  - iv. Any obligations arising under this Agreement.

PSNH further covenants, and agrees, that it shall not transfer or assign any of the Retained Claims.

- c. Releases by the Lenders. Upon entry of the 9019 Order and orders resolving the Contested Motions in a manner consistent with the terms of this Agreement, the Debtors' receipt of the Settlement Payment, and transfer of the LMP as set forth in Paragraph 4 of this Agreement, the Lenders (on behalf of themselves and their affiliates) shall be deemed to have released any and all claims and causes of action that the Lenders or their affiliates have or may have against the PSNH Parties, known or unknown, in respect of the Debtors or their assets, that existed as of the date of entry of this Agreement, 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 Agreement.

6. PSNH Claims for Post-Petition Charges under the LGIA and Utility Services.

- a. 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 LGIA.
- b. If the LGIA is assumed or assumed and 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 Cumulative Reduction (as defined in the PPA), ECR, 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 LGIA.

7. RECs. 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, first quarter 2024 RECs and any other RECs to whomever they want.

8. Withdrawal of Objections; Treatment of Other Pleadings.

- a. PSNH shall (i) withdraw with prejudice all objections to any motions filed by the Debtors as of the date of this Agreement, including the Debtors' Motions, and (ii) 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 a sale of the Debtors' assets, or other transaction that is consistent with the material terms of this Agreement.
- b. PSNH shall withdraw with prejudice the Motion to Transfer Venue, shall not cooperate with, support, or join in any other motion to transfer venue, including, without limitation, the Venue Joinder, and shall not oppose

entry of any order denying with prejudice any motion to transfer venue including, without limitation, an order denying the Venue Joinder.

- c. The orders on the Rejection Motion and the LMP Motion shall be in a form acceptable to the Parties and the Lenders.
- d. The order on the DIP Motion shall be in a form acceptable to the Debtors and the Lenders.
- e. The Parties and the Lenders shall not file pleadings in the Court in any way inconsistent with the terms of this Agreement, including that PSNH shall not appeal, or seek a stay, reconsideration or modification of, the orders entered by the Court approving the Debtors' Motions.

9. Resolution of Motion to Transfer Venue. The 9019 Order shall provide that the Motion to Transfer Venue is withdrawn with prejudice.

10. Further Assurances.

- a. The Parties will reasonably cooperate with one another to obtain any approvals needed by the Debtors and/or their agents to effectuate the transfer of the LMP, as contemplated by Paragraph 4(b) above.
- b. The Parties and the Lenders will cooperate to obtain the Court's approval of the provisions of this Agreement on an expedited basis (and on or before February 27, 2024), and the Parties shall otherwise cooperate to implement the terms of this Agreement. In the event the Court does not enter the 9019 Order by February 28, 2024, then, subject to the Lenders' subsequent agreement to fund or backstop administrative expenses of the Chapter 11 Cases until such time as the Court enters the 9019 Order, this Agreement will be null and void *ab initio*, and the parties hereto shall return to the status quo as if this Agreement had not existed.

11. Miscellaneous.

- a. Approval by Bankruptcy Court. This Agreement is conditioned upon entry by the Court of the 9019 Order, which shall authorize the Debtors to enter into, and consummate the transactions provided for in, this Agreement.
- b. Defense of the 9019 Order. Upon entry by the Court of the 9019 Order, the Parties and the Lenders will cooperate with one another to defend against any subsequent challenge to the effectiveness of the 9019 Order, including, without limitation, any appeal or motion for reconsideration thereof; provided, however, that the foregoing shall not be considered as an agreement by the Lenders (or the administrative and collateral agents) to provide debtor-in-possession financing or consent by the Lenders

(or the administrative and collateral agents) of the Debtors' use of cash collateral.

- c. Compromise of Claims. The parties hereto acknowledge that this Agreement is a compromise of disputed claims and that no party hereto admits, and each expressly denies, any liability on its part.
- d. No Reliance. Except as otherwise set forth in this Agreement, the parties hereto represent and acknowledge that, in executing this Agreement, they do not rely and have not relied upon any representation or statement made by any other party hereto, or any of its agents, shareholders, representatives, or attorneys, with regard to the subject matter, basis, or effect of this Agreement.
- e. Non-Severable. The terms of this Agreement are non-severable and mutually dependent. If any provision(s) of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, then the parties hereto shall amend this Agreement in such a manner as to effectuate the benefit of their bargain. If such amendment is not possible, and the parties do not agree otherwise, the entire Agreement will be null and void *ab initio*, and the parties hereto shall return to the status quo *ante* as if this Agreement had not existed.
- f. Amendment. This Agreement or any provisions hereof may not be amended, waived, delayed, or otherwise altered or modified unless set forth in a further written agreement executed by all of the Parties and the Lenders, and any such purported amendment, waiver, or delay in the enforcement of this Agreement not memorialized in a writing signed by all of the Parties and the Lenders shall have no force or effect.
- g. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, administrators, and permitted assigns; *provided, further*, that, PSNH may not assign this Agreement nor any of the rights and benefits arising under it without the prior written consent of each of the Debtors and the Lenders. Any releasees under Paragraph 5 that are not a signatory to this Agreement are intended third-party beneficiaries of this Agreement and are entitled to enforce such releases.
- h. Governing Law. This Agreement shall be interpreted and construed in accordance with the provisions of the Bankruptcy Code, and, where not inconsistent, the laws of the State of Delaware, without regard to the conflict of laws principles of the State of Delaware.
- i. Consent to Jurisdiction. Each of the parties hereto hereby irrevocably consents to the exclusive jurisdiction of the Court with respect to any action to enforce the terms and provisions of this Agreement and expressly


waives any right to commence any such action in any other forum. Without limiting the foregoing, each of the parties hereto agrees that the Court shall retain exclusive jurisdiction to oversee the Settlement and Settlement Agreement, the Debtors' Chapter 11 Cases, and all matters arising in, under, or related thereto.

- j. Not Construed Against Drafter. No party hereto shall be deemed to be the drafter of this Agreement, or of any particular provision or provisions, and no part of this Agreement shall be construed against any party hereto on the basis that the particular party is the drafter of any part of this Agreement.
- k. Counterparts. This Agreement may be executed (electronically or manually) in one or more counterparts, including by e-mail, PDF, or facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- l. Authority. Each person signing this Agreement represents and warrants that he or she has been duly authorized and has the requisite authority to execute and deliver this Agreement on behalf of such party and to bind his or her respective client(s) to the terms and conditions of this Agreement; provided, however, for the avoidance of doubt, the Debtors' authority to enter into this Agreement is expressly conditioned upon entry of the 9019 Order.

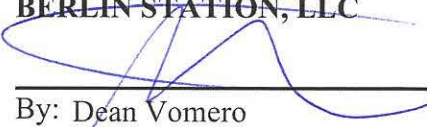
*[Remainder of Page Left Intentionally Blank; Signature Pages Follow]*

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by themselves, or their respective authorized agent, as of the date first written above.


**BURGESS BIOPOWER, LLC**

  
By: Dean Vomero  
Title: Chief Restructuring Officer

**BERLIN STATION, LLC**

  
By: Dean Vomero  
Title: Chief Restructuring Officer

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**


  
By: Gregory B. Butler  
Title: Executive Vice President & General Counsel

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by themselves, or their respective authorized agent, as of the date first written above.

**SOLELY AS TO PARAGRAPHS 5, 10.b AND 11 (for purposes of paragraph 11, as a “party” or one of the “parties” (lower case))**


**THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA**

By: PGIM, Inc., as investment manager

DocuSigned by:  
  
/s/ PAUL H. PROCYK  
A9DBB3E19A6246E...  
By: Paul H. Procyk  
Title: Vice President

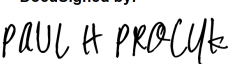
**PRUCO LIFE INSURANCE COMPANY**

By: PGIM, Inc., as investment manager

DocuSigned by:  
  
/s/ PAUL H. PROCYK  
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By: Paul H. Procyk  
Title: Vice President

**PRUDENTIAL LEGACY INSURANCE  
COMPANY OF NEW JERSEY**


By: PGIM, Inc., as investment manager

DocuSigned by:  
  
/s/ PAUL H. PROCYK  
A9DBB3E19A5246E...  
By: Paul H. Procyk  
Title: Vice President

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by themselves, or their respective authorized agent, as of the date first written above.

**SOLELY AS TO PARAGRAPHS 5, 10.b AND 11 (for purposes of paragraph 11, as a “party” or one of the “parties” (lower case))**

**PACIFIC LIFE & ANNUITY COMPANY**

 DocuSigned by:  
Chris Dallas  
9791B18E0A3C455...  
By: Chris Dallas  
Title: Vice President

**PACIFIC LIFE INSURANCE COMPANY**

 DocuSigned by:  
Chris Dallas  
9791B18E0A3C455...  
By: Chris Dallas  
Title: Vice President

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by themselves, or their respective authorized agent, as of the date first written above.

**SOLELY AS TO PARAGRAPHS 5, 10.b AND 11 (for purposes of paragraph 11, as a “party” or one of the “parties” (lower case))**

**ROYAL NEIGHBORS OF AMERICA**



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By: Tom Myers  
Title: Chief Financial Officer & Treasurer

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by themselves, or their respective authorized agent, as of the date first written above.

**SOLELY AS TO PARAGRAPHS 5, 10.b AND 11 (for purposes of paragraph 11, as a “party” or one of the “parties” (lower case))**

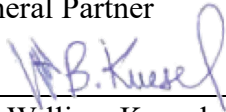
**ATHENE ANNUITY AND LIFE COMPANY  
(f/k/a Aviva Life and Annuity Company)**

By: Apollo Insurance Solutions Group LP, its  
investment adviser

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

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

/s/



By: William Kuesel

Title: Vice President

**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. 153, 164**

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

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

the sound business judgement of the Debtors; and it appearing that the legal 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 D.I. 164, 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.
4. 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.
5. 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.
6. The stay provided for in Bankruptcy Rule 6004(h) is hereby waived and this Order is effective immediately upon its entry.
7. The Court shall retain 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; provided, however, that the foregoing shall not be deemed to impair or affect

the jurisdiction of other courts or agencies with respect to a governmental unit's exercise of its police and/or regulatory powers.

Dated: February 28th, 2024  
Wilmington, Delaware

  
LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE