

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)
(Jointly Administered)

Re: D.I. 11

**NOTICE OF FILING OF REVISED PROPOSED INTERIM AND FINAL ORDERS
FOR THE MOTION OF THE DEBTORS FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO PAY PREPETITION CLAIMS
OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that, on February 9, 2024, the debtors and debtors in possession in the above-captioned cases filed the *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 “Motion”). Attached to the Motion as **Exhibit A** was a proposed form of order approving the relief requested in the Motion on an interim basis (the “Proposed Interim Order”). Attached to the Motion as **Exhibit B** was a proposed form of order approving the relief requested in the Motion on an final basis (the “Proposed Final Order”).

PLEASE TAKE FURTHER NOTICE pursuant to *the Amended Omnibus Notice of First Day Motions, Rejection Motion, and Hearing Thereon* [D.I. 97] any objections to the relief requested in the Motion were to be filed and served so as to be received by February 20, 2024 at 12:00 p.m. (ET) (the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that, prior to the Objection Deadline, Public Service Company of New Hampshire filed a formal objection to the Motion. Subsequently, 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.

Debtors received informal comments to the Proposed Interim Order and the Proposed Final Order from their lenders.

PLEASE TAKE FURTHER NOTICE that a revised proposed form of order addressing the informal comments from the Debtors' lenders and granting the relief requested in the Motion on an interim basis is attached hereto as **Exhibit A** (the "Revised Proposed Interim Order") and a revised proposed form of order addressing the informal comments from the Debtors' lenders and granting the relief requested in the Motion on a final basis is attached hereto as **Exhibit B** (the "Revised Proposed Final Order"). For the convenience of the Court and all parties in interest, a blackline of the Revised Proposed Interim Order against the Proposed Interim Order is attached hereto as **Exhibit C** and a blackline of the Revised Proposed Final Order against the Proposed Final Order is attached hereto as **Exhibit D**.

PLEASE TAKE FURTHER NOTICE that the Debtors intend to seek entry of the Revised Proposed Order at the hearing (the "Hearing") scheduled for **February 21, 2024 at 9:30 a.m. (ET)** before the Honorable Laurie Selber Silverstein at the United States Bankruptcy Court for the District of Delaware. The Debtors reserve all rights to modify the Revised Proposed Interim Order at or prior to the Hearing.

Dated: February 20, 2024
Wilmington, Delaware

/s/ Chantelle D. McClamb
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Katharina Earle (No. 6348)
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*Proposed Co-Counsel for Debtors Burgess
BioPower, LLC and Berlin Station, LLC*

-and-

Kenneth S. Leonetti (admitted *pro hac vice*)
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*Proposed Co-Counsel for Debtors Burgess
BioPower, LLC and Berlin Station, LLC*

EXHIBIT A

(Revised Proposed Interim Order)

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)
(Jointly Administered)

Re: D.I.

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION
CLAIMS OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF**

Upon consideration of the *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* (the “Motion”)² 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. §§ 1334 and 157 and the *Amended Standing Order of Reference* of 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) the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) the Court may enter a final order consistent with Article III of the United States Constitution; and upon the record herein; and after due deliberation thereon; and it appearing that sufficient notice of the Motion has been given and that no further notice is necessary, except as set forth in the Motion and with respect to entry of this Interim Order and notice of the Final Hearing (as defined below); and good cause appearing therefore, it is hereby

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

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

ORDERED THAT:

1. The Motion is **GRANTED** on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, to pay the Critical Vendor Claims of their Critical Vendors, subject to the terms and conditions of this Interim Order; *provided, however,* that the amount of the Critical Vendor Claims that the Debtors are authorized to pay pursuant to this Interim Order shall not exceed \$0.9 million in the aggregate.
3. Prior to making a payment to any Critical Vendor on account of a Critical Vendor Claim, the Debtors may, upon consultation with the Senior Secured Noteholders, settle all or some of the Critical Vendor Claims of such party for less than their face amount without further notice or hearing.
4. The Debtors are authorized to condition the payment of any Critical Vendor Claim on the Critical Vendor entering into a Critical Vendor Agreement.
5. The form of Critical Vendor Agreement attached as **Exhibit C** to the Motion is approved in its entirety, and the Debtors are authorized to negotiate, modify, or amend the form of Critical Vendor Agreement in their reasonable business judgment.
6. The Debtors are authorized to make payments on account of a Critical Vendor Claim, subject to the other limits set forth herein, even in the absence of a Critical Vendor Agreement, if the Debtors, upon consultation with the Senior Secured Noteholders and any official committee appointed in this case, determine that failure to pay such Critical Vendor Claim will result in harm to the Debtors' business.
7. If a Critical Vendor enters into a Critical Vendor Agreement and/or accepts payment, and subsequently refuses to supply goods or provide services to the Debtors on Trade Terms or otherwise fails to comply with the Critical Vendor Agreement, then the Debtors may

take any and all appropriate steps to cause such Critical Vendor to repay payments made to it on account of its Critical Vendor Claim. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Critical Vendor.

8. The Debtors' undisputed obligation to the Suppliers under Outstanding Orders arising from (a) shipments of goods delivered to and accepted by the Debtors on or after the Petition Date and (b) provision of services to the Debtors on or after the Petition Date at the Debtors' request are hereby granted administrative expense priority status pursuant to Section 503(b)(1)(A) of the Bankruptcy Code.

9. In accordance with this Interim Order, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court (and any such financial institution shall not have liability to any party for relying on such representations by the Debtors), whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

10. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of prepetition obligations and claims as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

11. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of any of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any Debtor and any third party under Section 365 of the Bankruptcy Code.

12. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

13. The requirements set forth in Bankruptcy Rule 6003 have been satisfied.

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

15. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be effective and enforceable immediately upon its entry.

16. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

17. The hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the "Final Hearing") shall be held **on _____, 2024 at _____ (prevailing Eastern Time)**. Any objections or responses to the entry of a final order on the Motion shall be filed on or **before 4:00 p.m. (prevailing Eastern Time) on _____, 2024** and shall be served on: (a) the Debtors, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm

Beach, FL 33408, Attn: Dean Vomero; (b) Foley Hoag, 1301 Avenue of the Americas, 25th Floor, New York, New York 10019, Attn: Alison Bauer, Esq. (abauer@foleyhoag.com) and Jiun-Wen Bob Teoh, Esq. (jteoh@foleyhoag.com), and 155 Seaport Boulevard, Boston, Massachusetts 02210, Attn: Kenneth S. Leonetti, Esq. (ksl@foleyhoag.com); (c) Gibbons, P.C., 300 Delaware Ave., Suite 1015, Wilmington, Delaware 19801, Attn: Chantelle D. McClamb, Esq. (cmcclamb@gibbonslaw.com), and One Gateway Plaza, Newark, New Jersey, 07102, Attn: Robert K. Malone, Esq. (rmalone@gibbonslaw.com); (d) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware; 19801, Attn: Jane M. Leamy, Esq. (jane.m.leamy@usdoj.gov); (e) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP, One International Place, Suite 2000, Boston, MA 02110, Attn: Julia Frost-Davies (julia.frostdavies@gtlaw.com), and 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801, Attn: Dennis Meloro (melorod@gtlaw.com); and (f) counsel to any statutory committee appointed in these chapter 11 cases. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

18. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation and enforcement of this Interim Order.

EXHIBIT B

(Revised Proposed Final Order)

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

In re BURGESS BIOPOWER, LLC, <i>et al.</i> ¹ Debtors.	Chapter 11 Case No. 24-10235 (LSS) (Jointly Administered) Re: D.I.
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**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION CLAIMS
OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF**

Upon consideration of the *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* (the “Motion”)² 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. §§ 1334 and 157 and the *Amended Standing Order of Reference* of 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) the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) the Court may enter a final order consistent with Article III of the United States Constitution; and upon the record herein; and after due deliberation thereon; and it appearing that sufficient notice of the Motion has been given and that no further notice is necessary; and good cause appearing therefore, it is hereby

ORDERED THAT:

1. The Motion is **GRANTED** on a final basis, as set forth herein.

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

2. The Debtors are authorized, but not directed, to pay the Critical Vendor Claims of their Critical Vendors, subject to the terms and conditions of this Final Order; *provided, however*, that the amount of the Critical Vendor Claims that the Debtors are authorized to pay pursuant to this Final Order shall not exceed \$1.2 million in the aggregate.

3. Prior to making a payment to any Critical Vendor on account of a Critical Vendor Claim, the Debtors may, upon consultation with the Senior Secured Noteholders, settle all or some of the Critical Vendor Claims of such party for less than their face amount without further notice or hearing.

4. The Debtors are authorized to condition the payment of any Critical Vendor Claim on the Critical Vendor entering into a Critical Vendor Agreement.

5. The form of Critical Vendor Agreement attached as **Exhibit C** to the Motion is approved in its entirety, and the Debtors are authorized to negotiate, modify, or amend the form of Critical Vendor Agreement in their reasonable business judgment.

6. The Debtors are authorized to make payments on account of a Critical Vendor Claim, subject to the other limits set forth herein, even in the absence of a Critical Vendor Agreement, if the Debtors, upon consultation with the Senior Secured Noteholders and any official committee appointed in this case, determine that failure to pay such Critical Vendor Claim will result in harm to the Debtors' business.

7. If a Critical Vendor enters into a Critical Vendor Agreement and/or accepts payment, and subsequently refuses to supply goods or provide services to the Debtors on Trade Terms or otherwise fails to comply with the Critical Vendor Agreement, then the Debtors may take any and all appropriate steps to cause such Critical Vendor to repay payments made to it on

account of its Critical Vendor Claim. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Critical Vendor.

8. The Debtors' undisputed obligation to the Suppliers under Outstanding Orders arising from (a) shipments of goods delivered to and accepted by the Debtors on or after the Petition Date and (b) provision of services to the Debtors on or after the Petition Date at the Debtors' request are hereby granted administrative expense priority status pursuant to Section 503(b)(1)(A) of the Bankruptcy Code.

9. In accordance with this Final Order, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court (and any such financial institution shall not have liability to any party for relying on such representations by the Debtors), whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

10. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of prepetition obligations and claims as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

11. Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Interim Order is intended to be or shall be construed as

(i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of any of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any Debtor and any third party under section 365 of the Bankruptcy Code.

12. Notwithstanding entry of this Final Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

13. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon its entry.

14. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

15. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation and enforcement of this Final Order.

EXHIBIT C

(Interim Blackline)

**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)

~~(Joint Administration Requested)~~

[\(Jointly Administered\)](#)

Re: D.I.

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION
CLAIMS OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF**

Upon consideration of the *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* (the “Motion”)² 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. §§ 1334 and 157 and the *Amended Standing Order of Reference* of 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) the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) the Court may enter a final order consistent with Article III of the United States Constitution; and upon the record herein; and after due deliberation thereon; and it appearing that sufficient notice of the Motion has been given and that no further notice is necessary, except as set forth in the Motion and with respect to entry of this Interim Order and notice of the Final Hearing (as defined below); and good cause appearing therefore, it is hereby

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² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

ORDERED THAT:

1. The Motion is **GRANTED** on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, to pay the Critical Vendor Claims of their Critical Vendors, subject to the terms and conditions of this Interim Order; *provided, however*, that the amount of the Critical Vendor Claims that the Debtors are authorized to pay pursuant to this Interim Order shall not exceed \$0.9 million in the aggregate.
3. Prior to making a payment to any Critical Vendor on account of a Critical Vendor Claim, the Debtors may, upon consultation with the Senior Secured Noteholders, settle all or some of the Critical Vendor Claims of such party for less than their face amount without further notice or hearing.
4. The Debtors are authorized to condition the payment of any Critical Vendor Claim on the Critical Vendor entering into a Critical Vendor Agreement.
5. The form of Critical Vendor Agreement attached as **Exhibit C** to the Motion is approved in its entirety, and the Debtors are authorized to negotiate, modify, or amend the form of Critical Vendor Agreement in their reasonable business judgment.
6. The Debtors are authorized to make payments on account of a Critical Vendor Claim, subject to the other limits set forth herein, even in the absence of a Critical Vendor Agreement, if the Debtors, upon consultation with the Senior Secured Noteholders and any official committee appointed in this case, determine that failure to pay such Critical Vendor Claim will result in harm to the Debtors' business.
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Terms or otherwise fails to comply with the Critical Vendor Agreement, then the Debtors may take any and all appropriate steps to cause such Critical Vendor to repay payments made to it on account of its Critical Vendor Claim. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Critical Vendor.

8. The Debtors' undisputed obligation to the Suppliers under Outstanding Orders arising from (a) shipments of goods delivered to and accepted by the Debtors on or after the Petition Date and (b) provision of services to the Debtors on or after the Petition Date at the Debtors' request are hereby granted administrative expense priority status pursuant to Section 503(b)(1)(A) of the Bankruptcy Code.

9. In accordance with this Interim Order, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, (and any such financial institution shall not have liability to any party for relying on such representations by the Debtors), whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

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11. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of any of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any Debtor and any third party under Section 365 of the Bankruptcy Code.

12. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

13. The requirements set forth in Bankruptcy Rule 6003 have been satisfied.

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

15. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be effective and enforceable immediately upon its entry.

16. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

17. The hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the "Final Hearing") shall be held **on _____, 2024 at _____ (prevailing Eastern Time)**. Any objections or responses to the entry of a final order on the Motion shall be filed on or **before 4:00 p.m. (prevailing Eastern Time) on _____, 2024** and shall be served on: (a) the Debtors, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm

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18. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation and enforcement of this Interim Order.

EXHIBIT D

(Final Blackline)

**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)

~~(Joint Administration Requested)~~

(Jointly Administered)

Re: D.I.

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION CLAIMS
OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF**

Upon consideration of the *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* (the “Motion”)² 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. §§ 1334 and 157 and the *Amended Standing Order of Reference* of 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) the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) the Court may enter a final order consistent with Article III of the United States Constitution; and upon the record herein; and after due deliberation thereon; and it appearing that sufficient notice of the Motion has been given and that no further notice is necessary; and good cause appearing therefore, it is hereby

ORDERED THAT:

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5. The form of Critical Vendor Agreement attached as **Exhibit C** to the Motion is approved in its entirety, and the Debtors are authorized to negotiate, modify, or amend the form of Critical Vendor Agreement in their reasonable business judgment.
6. The Debtors are authorized to make payments on account of a Critical Vendor Claim, subject to the other limits set forth herein, even in the absence of a Critical Vendor Agreement, if the Debtors, upon consultation with the Senior Secured Noteholders and any official committee appointed in this case, determine that failure to pay such Critical Vendor Claim will result in harm to the Debtors' business.
7. If a Critical Vendor enters into a Critical Vendor Agreement and/or accepts payment, and subsequently refuses to supply goods or provide services to the Debtors on Trade Terms or otherwise fails to comply with the Critical Vendor Agreement, then the Debtors may take any and all appropriate steps to cause such Critical Vendor to repay payments made to it on

account of its Critical Vendor Claim. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Critical Vendor.

8. The Debtors' undisputed obligation to the Suppliers under Outstanding Orders arising from (a) shipments of goods delivered to and accepted by the Debtors on or after the Petition Date and (b) provision of services to the Debtors on or after the Petition Date at the Debtors' request are hereby granted administrative expense priority status pursuant to Section 503(b)(1)(A) of the Bankruptcy Code.

9. In accordance with this Final Order, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court; (and any such financial institution shall not have liability to any party for relying on such representations by the Debtors), whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

10. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of prepetition obligations and claims as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

11. Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Interim Order is intended to be or shall be construed as

(i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of any of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any Debtor and any third party under section 365 of the Bankruptcy Code.

12. Notwithstanding entry of this Final Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

13. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon its entry.

14. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

15. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation and enforcement of this Final Order.