

**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)

Hearing Date: April 15, 2024 at 10:00 a.m. (ET)

Objection Deadline: April 8, 2024 at 4:00 p.m. (ET)

DEBTORS' MOTION FOR ENTRY OF AN ORDER

**(A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT;
(B) APPROVING THE SOLICITATION AND NOTICE PROCEDURES WITH
RESPECT TO CONFIRMATION OF THE JOINT PLAN OF REORGANIZATION OF
BURGESS BIOPOWER, LLC AND BERLIN STATION, LLC; (C) APPROVING THE
FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH;
(D) SCHEDULING CERTAIN DATES WITH RESPECT THERETO;
AND (E) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion (this “Motion”):

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), granting the following relief and such other relief as is just and proper:

- a. ***Disclosure Statement.*** Approving the *Disclosure Statement for the Joint Plan of Reorganization of Burgess BioPower, LLC and Berlin Station, LLC* (as amended, supplemented, or otherwise modified from time to time, the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125(a)(1) of the Bankruptcy Code;

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 meanings ascribed to them in the Debtors’ Disclosure Statement filed contemporaneously herewith, 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”), or the *Joint Plan of Reorganization of Burgess BioPower, LLC and Berlin Station, LLC* (as amended, supplemented,

- b. ***Solicitation and Voting Procedures.*** Approving the procedures for (i) soliciting, receiving, and tabulating votes to accept or reject the Plan, (ii) voting to accept or reject the Plan, and (iii) filing objections to the Plan (the “Solicitation and Voting Procedures”), substantially in the form attached to the Proposed Order as Exhibit 1;
- c. ***Ballots.*** Approving the Class 3A ballot and the Class 3B ballot (together, the “Ballots”), substantially in the forms attached to the Proposed Order as Exhibits 2A and 2B, respectively;
- d. ***Non-Voting Status Notices.*** Approving (i) the form of notice applicable to holders of Claims that are Unimpaired under the Plan and therefore conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code; (ii) the form of notice applicable to holders of Claims and Interests that are Impaired under the Plan and are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code; and (iii) the form of notice applicable to holders of Claims that are subject to a pending objection by the Debtors informing such holders that they are not entitled to vote the disputed portion of such Claim (each, a “Non-Voting Status Notice”), substantially in the forms attached to the Proposed Order as Exhibit 3, Exhibit 4, and Exhibit 5, respectively;
- e. ***Solicitation Packages.*** Finding that the solicitation materials and documents included in the solicitation packages (the “Solicitation Packages”) that will be sent to, among others, holders of Claims entitled to vote to accept or reject the Plan, comply with Bankruptcy Rules 2002(b) and 3017(d);
- f. ***Confirmation Hearing Notice.*** Approving the form and manner of notice of the hearing to consider confirmation of the Plan (the “Confirmation Hearing” and the notice thereof, the “Confirmation Hearing Notice”), substantially in the form attached to the Proposed Order as Exhibit 6;
- g. ***Publication Notice.*** Approving the manner of notice of, in a format suitable for publication, details pertaining to the Confirmation Hearing; and
- h. ***Confirmation Timeline.*** Establishing the following suggested dates and deadlines, subject to modification as necessary:
 - i. ***Voting Record Date. April 8, 2024*** (the “Voting Record Date”);

or otherwise modified from time to time, the “Plan”), as applicable. On February 9, 2024, the Debtors filed the Plan, which was a non-solicitation version of their reorganization plan attached as an exhibit to the Debtors’ Restructuring Support Agreement that was Exhibit M to the First Day Declaration. The Debtors, contemporaneously with the filing of this Motion, are filing a revised plan (the “Revised Plan”) that is identical to the Plan with the exception of certain defined terms appearing on pages 7 and 15 of the Revised Plan.

- ii. ***Solicitation Deadline.*** The date that is three (3) business days after the Court enters an order approving the Disclosure Statement and the Solicitation Procedures (the “Disclosure Statement Order”) as the deadline for distributing Solicitation Packages, including Ballots, to holders of Claims entitled to vote to accept or reject the Plan (the “Solicitation Deadline”);
- iii. ***Publication Deadline.*** The date that is five (5) business days from the entry of the Disclosure Statement Order as the last date by which the Debtors will submit the Confirmation Hearing Notice for publication in a format modified for publication;
- iv. ***3018 Motion Deadline.*** The date that is seven (7) days from the later of (A) the mailing of the Confirmation Hearing Notice and (B) the filing of a claim objection, as the deadline by which creditors seeking to have a claim temporarily allowed for purposes of voting to accept or reject the Plan pursuant to Bankruptcy Rule 3018(a) be required to file a motion (the “3018 Motion”);
- v. ***3018 Motion Objection Deadline.*** The date that is no later than seven (7) days prior to the Voting Deadline (as defined below) as the deadline by which the Debtors or other parties in interest must file objections to any 3018 Motions;
- vi. ***Plan Supplement Filing Date.*** The date that is seven (7) days prior to the Voting Deadline as the deadline by which the Debtors must file the initial Plan Supplement.
- vii. ***Voting Deadline.*** **May 14, 2024 at 4:00 p.m. prevailing Eastern Time** as the deadline by which **all** Ballots must be properly executed, completed, and delivered so that they are **actually received** (the “Voting Deadline”) by Epiq Corporate Restructuring, LLC (the “Solicitation Agent”);
- viii. ***Plan Objection Deadline.*** **May 14, 2024 at 4:00 p.m. prevailing Eastern Time** as the deadline by which objections to the Plan must be filed with the Court and served so as to be **actually received** by the appropriate notice parties (the “Plan Objection Deadline”);
- ix. ***Plan Objection Reply Deadline.*** **May 17, 2024 at 4:00 p.m. prevailing Eastern Time** as the deadline by which replies to objections to the Plan must be filed with the Court and served so as to be **actually received** by the appropriate notice parties (the “Plan Objection Reply Deadline”);

- x. ***Deadline to File the Confirmation Brief. May 17, 2024 at 4:00 p.m. prevailing Eastern Time*** as the deadline by which the Debtors shall file their brief in support of Confirmation;
- xi. ***Deadline to File Voting Report. May 17, 2024 at 4:00 p.m. prevailing Eastern Time*** as the date by which the report tabulating the voting on the Plan (the “Voting Report”) shall be filed with the Court; and
- xii. ***Confirmation Hearing Date. May 21, 2024 at 10:00 a.m. prevailing Eastern Time*** as the date for the hearing at which the Court will consider Confirmation of the Plan (the “Confirmation Hearing Date”).

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these chapter 11 cases 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 as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue for these chapter 11 cases and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are sections 105, 1125, 1126, and 1128 of the Bankruptcy Code, rules 2002, 3016, 3017, 3018, and 3020 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 3017-1.

Background

4. Together, the Debtors comprise a renewable energy power company operating a power plant (the “Facility”) in Berlin, New Hampshire (the “Facility Site”). Berlin Station owns the Facility and Facility Site and leases it to Burgess BioPower, which holds the necessary regulatory licenses. Non-debtor affiliates CS Berlin Ops Inc. and CS Operations, Inc. (collectively, the “Affiliate Service Providers”) operate and maintain the Facility and provide the Debtors with management services.

5. The Facility previously provided energy products to Public Service Company of New Hampshire, operating as Eversource Energy (“Eversource”), pursuant to a power purchase agreement (the “Power Purchase Agreement”), which was rejected in these chapter 11 cases. The Facility now sells energy on a merchant basis.

6. On February 8, 2024, the Debtors entered into a Restructuring Support Agreement (“RSA”) with their Senior Lenders, the Affiliate Service Providers, certain holders of the Subordinated Note Claims, and Jean Halle, a director of both Debtors and a majority equity holder (collectively, the “Consenting Stakeholders”). Under the terms of that RSA, the Consenting Stakeholders agreed to the terms of the Plan, including dates for concluding an alternative sale process and achieving confirmation of the Plan.

7. On February 9, 2024, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Following the commencement of the chapter 11 cases, Eversource, raised certain objections and filed various pleadings in the chapter 11 cases, objecting to the proposed treatment of the Power Purchase Agreement and its potential claims in the chapter 11 cases, among other things. Following initial litigation with Eversource, the parties engaged in extensive negotiations, eventually reaching a consensual resolution of the disputed matters, including rejection of the Power Purchase Agreement and the related option agreement. On February 24,

2024, the Debtors filed a motion with the Bankruptcy Court seeking approval of a settlement agreement by and among the Debtors and Eversource (and for certain limited purposes, the Senior Lenders), which included a term sheet reflecting the material terms of that settlement [Docket No. 153], which settlement was approved by the Court by order dated February 28, 2024 [Docket No. 185].

8. Contemporaneously herewith, the Debtors have filed their Plan. The Plan itself is a “toggle” plan: the Debtors are simultaneously pursuing both a sale process and a plan that includes a debt-for-equity swap by the Debtors’ DIP Lenders and Senior Lenders.

9. Depending on the outcome of the sale process, the Debtors, with the Senior Lenders’ consent, will determine which option to pursue. In the event of a sale, all or substantially all of the Debtors’ assets will be sold pursuant to the Plan to a buyer and the Plan will be a liquidating plan (the “Sale Transaction”). The DIP Lenders and the Senior Lenders have reserved the right to credit bid their debt in connection with any such sale.

10. If no sale is pursued, the DIP Lenders and the Senior Lenders will exchange their debt (in the case of the DIP Lenders, 100% of their debt, in the case of the Senior Lenders, a portion of their Senior Notes), for 100% of the equity in the Debtors and will own and control the assets of the Debtors free and clear of all liens, claims, interests, and encumbrances (the “Stand-Alone Restructuring Transaction”).

11. The Plan classifies holders of Claims and Interests into certain Classes of Claims and Interests for all purposes, including with respect to voting on the Plan, pursuant to section 1126 of the Bankruptcy Code. The following chart represents the Classes of Claims and Interests under the Plan:

Berlin Claims

Class	Claim/Interest	Status	Voting Rights
1A	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2A	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3A	Senior Notes Claims	Impaired	Entitled to Vote
4A	Subordinated Notes Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
5A	General Unsecured Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
6A	510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7A	Intercompany Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8A	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

Burgess Claims

Class	Claim/Interest	Status	Voting Rights
1B	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2B	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3B	Senior Notes Claims	Impaired	Entitled to Vote
4B	General Unsecured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
5B	510(b) Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
6B	Intercompany Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
7B	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

12. The Plan provides that the holders of the following Claims and Interests against Berlin shall receive the treatment described below in full and final satisfaction of such Claim or Interest:

Berlin Claims

Class	Claim/Interest	Treatment of Claim/ Interest
1A	Other Secured Claims	On the Plan Effective Date, except to the extent that a holder of an Other Secured Claim against Berlin has agreed to a less favorable treatment, each holder of an Other Secured Claim against Berlin, at the option of the Debtors, with the consent of the Senior Lenders, shall receive payment in full in Cash on the Plan Effective Date, or otherwise receive treatment consistent with the provisions of section 1129(a) of the Bankruptcy Code that renders its Allowed Other Secured Claim Unimpaired.
2A	Other Priority Claims	On the Plan Effective Date, except to the extent that a holder of an Allowed Other Priority Claim against Berlin has agreed to a less favorable treatment, each holder of an Allowed Other Priority Claim against Berlin shall receive, at the option of the Debtors, with the consent of the Senior Lenders, payment in full in Cash or such other treatment that would render its Allowed Other Priority Claim Unimpaired.
3A	Senior Notes Claims	<p>Except to the extent a holder of a Senior Notes Claim agrees to a less favorable treatment, in full and final satisfaction of such Claims:</p> <p>(i) <u>Stand-Alone Restructuring Scenario</u>: each holder of a Senior Notes Claim or its designee shall receive on account of such Senior Notes Claim, to the extent there is value for such Senior Note Claims after satisfaction of DIP Claims, its Pro Rata share of [(A)] [__]% of the New Reorganized Debtor Equity in Berlin, (B) an amount of New Notes equal to \$[____], and (C) [__]% of the New Reorganized Debtor Equity in Burgess,]; or</p> <p>(ii) <u>Sale Scenario</u>: each holder of a Senior Notes Claim or its designee shall receive on account of such Senior Notes Claim its Pro Rata share of (x) the Sale Proceeds remaining after satisfaction of the Administrative Claims (including the DIP Claims) and Claims in Classes 1 and 2, and after reserving as Wind-Down Assets an amount equal to the Wind-Down Budget,</p>

Class	Claim/Interest	Treatment of Claim/ Interest
		and (y) all rights to, and proceeds of, the Wind-Down Assets.
4A	Subordinated Notes Claims	On the Plan Effective Date, all Subordinated Notes Claims will be cancelled and released.
5A	General Unsecured Claims	On the Plan Effective Date, all General Unsecured Claims against Berlin will be cancelled and released.
6A	510(b) Claims	On the Plan Effective Date, all 510(b) Claims against Berlin will be cancelled and released.
7A	Intercompany Claims	On the Plan Effective Date, all Intercompany Claims against Berlin will be either cancelled or released or Reinstated, at the option of the Pro Forma Owners.
8A	Interests	On the Plan Effective Date, all Interests in Berlin will be cancelled and released.

13. The Plan provides that the holders of the following Claims and Interests against Burgess shall receive the treatment described below in full and final satisfaction of such Claim or Interest:

Burgess Claims

Class	Claim/Interest	Treatment of Claim/ Interest
1B	Other Secured Claims	On the Plan Effective Date, except to the extent that a holder of an Other Secured Claim against Burgess has agreed to a less favorable treatment, each holder of an Other Secured Claim against Burgess, at the option of the Debtors, with the consent of the Senior Lenders, shall receive payment in full in Cash on the Plan Effective Date, or otherwise receive treatment consistent with the provisions of section 1129(a) of the Bankruptcy Code that renders its Allowed Other Secured Claim Unimpaired.

Class	Claim/Interest	Treatment of Claim/ Interest
2B	Other Priority Claims	On the Plan Effective Date, except to the extent that a holder of an Allowed Other Priority Claim against Burgess has agreed to a less favorable treatment, each holder of an Allowed Other Priority Claim against Burgess shall receive, at the option of the Debtors, with the consent of the Senior Lenders, payment in full in Cash, or such other treatment that would render its Allowed Other Priority Claim Unimpaired.
3B	Senior Notes Claims	<p>Except to the extent a holder of a Senior Notes Claim agrees to a less favorable treatment, in full and final satisfaction of such Claims:</p> <p>(i) <u>Stand-Alone Restructuring Scenario</u>: each holder of a Senior Notes Claim or its designee shall receive on account of such Senior Notes Claim, to the extent there is value for such Senior Note Claims after satisfaction of DIP Claims, its Pro Rata share of [(A)] [__]% of the New Reorganized Debtor Equity in Berlin, (B) an amount of New Notes equal to \$[____], and (C) [__]% of the New Reorganized Debtor Equity in Burgess,]; or</p> <p>(ii) <u>Sale Transaction Scenario</u>: each holder of a Senior Notes Claim or its designee shall receive on account of such Senior Notes Claim its Pro Rata share of the Sale Proceeds remaining after satisfaction of the Administrative Claims (including the DIP Claims) and all rights to, and proceeds of, the Wind-Down Assets.</p>
4B	General Unsecured Claims	On the Plan Effective Date, except to the extent that a holder of an Allowed General Unsecured Claim against Burgess has agreed to a less favorable treatment, each holder of an Allowed General Unsecured Claim against Burgess shall receive, at the option of the Debtors, with the consent of the Senior Lenders, payment in full in Cash, or such other treatment that would render its Allowed General Unsecured Claim Unimpaired.

Class	Claim/Interest	Treatment of Claim/ Interest
5B	510(b) Claims	On the Plan Effective Date, except to the extent that a holder of an Allowed 510(b) Claim against Burgess has agreed to a less favorable treatment, each holder of an Allowed 510(b) Claim against Burgess shall receive, at the option of the Debtors, with the consent of the Senior Lenders, payment in full in Cash, or such other treatment that would render its Allowed 510(b) Claim Unimpaired.
6B	Intercompany Claims	On the Plan Effective Date, all Intercompany Claims against Burgess will be Reinstated.
7B	Interests	On the Plan Effective Date, all Interests in Burgess will be cancelled and released, and the New Reorganized Debtor Equity in Burgess will be distributed to the holders of the [Senior Notes Claims] [DIP Claims] (or their designees) in accordance with the Plan.

14. The Debtors propose to solicit votes to accept or reject the Plan from holders of Claims in Classes 3A and 3B (together, the “Voting Classes”).³

15. The Debtors do not propose to solicit votes from holders of Claims and Interests in the remaining Classes i.e., 1A, 2A, 4A, 5A, 6A, 7A, 8A, 1B, 2B, 4B, 5B, 6B, and 7B (collectively, the “Non-Voting Classes”).

Basis for Relief

I. The Court Should Approve the Disclosure Statement

A. The Disclosure Statement Contains “Adequate Information” and Satisfies the Flexible, Fact-Specific Requirements of Section 1125 of the Bankruptcy Code

16. Section 1125 of the Bankruptcy Code requires the proponent of a proposed chapter 11 plan to provide “adequate information” regarding the plan to holders of impaired claims and interests entitled to vote. In relevant part, the statute defines “adequate information” as follows:

³ If the Debtors amend the Plan prior to the hearing to consider approval of the Disclosure Statement such that any Voting Class is no longer Impaired, the Debtors do not intend to solicit votes from holders of Claims in such Class, and instead intend to treat such Class as a Non-Voting Class.

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

17. Disclosure statements, in turn, must ensure that creditors and interest holders affected by a proposed chapter 11 plan receive all material information necessary to reach an informed decision regarding whether to vote for or against a plan. *See, e.g., Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) (“[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”). Courts have likewise acknowledged that Congress intended this requirement “to help creditors in their negotiations” regarding the chapter 11 plan. *See id.* at 100. Courts have construed the “adequate information” standard under section 1125(a)(1) flexibly, in light of the facts and circumstances underlying each bankruptcy case. *See, e.g., Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”) (citations omitted).

18. The determination whether a disclosure statement contains “adequate information” for purposes of section 1125 resides within the broad discretion of the court. *See, e.g., In re River Vill. Assocs.*, 181 B.R. 795, 804 (E.D. Pa. 1995) (“[T]he Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement”); *In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (E.D. Pa. 2001) (same); *In re Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely

within the discretion of the bankruptcy court.”); *In re PC Liquidation Corp.*, 383 B.R. 856, 865 (E.D.N.Y. 2008) (“The standard for disclosure is, thus, flexible and what constitutes ‘adequate disclosure’ in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court.”) (internal citations omitted); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (Bankr. D. N.J. 2005) (“The information required will necessarily be governed by the circumstances of the case.”) (citations omitted).

19. In determining whether a disclosure statement contains such “adequate information,” courts typically look to disclosures relating to topics such as:

- a. the events that led to the filing of a bankruptcy petition;
- b. a description of the available assets and their value;
- c. the debtors’ anticipated future performance;
- d. the source of information presented in the disclosure statement;
- e. appropriate disclaimers;
- f. the debtors’ condition while in chapter 11;
- g. the claims scheduled or asserted against the estate;
- h. the estimated return to creditors under a chapter 7 liquidation of the debtor;
- i. the future management of the debtor;
- j. the chapter 11 plan or a summary thereof;
- k. financial information, valuations, and projections relevant to a creditor’s decision to accept or reject the chapter 11 plan;
- l. the accounting or valuation methods used to produce such financial information;
- m. information relevant to the risks posed to creditors under the plan;
- n. the actual or projected realizable value from recovery of preferential or otherwise avoidable transfers;
- o. litigation likely to arise in a non-bankruptcy context; and

p. the tax attributes of the debtor.

See In re U.S. Brass Corp., 194 B.R. 420, 424-25 (Bankr. E.D. Tex. 1996); *see also In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988) (listing factors courts have considered in determining the adequacy of information provided in a disclosure statement); *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). Because “adequate information” depends upon the facts and circumstances of each case, disclosure regarding every topic courts have referenced is not necessary in every case. *See, e.g., In re Phoenix Petroleum Co.*, 278 B.R. at 393 (“[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case.”); *In re U.S. Brass Corp.*, 194 B.R. at 425 (same).

20. Here, the Disclosure Statement is comprehensive and contains adequate information within the meaning of section 1125 of the Bankruptcy Code. The Disclosure Statement contains detailed information with respect to, among other things, (a) the Plan, (b) the Debtors’ background and business operations, (c) key events leading to commencement of the chapter 11 cases, (d) the Debtors’ prepetition indebtedness, (e) the proposed capital structure of the Reorganized Debtors, (f) financial information and valuations that would be relevant to creditors’ determination to accept or reject the Plan, (g) a liquidation analysis setting forth the estimated return that holders of Claims and Interests would receive in a hypothetical chapter 7 liquidation, (h) certain United States federal income tax consequences, (i) certain risk factors to be considered, (j) instructions for voting to accept or reject the Plan, (k) a description of confirmation procedures, including details regarding objections and the requirements for Plan confirmation, and

(l) a recommendation by the Debtors that holders of Claims in the Voting Classes (Classes 3A and 3B) should vote to accept the Plan.⁴

21. The Debtors believe that the information provided in the Disclosure Statement is sufficiently detailed and contains adequate information to allow holders of Claims in the Voting Classes to reach informed decisions regarding whether to vote to accept or reject the Plan.

22. Based on the foregoing, the Debtors submit the Disclosure Statement complies with all requirements set forth in section 1125 of the Bankruptcy Code and conveys the information described above in a manner that provides adequate information to holders of Claims entitled to vote to accept or reject the Plan. Accordingly, the Debtors likewise submit that the Disclosure Statement contains “adequate information” and should be approved.

B. The Disclosure Statement Provides Sufficient Notice of Injunction, Release, and Exculpation Provisions Set Forth in the Plan

23. In the event a plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code, both the plan and disclosure statement must describe, “in specific and conspicuous language,” the acts to be enjoined and the entities subject to such injunction. *See* Fed. R. Bankr. P. 3016(c). In Article V, the Disclosure Statement describes in detail, and in conspicuous bold font, both the entities subject to an injunction under the Plan and the acts that they are enjoined from pursuing. Moreover, Article VIII of the Plan, which contains the relevant language describing these injunctions, likewise makes use of the same conspicuous bold font.

24. Additionally, both the Disclosure Statement, in Article V, and the Plan, in Article VIII, describe in detail, and in conspicuous bold font, the entities subject to or providing a release

⁴ To the extent any of this information is not already included in the Disclosure Statement, the Debtors intend to provide such information prior to the hearing to consider approval of the Disclosure Statement.

under the Plan, as well as the Claims and Causes of Action so released. The Plan contemplates fully consensual third-party releases that provide all Releasing Parties—including unimpaired classes—the opportunity to opt out prior to the Voting Deadline. Lastly, both the Disclosure Statement, in Article V, and the Plan, in Article VIII, also describe in detail, and in conspicuous bold font, the entities entitled to exculpation under the Plan. Accordingly, the Debtors respectfully submit that the Disclosure Statement complies with Bankruptcy Rule 3016(c) by conspicuously and specifically describing the conduct and parties enjoined by the Plan.

II. Notice of the Disclosure Statement Hearing, Objection Deadline, and Hearing Date

25. Upon the filing of a disclosure statement, the Court ordinarily must hold a hearing on at least twenty-eight (28) days' notice to consider the disclosure statement and any objections or modifications thereto. *See* Fed. R. Bankr. P. 3017(a); *see also* Fed. R. Bankr. P. 2002(b) (requiring not less than 28 days' notice by mail of the time for filing objections and the hearing to consider the approval of a disclosure statement).⁵ Additionally, the Local Rules require that, upon the filing of the disclosure statement, the proponent of the plan shall obtain hearing and objection dates from the bankruptcy court and shall provide notice of those dates in accordance with Bankruptcy Rule 3017. *See* Del. Bankr. L.R. 3017-1(a).

26. The Debtors will serve all known creditors with notice of the hearing to consider approval of the Disclosure Statement (such hearing, the “Disclosure Statement Hearing”), which notice will include the following: (a) the date, time, and place of the Disclosure Statement Hearing; (b) the manner in which a copy of the Disclosure Statement (and exhibits thereto, including the Plan) can be obtained; and (c) the deadline and procedures for filing objections to the approval of the Disclosure Statement. The Debtors will also distribute copies of the Disclosure Statement,

⁵ The Court may, in its discretion, reduce the notice period for cause. *See* Fed. R. Bankr. P. 9006(c).

including exhibits thereto, to all parties that have requested notice under Bankruptcy Rule 2002 and Local Rule 2002-1 (the “Rule 2002 List”).

III. The Court Should Approve the Materials and Timeline for Soliciting Votes on the Plan

A. The Court Should Approve the Voting Record Date, Solicitation Deadline, and Voting Deadline

27. For purposes of soliciting votes in connection with plan confirmation, “creditors and equity security holders shall include holders of stocks, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” *See* Fed. R. Bankr. P. 3017(d); *see also* Fed. R. Bankr. P. 3018(a) (contemplating similar treatment for the determination of the record date for voting purposes).

28. The Debtors respectfully request that the Court exercise its authority under Bankruptcy Rules 3017(d) and 3018(a) and Local Rule 3017-1(a) to establish, (a) **May 14, 2024 at 4:00 p.m. prevailing Eastern Time** as the Voting Deadline. Moreover, the Debtors propose that, with respect to any transferred Claim, the transferee shall be entitled to receive a Solicitation Package and, if the holder of such Claim is entitled to vote with respect to the Plan, cast a Ballot on account of such Claim **only if**: (a) all actions necessary to effectuate the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date or (b) the transferee files by the Voting Record Date (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer and (ii) a sworn statement of the transferor supporting the validity of the transfer. In the event a Claim is transferred after the Voting Record Date, the transferee of such Claim shall be bound by any vote (and the consequences thereof) on the Plan made by the holder of such Claim as of the Voting Record Date.

29. The Debtors request that, after the Debtors distribute Solicitation Packages to holders of Claims entitled to vote on the Plan by the Solicitation Deadline, the Court require that all holders of Claims entitled to vote on the Plan complete, execute, and return their Ballots so that they are actually received by the Solicitation Agent, on or before the Voting Deadline. Nonetheless, the Debtors request authority to extend the Voting Deadline in their sole discretion and without further order of the Court.

30. Consistent with the requirements set forth in Bankruptcy Rule 3017, the foregoing provisions will afford holders of Claims entitled to vote on the Plan at least twenty-eight (28) days within which to review and analyze such materials and, subsequently, to reach an informed decision whether to vote to accept or reject the Plan before the Voting Deadline. *See* Fed. R. Bankr. P. 3017(d) (directing that, after approval of a disclosure statement, the debtor must transmit the plan, the approved disclosure statement, a notice of the time within which acceptances and rejections of such plan may be filed, and any other information that the court may direct to certain holders of claims). Accordingly, the Debtors request that the Court approve the form of, and the Debtors' proposed procedures for distributing, the Solicitation Packages to the holders of Claims in the Voting Classes.

B. The Court Should Approve the Forms of the Ballots

31. The Debtors have prepared and customized the Ballots in accordance with the requirements of Bankruptcy Rule 3018(c). Although based on Official Form No. 314, the Debtors have modified the Ballots to (a) address the particular circumstances of these chapter 11 cases and (b) include certain additional information that is relevant and appropriate for Claims in certain of the Voting Classes. The proposed Ballots for both Voting Classes are annexed as Exhibits 2A and 2B to the Proposed Order. The Debtors respectfully submit that the forms of the Ballots comply with the requirements set forth in Bankruptcy Rule 3018(c) and, therefore, should be approved.

C. The Court Should Approve the Form and Distribution of Solicitation Packages to Parties Entitled to Vote on the Plan

32. Bankruptcy Rule 3017 specifies the materials to be distributed to holders of allowed claims and/or equity interests upon approval of a disclosure statement, including the court-approved disclosure statement, as well as notice of the time within which acceptances and rejections of the plan may be filed. *See* Fed. R. Bankr. P. 3017(d).

33. In accordance with these requirements, the Debtors propose to send the Solicitation Packages to provide holders of Claims in the Voting Classes with the information they need to reach informed decisions on how to vote with respect to the Plan. On or before the Solicitation Deadline, the Debtors will cause the Solicitation Packages to be distributed through their Solicitation Agent (by first-class U.S. mail or e-mail to counsel, if known) to those holders of Claims in the Voting Classes. Each Solicitation Package will include the following materials:

- a. a copy of the Solicitation and Voting Procedures;
- b. a Ballot, together with detailed voting instructions and a pre-addressed, postage pre-paid return envelope;
- c. the Disclosure Statement (and exhibits thereto);
- d. the Plan;
- e. the Disclosure Statement Order (without exhibits, except the Solicitation and Voting Procedures);
- f. the Confirmation Hearing Notice; and
- g. such other materials as the Court may direct.

34. The Debtors request that the Court authorize distribution of the Plan, the Disclosure Statement, and the Disclosure Statement Order (without exhibits except the Solicitation and Voting Procedures) to holders of Claims entitled to vote on the Plan in electronic format. Assuming such authorization, only the Ballots and the Confirmation Hearing Notice would be provided in paper

format. Given the length of the Plan, the Disclosure Statement, and the Disclosure Statement Order, distribution in this manner will translate into significant monetary savings for the Debtors' estates.

35. Bankruptcy courts in this district have permitted debtors to transmit solicitation documents in electronic format in other large chapter 11 cases in the interest of saving printing and mailing costs. *See, e.g., In re The Hertz Corp.*, No. 20-11218 (MFW) (Bankr. D. Del. Apr. 22, 2021) (authorizing the debtors to provide holders of claims with a QR Code to access solicitation documents electronically instead of mailing paper copies, except for the cover letter, applicable ballot, and confirmation hearing notice, which were mailed); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. Nov. 6, 2020) (authorizing the debtors to transmit solicitation documents other than the cover letter, ballot, and confirmation hearing notice in electronic format); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. May 2, 2019) (authorizing same).

36. Additionally, the Debtors will provide complete Solicitation Packages (excluding the Ballots) to the Office of the United States Trustee for the District of Delaware and all parties on the Rule 2002 List as of the Voting Record Date. Any party that receives materials in electronic format, but would instead prefer hard-copy materials, may contact the Solicitation Agent and request paper copies of the corresponding materials previously received in electronic format at the Debtors' expense.

37. The Debtors will not mail Solicitation Packages or other solicitation materials to holders of Claims that have already been paid in full during these chapter 11 cases pursuant to an order previously entered by this Court, or to any party to whom notice of the Disclosure Statement Hearing was sent but subsequently returned as undeliverable.

38. For purposes of serving Solicitation Packages and Notices of Non-Voting Status, the Debtors seek authorization to rely on the address information for the Voting and Non-Voting Classes as compiled and maintained by the Solicitation Agent as of the Voting Record Date, such that the Debtors and Solicitation Agent will not be required to conduct any additional research for updated addresses based on undeliverable Solicitation Packages or Notices of Non-Voting Status and will not be required to resend Solicitation Packages or other materials, including Notices of Non-Voting Status, that are returned as undeliverable unless the Debtors are provided with accurate addresses for such parties at least seven (7) days prior to the Voting Deadline.

39. The Debtors respectfully request that the Court authorize the Solicitation Agent, to the extent not previously authorized by another order of the Court, to assist the Debtors in: (a) distributing the Solicitation Packages; (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by holders of Claims against the Debtors; (c) responding to inquiries from holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan; and (d) soliciting votes on the Plan.

40. In addition to accepting hard-copy Ballots and Opt-Out Forms (defined below) via first-class U.S. mail, overnight courier, and hand delivery, the Debtors request that the Court authorize the acceptance of Ballots and Opt-Out Forms via electronic transmission, solely through a customized balloting portal on the Debtors' case website. Parties entitled to vote or who otherwise receive an Opt-Out Form may cast an electronic Ballot or Opt-Out Form and electronically sign and submit the Ballot or Opt-Out Form instantly through the online balloting portal, which allows a holder to submit an electronic signature. The Ballots and Opt-Out Forms

include instructions for such electronic transmission. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot or Opt-Out Form submitted in this manner, and the submitting party's electronic signature shall be deemed immediately legally valid and effective. For the avoidance of doubt, Ballots or Opt-Out Forms submitted via the customized online balloting portal shall be deemed to contain an original signature.

41. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first-class U.S. mail, in the return envelope provided with each Ballot; (b) overnight delivery; or (c) personal delivery, so that the Ballots are **actually received** by the Solicitation Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot. Alternatively, Ballots may be submitted electronically through the Solicitation Agent's online "E-Ballot" submission portal on the Debtors' case website at <https://dm.epiq11.com/case/burgess> by no later than the Voting Deadline.

D. The Court Should Approve the Confirmation Hearing Notice

42. The Debtors will serve the Confirmation Hearing Notice on all known holders of Claims and Interests and the Rule 2002 List (regardless of whether such parties are entitled to vote on the Plan) by no later than the date that is three (3) business days from the entry of the Disclosure Statement Order. The Confirmation Hearing Notice will include the following: (a) instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibits thereto), the Disclosure Statement Order, and all other materials in the Solicitation Package (excluding Ballots) from the Solicitation Agent and/or the Court's website via PACER at <http://www.deb.uscourts.gov>; (b) notice of the Voting Deadline; (c) notice of the date by which

the Debtors will file the Plan Supplement; (d) notice of the Plan Objection Deadline; and (e) notice of the Confirmation Hearing Date and information related thereto.

43. Bankruptcy Rule 2002(1) permits the Court to “order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.” *See* Fed. R. Bankr. P. 2002(1). Therefore, in addition to the foregoing distribution of the Confirmation Hearing Notice, the Debtors will publish the Confirmation Hearing Notice, as may be modified for publication, one time within five (5) days of the entry of the Disclosure Statement Order (or as soon as practicable thereafter) in the following newspapers: (a) the eastern edition of the *Wall Street Journal* or *New York Times* or similar publication and (b) the *Boston Globe* or such other local newspaper or publication. The Debtors believe that such publication notice will provide sufficient notice of, among other things, the entry of the Disclosure Statement Order, the Voting Deadline, the Plan Objection Deadline, and the Confirmation Hearing to parties that did not otherwise receive notice thereof by mail. Accordingly, the Debtors submit that the Court should approve service and publication of the Confirmation Hearing Notice.

E. The Court Should Approve the Form of Notices to Non-Voting Classes

44. As discussed above, the Non-Voting Classes **are not** entitled to vote on the Plan. As a result, they **will not** receive Solicitation Packages. Instead, the Debtors propose that such parties receive a Non-Voting Status Notice. In lieu of solicitation materials, the Debtors propose to provide the following to holders of Claims and Interests in the following Non-Voting Classes:

- a. ***Unimpaired Claims—Conclusively Presumed to Accept.*** Holders of Claims in Classes 1A, 1B, 2A, 2B, 4B, 5B and 6B are not impaired under the Plan and, therefore, are conclusively presumed to have accepted the Plan. As such, holders of such Claims will receive a notice, substantially in the form attached to the Proposed Order as Exhibit 3, in lieu of a Solicitation Package.
- b. ***Other Interests and Claims—Deemed to Reject*** Holders of Claims and Interests in Classes 4A, 5A, 6A, 7A, 7B, and 8A are receiving no

distribution under the Plan and, therefore, are deemed to reject the Plan and will receive a notice, substantially in the form attached to the Proposed Order as Exhibit 4, in lieu of a Solicitation Package.

- c. ***Disputed Claims.*** Holders of Claims subject to pending objection by the Debtors are not entitled to vote the disputed portion of their claim. As such, holders of such Claims will receive a notice, substantially in the form attached to the Proposed Order as Exhibit 5.

45. Each of the Non-Voting Status Notices will include, among other things: (a) instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibits thereto), the Disclosure Statement Order, and all other materials in the Solicitation Package (excluding Ballots) from the Solicitation Agent and/or the Court's website via PACER; (b) a disclosure regarding the settlement, release, exculpation, and injunction language set forth in Article VIII of the Plan; (c) notice of the Plan Objection Deadline; and (d) notice of the Confirmation Hearing Date and information related thereto.

46. Additionally, the Non-Voting Status Notice for Holders of unimpaired Claims in Classes 1A, 1B, 2B, 4B, 5B, and 6B provides an opportunity to opt out of the releases contemplated by Article VIII of the Plan through submission of an opt-out form (the "Opt-Out Form").

47. The Debtors submit that the mailing of Non-Voting Status Notices in lieu of Solicitation Packages satisfies the requirements of Bankruptcy Rule 3017(d). Accordingly, unless the Court orders otherwise, the Debtors **will not** distribute Solicitation Packages to holders of Claims and Interests in the Non-Voting Classes.

48. The Debtors further request that they not be required to mail Solicitation Packages or other solicitation materials to: (a) holders of Claims that have already been paid in full during these chapter 11 cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court or (b) any party to whom notice of the Disclosure Statement Hearing was sent but subsequently returned as undeliverable.

F. The Court Should Approve the Notice Procedures to Contract and Lease Counterparties

49. If the Standalone Restructuring Transaction is consummated, on the Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, the Plan, in Article V, provides that all Executory Contracts and Unexpired Leases shall be deemed rejected under section 365 of the Bankruptcy Code (other than the Restructuring Support Agreement, which, if not terminated prior to Confirmation, shall be deemed assumed as of the Confirmation Date), without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) was previously assumed by a Debtor; (2) expired or was terminated pursuant to its own terms or by agreement of the parties thereto; (3) is the subject of a motion to assume Filed by the Debtors on or before the date of entry of the Confirmation Order; or (4) is listed on the Assumed Executory Contracts and Unexpired Leases List; provided, that rejections of Unexpired Leases of non-residential real property shall be effective as of the later of (a) the Plan Effective Date and (b) the date on which the leased premises are unconditionally surrendered to the landlord under such rejected Unexpired Lease.

50. If the Sale Transaction is consummated (instead of a Standalone Restructuring Transaction), on the Effective Date, the Plan, in Article V.A.1, provides that except where otherwise stated in the Plan, each Executory Contract or Unexpired Lease not previously assumed, assumed and assigned, or rejected shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (a) is assumed by the Debtors and assigned to the Purchaser pursuant to the Sale Transaction, the Plan,

and the Confirmation Order and in accordance with the Sale Transaction Documents; or (b) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto.

51. The Plan also provides that the Debtors shall provide notice of proposed assumption or assumption and assignment and proposed cure amounts to the applicable contract and lease counterparties, together with procedures for objecting thereto and resolution of disputes by the Court. *See* Plan at Article V.D. Subject to approval by the Court, counterparties to Executory Contracts and Unexpired Leases will receive notice of the potential assumption or assumption and assignment of their Executory Contract or Unexpired Lease (and any corresponding cure claim) along with procedures for objecting thereto in accordance with the procedures proposed in the Debtors' pending bid procedures and sale motion [Docket No. 205].⁶

52. The Plan also provides that Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to the Plan, if any, must be Filed with the Bankruptcy Court within thirty (30) days after the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, (2) the effective date of such rejection, or (3) the Plan Effective Date. *See* Plan at Article V.C. The Debtors propose to provide notice to counterparties to Executory Contracts and Unexpired Leases of the deadline to file Claims arising from rejection of Executory Contracts and Unexpired Leases pursuant to the Plan

⁶ In connection with the Debtors' toggle plan, and the possible sale of their assets, the Debtors have requested that the Court enter bid procedures that include a process for assuming and assigning executory contracts and unexpired leases, establishing any cure amounts in connection with such contract and leases, and providing notice of such procedures to counterparties (the "Executory Contract Procedures"). *See* Docket No. 205. The Stand-alone Plan also contemplates that certain executory contracts and/or unexpired leases may be assumed. In order to streamline the process for the assumption, or assumption and assignment, of executory contracts and unexpired leases, and for establishing any cure amounts for such contracts and leases, the Debtors intend to request Court approval to modify the Executory Contract Procedures such that only a single notice is sent to contract counterparties, with a standardized procedure for counterparties to object to the assumption and/or assumption and assignment of their contracts or leases, or to object to the Debtors' proposed cure amount for such assumed contracts or leases.

in any notice to be provided with respect to confirmation of the Plan and the occurrence of the Plan Effective Date.

IV. The Court Should Approve the Solicitation and Voting Procedures

A. Section 1126(c) of the Bankruptcy Code and Bankruptcy Rule 3018(c) Govern Approval of Solicitation and Voting Procedures

53. With respect to the approval of solicitation and voting procedures, the Bankruptcy Code provides that:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under section (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected the plan.

11 U.S.C. § 1126(c).

54. Bankruptcy Rule 3018, moreover, provides in relevant part, that “[a]n acceptance or rejection [of a plan] shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent and conform to the appropriate Official Form.” *See* Fed. R. Bankr. P. 3018(c). Consistent with these requirements, the Debtors propose to use the Solicitation and Voting Procedures, which include specific voting and tabulation requirements and procedures as described below.

B. The Solicitation and Voting Procedures Require That Ballots Must Satisfy Certain Minimal Criteria

55. To standardize the process of tabulating all votes received, the Debtors propose that a Ballot be counted in determining the acceptance or rejection of the Plan only if it satisfies certain criteria. The Solicitation and Voting Procedures specify that the Debtors shall not count a Ballot if it is, among other things, illegible, submitted by a holder of a Claim that is not entitled to vote on the Plan, unsigned, or not clearly marked. Further, the Debtors, subject to a contrary order of

the Court, may waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and any such waivers shall be documented in the Voting Report.⁷

C. The Solicitation and Voting Procedures Set Forth Specific Tabulation Criteria and Voting Procedures

56. The proposed Solicitation and Voting Procedures set forth specific criteria with respect to the general tabulation of Ballots, voting procedures applicable to holders of Claims, and tabulation of such votes. The Debtors believe that the proposed Solicitation and Voting Procedures will facilitate the plan confirmation process by clarifying any obligations of holders of Claims entitled to vote to accept or reject the Plan, and will create a straightforward process by which the Debtors can determine whether they have satisfied the numerosity requirements of section 1126(c) of the Bankruptcy Code. Accordingly, the Debtors submit that the Solicitation and Voting Procedures are in the best interests of their estates, holders of Claims, and other parties in interest, and that good cause supports the relief requested herein.

V. The Court Should Approve the Procedures for Confirming the Plan

A. The Debtors Request May 21, 2024 as the Confirmation Hearing Date

57. The Bankruptcy Code requires that the court hold a hearing on confirmation of a plan and provides that parties in interest can object to confirmation. *See* 11 U.S.C. § 1128. The Bankruptcy Rules, moreover, provide that on or before approval of a disclosure statement, the court shall fix a time for the hearing on confirmation of a plan. *See* Fed. R. Bankr. P. 3017(c). In accordance with Bankruptcy Rule 3017(c) and section 1128 of the Bankruptcy Code, the Debtors request that the Court establish **May 21, 2024 at 10:00 a.m. prevailing Eastern Time** as the

⁷ The Solicitation Agent is required to retain all paper copies of Ballots and all solicitation-related correspondence for one (1) year following the effective date of the Plan, at which time the Solicitation Agent is authorized to destroy and/or otherwise dispose of all paper copies of Ballots, printed solicitation materials including unused copies of the Solicitation Package, and all solicitation-related correspondence (including undeliverable mail) in each case unless otherwise directed by the Debtors or the Clerk of the Court in writing within such one (1) year period.

Confirmation Hearing Date. The Debtors further request that the Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice to parties in interest other than such adjournment announced in open court and/or a notice of adjournment filed with the Court and served on the Rule 2002 List.

B. The Court Should Approve the Procedures for Filing Objections to the Plan

58. Bankruptcy Rule 2002 requires no less than twenty-eight (28) days' notice to all holders of Claims and Interests of the time fixed for filing objections to and the hearing on confirmation of a chapter 11 plan. *See* Fed. R. Bankr. P. 2002(b), (d). The Debtors accordingly request that the Court establish **May 14, 2024 at 4:00 p.m. prevailing Eastern Time** as the Plan Objection Deadline.

59. The Debtors also request that the Court direct the manner in which parties in interest may object to confirmation of the Plan. Bankruptcy Rule 3020 specifies that objections to plan confirmation must be filed and served "within a time fixed by the court." *See* Fed. R. Bankr. P. 3020(b)(1). The Confirmation Hearing Notice will, accordingly, require that objections to confirmation of the Plan or requests for modifications to the Plan, if any, must:

- a. be in writing;
- b. conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court;
- c. state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and
- d. be filed with the Court (contemporaneously with a proof of service) on or before the Plan Objection Deadline.

60. The Debtors believe that the Plan Objection Deadline for filing and service of objections (and proposed modifications, if any) will afford the Court, the Debtors, and other parties

in interest reasonable time to consider the objections and proposed modifications prior to the Confirmation Hearing.

Non-Substantive Modifications

61. The Debtors lastly request authorization from the Court to make non-substantive changes to the Disclosure Statement, the Plan, the Confirmation Hearing Notice, the Solicitation Packages, the Non-Voting Status Notices, the Ballots, the Solicitation and Voting Procedures, the Assumption and Rejection Notices, and related documents without further order of the Court, including changes to correct typographical and grammatical errors, if any, changes to reflect ongoing negotiations that do not materially reduce the recoveries to creditors, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution.

Notice

62. Notice of this Motion will be provided to: (i) the U.S. Trustee (Attn: Jane M. Leamy); (ii) the holders of the twenty (20) largest unsecured claims against each Debtor; (iii) counsel to Deutsche Bank Trust Company Americas in its capacity as Collateral Agent, Hogan Lovells LLP; (iv) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP; (v) Berlin Biopower Investment Fund, LLC, with a copy to Murray Plumb & Murray; (vi) Greenline CDF Subfund XVIII LLC, with a copy to Kutak Rock LLP, U.S. Bancorp Community Development Corporation and Leverage Law Group, LLC; (vii) Public Service Company of New Hampshire d/b/a Eversource Energy, with a copy to Hunton Andrews Kurth LLP; (viii) the United States Attorney's Office for the District of Delaware; (ix) the United States Attorney's Office for the District of New Hampshire; (x) the United States Environmental Protection Agency; (xi) the Nuclear Regulatory Commission; (xii) the United States Department of Energy; (xiii) the Federal Energy Regulatory Commission; (xiv) New Hampshire Department

of Environmental Services; (xv) New Hampshire Public Utilities Commission; (xvi) New Hampshire Site Evaluation Committee; (xvii) New Hampshire Department of Energy; (xviii) City of Berlin; (xix) ISO New England, Inc.; (xx) the United States Securities and Exchange Commission; (xxi) the Internal Revenue Service; (xxii) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (xxiii) all persons or entities known to the Debtors that have or have asserted a lien on, or security interest in, all or any portion of the Assets. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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WHEREFORE, the Debtors respectfully request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting (a) the relief requested herein and (b) such other relief as the Court may deem just and proper.

Dated: March 11, 2024
Wilmington, Delaware

/s/ Katharina Earle

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

**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)

Hearing Date: April 15, 2024 at 10:00 a.m. (ET)

Objection Deadline: April 8, 2024 at 4:00 p.m. (ET)

NOTICE OF MOTION

TO: (I) THE U.S. TRUSTEE FOR THE DISTRICT OF DELAWARE (ATTN: JANE M. LEAMY); (II) THE HOLDERS OF THE TWENTY (20) LARGEST UNSECURED CLAIMS AGAINST EACH DEBTOR; (III) COUNSEL TO DEUTSCHE BANK TRUST COMPANY AMERICAS IN ITS CAPACITY AS COLLATERAL AGENT, HOGAN LOVELLS LLP; (IV) COUNSEL TO THE DIP LENDERS AND THE SENIOR SECURED NOTEHOLDERS, GREENBERG TRAURIG, LLP; (V) BERLIN BIOPOWER INVESTMENT FUND, LLC, WITH A COPY TO MURRAY PLUMB & MURRAY; (VI) GREENLINE CDF SUBFUND XVIII LLC, WITH A COPY TO KUTAK ROCK LLP, U.S. BANCORP COMMUNITY DEVELOPMENT CORPORATION AND LEVERAGE LAW GROUP, LLC; (VII) PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY, WITH A COPY TO HUNTON ANDREWS KURTH LLP; (VIII) THE UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF DELAWARE; (IX) THE UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF NEW HAMPSHIRE; (X) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; (XI) THE NUCLEAR REGULATORY COMMISSION; (XII) THE UNITED STATES DEPARTMENT OF ENERGY; (XIII) THE FEDERAL ENERGY REGULATORY COMMISSION; (XIV) NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES; (XV) NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION; (XVI) NEW HAMPSHIRE SITE EVALUATION COMMITTEE; (XVII) NEW HAMPSHIRE DEPARTMENT OF ENERGY; (XVIII) CITY OF BERLIN; (XIX) ISO NEW ENGLAND, INC.; (XX) THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION; (XXI) THE INTERNAL REVENUE SERVICE; (XXII) ANY PARTY THAT HAS REQUESTED NOTICE PURSUANT TO BANKRUPTCY RULE 2002; AND (XXIII) ALL PERSONS OR ENTITIES KNOWN TO THE DEBTORS THAT HAVE OR HAVE ASSERTED A LIEN ON, OR SECURITY INTEREST IN, ALL OR ANY PORTION OF THE ASSETS.

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.

PLEASE TAKE NOTICE that the above captioned debtors and debtors in possession (the “Debtors”) in these chapter 11 cases (the “Chapter 11 Cases”) filed the *Debtors’ Motion for Entry of an Order (I) Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Joint Plan of Reorganization of Burgess BioPower, LLC and Berlin Station, LLC; (C) Approving the Forms of Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates with Respect Thereto; and (E) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that any objections or responses to the relief requested in the Motion must be filed on or before **April 8, 2024 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 and served upon, so as to be actually received by, the undersigned counsel for the Debtors on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion will be held on **April 15, 2024 at 10:00 a.m. (ET)** before the Honorable Laurie Selber Silverstein in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801 (the “Hearing”).

PLEASE TAKE FURTHER NOTICE that a copy of the Motion and all other pleadings filed in these Chapter 11 Cases are available, free of charge, from the website of the Court-appointed claims agent, Epiq: <https://dm.epiq11.com/case/burgess/info>.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 11, 2024

/s/ Katharina Earle

Chantelle D. McClamb (No. 5978)

Katharina Earle (No. 6348)

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*Proposed Co-Counsel for Debtors Burgess
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Exhibit A

Proposed 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.

**ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE
STATEMENT; (B) APPROVING THE SOLICITATION AND NOTICE PROCEDURES
WITH RESPECT TO CONFIRMATION OF THE JOINT PLAN OF
REORGANIZATION OF BURGESS BIOPOWER, LLC AND BERLIN STATION, LLC;
(C) APPROVING THE FORMS OF BALLOTS AND NOTICES IN CONNECTION
THEREWITH; (D) SCHEDULING CERTAIN DATES WITH RESPECT
THERE TO; AND (E) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors for entry of an order pursuant to sections 105, 1125, 1126, and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018, 3020, and Local Rules 2002-1, 3017-1, 3018-1, and 3020-1 (a) approving the Disclosure Statement, (b) approving the Solicitation and Notice Procedures with respect to confirmation of the Plan, (c) approving the forms of Ballots and Notices in connection therewith, (d) scheduling certain dates with respect thereto, and (e) granting related relief, all as more fully set forth in the Motion; and this Court having found that it 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 as of February 29, 2012; and this Court having found that

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² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or the Disclosure Statement, as applicable.

this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that due and proper notice of the Motion and the hearing thereon was adequate and appropriate under the circumstances and no other or further notice need be provided; and this Court having reviewed the Motion; and upon the Motion and the record of any hearing on the Motion, as applicable; and this Court having determined that the legal and factual bases set forth in the Motion and at any applicable hearing establish just cause for the relief granted herein and that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

I. Approval of the Disclosure Statement

2. The Disclosure Statement is hereby approved as providing holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with section 1125(a)(1) of the Bankruptcy Code.

3. The Disclosure Statement (including all applicable exhibits thereto) provides holders of Claims, holders of Interests, and other parties in interest with sufficient notice of the injunction, exculpation, and release provisions contained in Article VIII of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

II. Approval of the Solicitation and Voting Procedures

4. The Debtors are authorized to solicit, receive, and tabulate votes to accept the Plan in accordance with the Solicitation and Voting Procedures attached hereto as **Exhibit 1**, which are hereby approved in their entirety.

5. Any party wishing to file a motion under Bankruptcy Rule 3018(a) to temporarily allow a Claim or Interest for purposes of voting to accept or reject the Plan shall have until seven (7) days from the later of (a) the mailing of the Confirmation Hearing Notice and (b) the filing of a claim objection to file such a motion. The Debtors and other parties in interest shall have until the date that is seven (7) days prior to the Voting Deadline as the deadline by which the Debtors or other parties in interest must file objections to any motion filed pursuant to Bankruptcy Rule 3018(a).

III. Approval of the Materials and Timeline for Soliciting Votes

A. Approval of Key Dates and Deadlines with Respect to the Plan and Disclosure Statement

6. The following dates are hereby established (subject to modification as necessary) with respect to the solicitation of votes to accept, and voting on, the Plan:

- a. **Voting Record Date. April 8, 2024;**
- b. **Solicitation Deadline.** the Debtors shall distribute Solicitation Packages to holders of Claims entitled to vote on the Plan by the date that is three (3) business days from the entry of this Order (the “**Solicitation Deadline**”);
- c. **Publication Deadline.** The date that is five (5) business days from the entry of this Order as the last date by which the Debtors shall submit the Confirmation Hearing Notice for publication in a format modified for publication;
- d. **Voting Deadline. May 14, 2024 at 4:00 p.m.** prevailing Eastern Time as the deadline by which **all** Ballots must be properly executed, completed, and delivered so that they are **actually received** (the “**Voting Deadline**”) by Epiq Corporate Restructuring, LLC (the “**Solicitation Agent**”);

- e. **Deadline to File Voting Report. May 17 , 2024 at 4:00 p.m.** prevailing Eastern Time as the date by which the report tabulating the voting on the Plan (the “Voting Report”) shall be filed with the Court.

B. Approval of the Form of, and Distribution of, Solicitation Packages to Parties Entitled to Vote on the Plan

7. In addition to the Disclosure Statement, and exhibits thereto, and the Plan, the Solicitation Packages to be transmitted on or before the Solicitation Deadline to those holders of Claims in the Voting Classes entitled to vote on the Plan as of the Voting Record Date, shall include the following, the form of each of which is hereby approved:

- a. an appropriate form of Ballot attached hereto as Exhibits 2A and 2B, respectively;³and
- b. the Confirmation Hearing Notice attached hereto as Exhibit 6.

8. The Solicitation Packages provide the holders of Claims entitled to vote on the Plan with adequate information to make informed decisions with respect to voting on the Plan in accordance with the Bankruptcy Code, Bankruptcy Rules 2002(b) and 3017(d), and Local Rules 2002-1 and 3017-1.

9. The Debtors shall distribute Solicitation Packages to all holders of Claims entitled to vote on the Plan on or before the Solicitation Deadline. Such service shall satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

10. The Debtors are authorized, but not directed or required, to distribute the Plan, the Disclosure Statement, and this Order to holders of Claims entitled to vote on the Plan in electronic format).

³ The Debtors will use commercially reasonable efforts to ensure that any holder of a Claim who has filed duplicate Claims against the Debtors (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class, receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class.

11. On or before the Solicitation Deadline, the Debtors (through their Solicitation Agent) shall provide complete Solicitation Packages (other than Ballots) to the Office of the United States Trustee for the District of Delaware and to all parties on the Rule 2002 List as of the Voting Record Date.

12. Any party that receives the materials in electronic format that would prefer to receive materials in paper format may contact the Solicitation Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

13. The Solicitation Agent is authorized to assist the Debtors in: (a) distributing the Solicitation Package; (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by holders of Claims against the Debtors; (c) responding to inquiries from holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan; and (d) soliciting votes on the Plan.

14. The Solicitation Agent is also authorized to accept Ballots and Opt-Out Forms via electronic online transmission solely through a customized online balloting portal on the Debtors' case website. The encrypted data and audit trail created by such electronic submission shall become part of the record of any Ballot or Opt-Out Form submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid and effective. Ballots or Opt-Out Forms submitted via the customized online balloting portal shall be deemed to contain an original signature.

15. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first-class U.S. mail, in the return envelope provided with each Ballot; (b) overnight delivery; or (c) personal delivery, such that the Ballots are **actually received** by the Solicitation Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot. Alternatively, Ballots may be submitted electronically through the Solicitation Agent's online Ballot submission portal at <https://dm.epiq11.com/case/burgess> by no later than the Voting Deadline. The Debtors, in consultation and with the consent of the DIP Lenders and Senior Lenders, are authorized to extend the Voting Deadline without further order of the Court.

C. Approval of the Confirmation Hearing Notice

16. The Confirmation Hearing Notice, substantially in the form attached hereto as **Exhibit 6** is approved and shall be deemed good and sufficient notice of the Confirmation Hearing and no further notice need be given. The Debtors shall file and serve the Confirmation Hearing Notice upon parties in interest in these chapter 11 cases by no later than the date that is five (5) business days from the entry of this Order. The Debtors shall also cause the Confirmation Hearing Notice, as may be modified for purposes of publication, to be published one time on or before the date that is five (5) business days from the entry of this Order in: (a) the eastern edition of the *Wall Street Journal* or *New York Times* or similar publication and (b) the *Boston Globe* or such other local newspaper or publication. Service of the Confirmation Hearing Notice, as well as the publication of such notice, as set forth herein constitutes adequate and sufficient notice of the hearings to consider approval of the Plan, the manner in which a copy of the Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

D. Plan Supplement

17. The Plan Supplement (as may be amended) shall be filed at least seven (7) days prior to the Voting Deadline, and notice of such filing shall be served on the Office of the United States Trustee for the District of Delaware and to all parties on the Rule 2002 List.

E. Approval of the Form of Notices to Non-Voting Classes

18. Except to the extent that the Debtors determine otherwise, the Debtors are not required to provide Solicitation Packages to holders of Claims or Interests in Non-Voting Classes, as such holders are not entitled to vote on the Plan. Instead, on or before the Solicitation Deadline, the Solicitation Agent shall mail (first-class postage pre-paid) a Non-Voting Status Notice in lieu of Solicitation Packages, the form of each of which is hereby approved, to those parties outlined below that are not entitled to vote on the Plan:

- a. ***Unimpaired Claims—Conclusively Presumed to Accept.*** Holders of Claims in Classes 1A, 1B, 2A, 2B, 4B, 5B and 6B are not impaired under the Plan and, therefore, are conclusively presumed to have accepted the Plan. As such, holders of such Claims will receive a notice, substantially in the form attached hereto as **Exhibit 3**, in lieu of a Solicitation Package.
- b. ***Other Interests and Claims—Deemed to Reject.*** Holders of Claims and Interests in Classes 4A, 5A, 6A, 7A, 7B, and 8A are receiving no distribution under the Plan and, therefore, are deemed to reject the Plan and will receive a notice, substantially in the form attached hereto as **Exhibit 4**, in lieu of a Solicitation Package.
- c. ***Disputed Claims.*** Holders of Claims subject to a pending objection by the Debtors are not entitled to vote the disputed portion of their claim. As such, holders of such Claims will receive a notice, substantially in the form attached to this Order as **Exhibit 5**.

19. The Debtors are not required to mail Solicitation Packages or other solicitation materials to: (a) holders of Claims that have already been paid in full during these chapter 11 cases pursuant to an order previously entered by this Court; or (b) any party to whom notice of the Disclosure Statement Hearing was sent but subsequently returned as undeliverable. The Debtors

are likewise authorized to rely on the address information for the Voting and Non-Voting Classes as compiled and maintained by the Solicitation Agent as of the Voting Record Date, such that the Debtors and Solicitation Agent will not be required to conduct any additional research for updated addresses based on undeliverable Solicitation Packages or Notices of Non-Voting Status and will not be required to resend Solicitation Packages or other materials, including Notices of Non-Voting Status, that are returned as undeliverable.

F. Approval of Notices to Contract and Lease Counterparties

20. The Debtors were authorized to mail a notice of assumption (or assumption and assignment) or rejection of any Executory Contracts or Unexpired Leases (and any corresponding cure claims), in the form approved by this Court pursuant to the Order, dated March [___], 2024 [D.I. ___], to the applicable counterparties to Executory Contracts and Unexpired Leases that will be assumed (or assumed and assigned) in connection with the Plan, whether under a Sale Scenario and/or Stand-Alone Restructuring Scenario.

IV. Approval of Procedures for Confirming the Plan

A. Approval of the Timeline for Filing Objections to the Plan and Confirming the Plan

21. The following dates are hereby established (subject to modification as needed) with respect to filing objections to the Plan and confirming the Plan:

- a. **Plan Supplement Filing Date.** The date that is seven (7) days prior to the Voting Deadline as the deadline by which the Debtors must file the initial Plan Supplement;
- b. **Plan Objection Deadline: May 14, 2024, 2024, at 4:00 p.m.** prevailing Eastern Time shall be the date by which objections to the Plan must be filed with this Court and served on the appropriate notice parties (as identified below) (the “Plan Objection Deadline”);
- c. **Deadline to file Voting Report. May 17, 2024, at 4:00 p.m.** prevailing Eastern Time shall be the date by which the Voting Report must be filed with this Court;

- d. **Plan Objection Reply Deadline: May 17, 2024, at 4:00 p.m.** prevailing Eastern Time shall be the date by which replies to objections to the Plan must be filed with this Court and served by the appropriate notice parties (the “Plan Objection Reply Deadline”);
- e. **Deadline to File the Confirmation Brief: May 17, 2024, at 4:00 p.m.** prevailing Eastern Time shall be the date by which the Debtors shall file their brief in support of Confirmation; and
- f. **Confirmation Hearing Date:** this Court shall consider Confirmation of the Plan at the hearing to be held on **May 21, 2024, at 10:00 a.m.** prevailing Eastern Time (the “Confirmation Hearing Date”).

B. Approval of the Procedures for Filing Objections to the Plan

22. Objections to the Plan will not be considered by this Court unless such objections are timely filed and properly served in accordance with this Order. Specifically, all objections to confirmation of the Plan or requests for modifications to the Plan, if any, **must**: (a) be in writing; (b) conform to the Bankruptcy Rules and the Local Rules; (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and (d) be filed with this Court (contemporaneously with a proof of service) and served upon the notice parties identified in the Confirmation Hearing Notice on or before **May 14, 2024, at 4:00 p.m.** prevailing Eastern Time.

V. Miscellaneous

23. The Debtors’ right to modify the Plan in accordance with Article X thereof, including the right to withdraw the Plan as to any or all Debtors at any time before the Confirmation Hearing Date, is hereby reserved.

24. Nothing in this Order shall be construed as a waiver of the right of the Debtors or any other party in interest, as applicable, to object to a proof of claim after the Voting Record Date.

25. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

26. This Court shall retain exclusive jurisdiction over all matters arising from or related to the interpretation, implementation, and enforcement of this Order.

Exhibit 1

Solicitation and Voting Procedures

**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)

SOLICITATION AND VOTING PROCEDURES

PLEASE TAKE NOTICE THAT, on April [•], 2024, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order (the “Disclosure Statement Order”), (a) authorizing Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”) and together with Burgess, the “Debtors”), to solicit acceptances for the *Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as modified, amended, or supplemented from time to time, the “Plan”); (b) approving the *Disclosure Statement for the Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as modified, amended, or supplemented from time to time, the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

A. The Voting Record Date for Class 3A (Berlin Senior Note Claims) and Class 3B (Burgess Senior Notes Claims)

The record date to determine which Claims in Class 3A (Berlin Senior Note Claims) and Class 3B (Burgess Senior Notes Claims) are entitled to vote with respect to the Plan is April 8, 2024.

B. The Voting Deadline

The Court has approved **May 14, 2024, at 4:00 p.m. prevailing Eastern Time** as the voting deadline (the “Voting Deadline”) for the Plan. The Debtors, in consultation and with the consent of the DIP Lenders and Senior Lenders, are authorized to extend the Voting Deadline without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots sent to registered holders of Claims (each, a “Ballot”) must be properly executed, completed, and

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² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Disclosure Statement and the Plan, as applicable.

returned in the pre-paid, pre-addressed return envelope included in the Solicitation Package or delivered by: (i) first-class U.S. mail; (ii) overnight courier; (iii) personal delivery; or (iv) “E-Ballot”, so that they are **actually received**, in any case, no later than the Voting Deadline by Epiq Corporate Restructuring, LLC (the “Solicitation Agent”). All Ballots returned by first-class U.S. mail should be sent to: Burgess BioPower, LLC c/o Epiq Ballot Processing, LLC, P.O. Box 4422, Beaverton, OR 97076-4422. All Ballots returned by overnight courier or personal delivery should be sent or delivered, as applicable, to: Burgess BioPower, LLC c/o Epiq Ballot Processing, LLC, 10300 SW Allen Boulevard, Beaverton, OR 97005. Return of Ballots via “E-Ballot” submission must be made by visiting <https://dm.epiq11.com/case/burgess>. Delivery of a Ballot to the Solicitation Agent by facsimile or electronic mail shall not be valid and shall not be counted by the Solicitation Agent.

C. Form, Content, and Manner of Notices

1. The Solicitation Package

The following materials shall constitute the solicitation package (the “Solicitation Package”):

- a. a copy of these Solicitation and Voting Procedures;
- b. the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed By the Debtors and Related Voting and Objection Deadlines*, in substantially the form annexed as Exhibit 6 to the Disclosure Statement Order (the “Confirmation Hearing Notice”);
- c. the applicable form of Ballot, in substantially the form of Ballots annexed as Exhibit 2A & B to the Disclosure Statement Order, including a pre-paid, pre-addressed return envelope;
- d. the approved Disclosure Statement (and exhibits thereto, including the Plan);
- e. the Disclosure Statement Order (without exhibits); and
- f. any additional documents that the Court has ordered to be made available.

2. Distribution of the Solicitation Package

The Solicitation Package shall provide (a) a copy of the Solicitation and Voting Procedures; (b) a Ballot, together with detailed voting instructions and a pre-addressed, postage pre-paid return envelope; (c) the Disclosure Statement (and exhibits thereto); (d) the Plan; (e) the Disclosure Statement Order (without exhibits, except the Solicitation and Voting Procedures); and (f) the Confirmation Hearing Notice. Except for the Confirmation Hearing Notice and the Ballots, which shall be provided in paper format, all other contents of the Solicitation Package may be provided in electronic format.

Any party that receives the materials in electronic format but would prefer paper format may contact the Solicitation Agent by: (a) calling the Debtors' restructuring hotline at (877) 556-2937 (Domestic, toll-free) or +1 (503) 843-8526 (International); (b) visiting the Debtors' restructuring website at: <https://dm.epiq11.com/case/burgess>; and/or (c) emailing Burgess@epiqglobal.com (with "Burgess BioPower Solicitation" in the subject line) and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

The Debtors shall serve, or cause to be served, all of the materials in the Solicitation Package (excluding the Ballots) on the United States Trustee and all parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 as of the Voting Record Date. In addition, the Debtors shall mail, or cause to be mailed, the Solicitation Package to all holders of Claims in the Voting Classes who are entitled to vote by the date that is no later than three (3) business days after the Court enters the Disclosure Statement Order, as described below in Section D.

To avoid duplication and reduce expenses, the Debtors will use commercially reasonable efforts to ensure that any holder of a Claim who has filed duplicative Claims against a Debtor (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class as against that Debtor.

3. Resolution of Disputed Claims for Voting Purposes; Resolution Event

- a. Absent a further order of the Court, the holder of a Claim in a Voting Class that is the subject of a pending objection filed with the Court by the Debtors on a "reduce and allow" basis shall be entitled to vote such Claim in the reduced amount contained in such objection.
- b. If a Claim in a Voting Class is subject to an objection other than a "reduce and allow" objection that is filed with the Court by the Debtors at least twenty-one (21) days prior to the Voting Deadline: (i) the Debtors shall cause the applicable holder to be served with a Disputed Claim Notice substantially in the form annexed as Exhibit 5 to the Disclosure Statement Order; and (ii) the applicable holder shall not be entitled to vote to accept or reject the Plan on account of such Claim unless a Resolution Event (as defined herein) occurs as provided herein.
- c. If a Claim in a Voting Class is subject to an objection other than a "reduce and allow" objection that is filed with the Court by the Debtors after the date that is twenty-one (21) days prior to the Voting Deadline, the applicable Claim shall be deemed temporarily allowed for voting purposes only, without further action by the holder of such Claim and without further order of the Court, unless the Court orders otherwise.
- d. A "Resolution Event" means the occurrence of one or more of the following events no later than three (3) business days prior to the Voting Deadline:

- i. an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
 - ii. an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
 - iii. a stipulation or other agreement is executed between the holder of such Claim and the Debtors resolving the objection and allowing such Claim in an agreed-upon amount; or
 - iv. the pending objection is voluntarily withdrawn by the Debtors.
- e. No later than two (2) business days following the occurrence of a Resolution Event, the Debtors shall cause the Solicitation Agent to distribute via electronic mail, hand delivery, or overnight-courier service a Solicitation Package and a pre-addressed, postage pre-paid envelope to the relevant holder.

4. Non-Voting Status Notices for Unimpaired Classes and Classes Deemed to Reject the Plan

Certain Holders of Claims and Interests that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the *Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form annexed as Exhibit 3 to the Disclosure Statement Order. Such notice will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). Certain holders of Claims and Interests who are not entitled to vote because they are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code will receive the *Notice of Non-Voting Status to Holders of Impaired Interests Deemed to Reject the Plan*, substantially in the form annexed as Exhibit 4 to the Disclosure Statement Order. Such notice will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots).

5. Notices in Respect of Executory Contracts and Unexpired Leases

Counterparties to Executory Contracts and Unexpired Leases that receive a notice informing of the potential assumption or assumption and assignment of executory contracts and unexpired leases and any applicable cure amount in the form approved by this Court pursuant to the order dated March [●], 2024 [Docket No. ●] (as may be amended from time to time, the “Cure Notice”) may file an objection to the Debtors’ proposed assumption, assumption and assignment and/or cure amount, as applicable, as set forth in the Cure Notice.

D. Voting and Tabulation Procedures

1. Holders of Claims Entitled to Vote

Only the following holders of Claims in the Voting Classes shall be entitled to vote with regard to such Claims:

- a. holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim (or an untimely Proof of Claim that has been Allowed as timely by the Court under applicable law on or before the Voting Record Date) that: (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection filed with the Court by the Debtors at least twenty-one (21) days prior to the Voting Deadline, pending a Resolution Event as provided herein; *provided* that a holder of a Claim that is the subject of a pending objection on a “reduce and allow” basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further order of the Court;
- b. holders of Claims that are listed in the Schedules (as defined in the Plan) (to the extent a superseding Proof of Claim has not yet been timely filed as of the Voting Record Date); *provided* that if the applicable Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote only in the amount of \$1.00;
- c. holders whose Claims arise: (i) pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Court; (ii) in an order entered by the Court; or (iii) in a document executed by the Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed;
- d. holders of any Disputed Claim that has been temporarily allowed to vote on the Plan pursuant to Bankruptcy Rule 3018(a); and
- e. with respect to any entity described in subparagraphs (a) through (d) above, who, on or before the Voting Record Date, has transferred such entity’s Claim to another Entity, the assignee of such Claim; *provided* that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register (as defined in the Plan) as of the Voting Record Date.

2. Establishing Claim Amounts for Voting Purposes

Class 3A and 3B Claims. Notwithstanding anything to the contrary set forth herein, the Claims amount of Senior Notes Claims, including Class 3A (Berlin Senior Notes Claims) and Class 3B (Burgess Senior Notes Claims), for voting purposes only will be established by reference

to the principal amount of such Claims as reflected in the signature pages of the Restructuring Support agreement for each holder of the Senior Notes Claims.

File/Scheduled Claims. To the extent applicable, the following applies for Filed and/or Scheduled Claims, whose holders are eligible to vote on the Plan. The Claim amount established herein shall control for voting purposes only and shall not constitute the Allowed (as defined in the Plan) amount of any Claim. Moreover, any amounts filled in on Ballots by the Debtors through the Solicitation Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy shall be used to determine the amount of the Claim associated with each claimant's vote:

- a. the Claim amount: (i) settled and/or agreed upon by the Debtors, as reflected in a document filed with the Court; (ii) set forth in an order of the Court; or (iii) set forth in a document executed by the Debtors pursuant to authority granted by the Court;
- b. the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under the procedures set forth in the Solicitation and Voting Procedures;
- c. the Claim amount contained in a Proof of Claim that has been timely filed (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; *provided, however*, that Ballots cast by holders of Claims who timely file a Proof of Claim in respect of a contingent Claim or in a wholly-unliquidated or unknown amount that is not the subject of an objection will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as Ballots for Claims in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and, if a Proof of Claim is filed as partially liquidated and partially unliquidated, such Claim will be Allowed for voting purposes only in the liquidated amount; *provided, further*, that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim;
- d. the Claim amount listed in the Schedules, *provided* that such Claim is not scheduled as contingent, disputed, or unliquidated (for the avoidance of doubt, to the extent a Claim is scheduled as contingent, disputed, or unliquidated and no Proof of Claim is timely filed, the holder of such Claim shall not be entitled to vote on the Plan), *provided further* that if the Bar Date applicable to governmental units has not expired prior to the Voting Record Date and no Proof of Claim has been filed prior to the Voting Record Date with respect to a Claim of a governmental unit that is listed in

the Schedules as contingent, disputed, or unliquidated, such Claim shall be allowed to vote only in the amount of \$1.00; and

- e. in the absence of any of the foregoing, such Claim shall be disallowed for voting purposes unless otherwise ordered by the Court.

3. Voting and Ballot Tabulation Procedures

The following voting procedures and standard assumptions shall be used in tabulating Ballots, subject to the Debtors' right to waive any of the below specified requirements for completion and submission of Ballots so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Rules:

- a. Except as otherwise provided in these Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Debtors, in consultation and with the consent of the DIP Lenders and Senior Lenders, or by order of the Court), the Debtors shall reject such Ballot as invalid and, therefore, shall not count it in connection with Confirmation of the Plan.
- b. The Solicitation Agent will date-stamp all Ballots when received. The Solicitation Agent shall retain the original Ballots and an electronic copy of the same for a period of one (1) year after the Effective Date of the Plan, unless otherwise ordered by the Court. The Solicitation Agent shall tabulate Ballots on a Debtor-by-Debtor basis.
- c. The Debtors will file with the Court, not later than **4:00 p.m. prevailing Eastern Time on May 17, 2024**, a certification of votes (the "Voting Report"). The Voting Report shall, among other things, certify to the Court in writing the amount and number of Allowed Claims of each Class accepting or rejecting the Plan, and delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or necessary information, received via facsimile, or damaged (all such Ballots, "Irregular Ballots"). The Voting Report shall indicate the Debtors' intentions with regard to each such Irregular Ballot.
- d. The method of delivery of Ballots to be sent to the Solicitation Agent is at the election and risk of each holder, and, except as otherwise provided, a Ballot will be deemed delivered only when the Solicitation Agent actually receives the executed Ballot.
- e. An executed Ballot is required to be submitted by the entity submitting such Ballot. Subject to the other procedures and requirements herein, completed, executed Ballots may be submitted to the Solicitation Agent via the Solicitation Agent's E-Ballot system at <https://dm.epiq11.com/case/burgess>. However, Ballots submitted by

electronic mail or facsimile will not be valid and will not be counted by the Solicitation Agent.

- f. No Ballot should be sent to the Debtors, the Debtors' agents (other than the Solicitation Agent), the Debtors' financial or legal advisors, and any Ballot so sent will not be counted.
- g. If multiple Ballots are received from the same holder with respect to the same Claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot.
- h. Holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims within the same Class, the Debtor may, in its discretion, aggregate the Claims of any particular holder within a Class for the purpose of counting votes.
- i. A person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a holder of Claims must indicate such capacity when signing.
- j. The Debtors, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report.
- k. Neither the Debtors, nor any other entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification.
- l. Unless waived or otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted.
- m. In the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected.
- n. If a Claim has been estimated or otherwise Allowed for voting purposes only by order of the Court, such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution.

- o. If an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein.
- p. The following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of such Claim; (ii) any Ballot cast by any entity that does not hold a Claim in a Voting Class; (iii) any Ballot cast for a Claim scheduled as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed, *provided* that if the Bar Date applicable to governmental units has not expired prior to the Voting Record Date and no Proof of Claim has been filed prior to the Voting Record Date with respect to a Claim of a governmental unit that is listed in the Schedules as contingent, disputed, or unliquidated, such Claim shall be allowed to vote only in the amount of \$1.00; (iv) any unsigned Ballot or Ballot lacking an original signature (for the avoidance of doubt, a Ballot cast via the Debtors' online "E-Ballot" submission portal will be deemed to have an original signature); (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; (vi) any Ballot submitted by any electronic means other than via the Debtors' online "E-Ballot" submission portal; (vii) any Ballot submitted to the Debtors or any person, entity, or agent of the Debtors other than the Solicitation Agent; and (viii) any Ballot submitted by any entity not entitled to vote pursuant to the procedures described herein.
- q. After the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Debtors; provided, however, for the avoidance of doubt, any vote cast by a holder of a Class 3A and/or 3B Claim may be withdrawn after the Voting Deadline without the Debtors' consent upon termination of the RSA pursuant to Section 10 thereof and such holder may cast a new Ballot promptly thereafter.
- r. The Debtors are authorized to enter into stipulations with the holder of any Claim agreeing to the amount of a Claim for voting purposes.
- s. Where any portion of a single Claim has been transferred to a transferee, the holders of any portion of such single Claim will be: (i) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other voting and solicitation procedures set forth herein); and (ii) required to vote every portion of such Claim collectively to accept or reject the Plan. In the event that: (i) a Ballot; (ii) a group of Ballots within a Voting Class received from a single creditor; or (iii) a group of Ballots received from the various holders of multiple portions of a single Claim partially reject and partially accept the Plan, such Ballots shall not be counted.

E. Amendments to the Plan and Solicitation and Voting Procedures

The Debtors reserve the right to make non-substantive or immaterial changes to the Disclosure Statement, Plan, Confirmation Hearing Notice, Solicitation Packages, Non-Voting Status Notices, Ballots, Solicitation and Voting Procedures, and related documents without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution, in each case, subject to the terms of the Plan and RSA.

Exhibit 2A

Class 3A Ballot

**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)

**BALLOT FOR VOTING TO ACCEPT OR REJECT THE JOINT CHAPTER 11 PLAN
OF BURGESS BIOPOWER, LLC AND BERLIN STATION, LLC**

**CLASS 3A BALLOT FOR HOLDERS OF SENIOR NOTES CLAIMS OF BERLIN
STATION, LLC**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR
COMPLETING BALLOTS CAREFULLY *BEFORE* COMPLETING THIS BALLOT.**

**FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE COMPLETED,
EXECUTED, AND RETURNED SO AS TO BE
*ACTUALLY RECEIVED***

**BY THE SOLICITATION AGENT BY MAY 14, 2024 AT 4:00 P.M.
PREVAILING EASTERN TIME (THE “VOTING DEADLINE”) IN ACCORDANCE
WITH THE FOLLOWING:**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), are soliciting votes with respect to the *Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as modified, amended, or supplemented from time to time, the “Plan”) as described in the *Disclosure Statement for Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as amended, supplemented, or otherwise modified from time to time, the “Disclosure Statement”). The United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) has approved the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code, by entry of an order on April [●], 2024 (the “Disclosure Statement Order”). Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Disclosure Statement.

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.

You are receiving this Class 3A ballot (this “Class 3A Ballot”) because you are a holder of a Berlin Senior Notes Claim in Class 3A as of April 8, 2024 (the “Voting Record Date”). Accordingly, you have a right to vote to accept or reject the Plan.

Your rights are described in the Disclosure Statement, which was included in the package (the “Solicitation Package”) you are receiving with this Class 3A Ballot (as well as the Plan, Disclosure Statement Order, and certain other materials). If you received a Solicitation Package in electronic format and desire paper copies, or if you need to obtain additional Solicitation Packages, you may obtain them from Epiq Corporate Restructuring, LLC (the “Solicitation Agent”) at no charge by: (a) calling the Debtors’ restructuring hotline at **(877) 556-2937 (Domestic, toll-free)** or **+1 (503) 843-8526 (International)**; (b) visiting the Debtors’ restructuring website at: <https://dm.epiq11.com/case/burgess>; and/or (c) emailing Burgess@epiqglobal.com (with “Burgess BioPower Solicitation” in the subject line). You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at <http://www.deb.uscourts.gov>.

This Class 3A Ballot may not be used for any purpose other than for casting a vote to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe you have received this Class 3A Ballot in error, or if you believe that you have received the wrong ballot, please contact the Solicitation Agent *immediately* at the address, telephone number, or e-mail address set forth above.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Claim. Notwithstanding anything to the contrary herein, the vote you cast shall be null and void ab initio upon termination of the RSA pursuant to Section 10 thereof, and you may cast a new Ballot promptly thereafter.

Item 1. Amount of Claim

The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the holder of a Berlin Senior Note Claim in the following unpaid aggregate principal amount:

\$_____

Item 2. Vote on Plan

The holder of the Berlin Senior Note Claim against Debtor Berlin Station, LLC set forth in Item 1 votes to (please check one):

<input type="checkbox"/> <u>ACCEPT</u> (vote FOR) the Plan	<input type="checkbox"/> <u>REJECT</u> (vote AGAINST) the Plan
---	---

Item 3. Important information regarding the Third-Party Release

If you vote to accept the Plan, you shall be deemed to have consented to the Plan's Third-Party Release described in this Item 3 below. If (a) you do not vote either to accept or reject the Plan, or (b) if you vote to reject the Plan, and you do not check the box in Item 3 below, you shall be deemed to have consented to the Plan's Third-Party Release provision described in this Item 3 below and be bound by it.

The Holder of the Berlin Senior Note Claim set forth in Item 1 elects to (optional):

- ☐ The undersigned has elected (i) not to vote on the Plan or (ii) to vote to reject the Plan in Item 2, and elects to **Opt Out** of the below Third-Party Release.

Article VIII.A.3 of the Plan contains the following provision:

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Plan Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part: any of the Debtors (including the capital structure, management, ownership, or operation

thereof); any security of any of the Debtors or any of the Reorganized Debtors; the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan; the business or contractual arrangements between any Debtor and any Released Party; the Senior Notes Documents; the assertion or enforcement of rights and remedies against any of the Debtors; the Debtors' in- or out-of-court restructuring efforts; any Avoidance Actions held by any of the Debtor(s) or their Estates; intercompany transactions between or among a Debtor and another Debtor; the Chapter 11 Cases; the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring Support Agreement, the DIP Facility, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; the Filing of the Debtors' Chapter 11 Cases; the Disclosure Statement, the Plan, the solicitation of votes with respect to the Plan, the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, the distribution of property under the Plan or any other related agreement, or any cancellation of debt income realized in connection with the Plan; or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Plan Effective Date, other than Claims and liabilities resulting therefrom arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (i) any party of any obligations related to customary banking products, banking services or other financial accommodations (except as may be expressly amended or modified by the Plan or any other financing document under and as defined therein) or (ii) any post-Plan Effective Date obligations of any Person under the Plan, the Confirmation Order, any Stand-Alone Restructuring Transaction, any Definitive Document or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the New Note Documents, if any, the Purchase Agreement(s), if any, or any Claim or obligation arising under the Plan.

In addition, the Plan contains the following related definitions:

- **"Released Party"** means, in its capacity as such, each of: (a) the Debtors and their Estates; (b) the officers of each of the Debtors and the members of any board of managers or directors of each Debtor, and employees of each Debtor; (c) the DIP Lenders and the DIP Agent and their respective Related Parties; (d) the Senior Lenders and their respective Related Parties; (e) the Senior Notes Agent and its Related Parties; (f) all holders of Claims or Interests that (A) vote to accept the Plan; (B) vote to reject the Plan and do not elect to opt out of the releases contained in Article VIII of the Plan; or (C) are Unimpaired and do not timely File an objection to the releases contained in Article VIII of the Plan that is not resolved before Confirmation; and (g) in the event of one or more Sale Transaction(s), each Purchaser and the Plan Administrator (if applicable); provided, however, that no Person (other than the Debtors and the employees of each of the Debtors) shall be a

Released Party unless such Person is also a Releasing Party hereunder; provided further, that if any Person that otherwise would qualify as a Sponsor has not signed the Restructuring Support Agreement on or prior to the Petition Date, then such Person shall not be a Released Party in any capacity.

- **“Releasing Party”** means, in its capacity as such, each of: (a) the officers of each of the Debtors, the members of any board of managers of each Debtor and the managing members (or comparable governing bodies or Persons) of any Debtor; (b) the DIP Lenders and the DIP Agent; (c) the Senior Lenders; (d) the Senior Notes Agent; (e) the Sponsors and their Related Parties; (f) all holders of Claims or Interests that (A) vote to accept the Plan; or (B) vote to reject the Plan and do not elect to opt out of the releases contained in Article VIII of the Plan; (g) in the event of one or more Sale Transaction(s), each Purchaser and the Plan Administrator (if applicable); and (h) each Related Party of each Person in clause (a) through clause (g), but solely in their capacity as such, and solely to the extent the Person to whom they are related can bind them to releases under the terms of applicable non-bankruptcy law or otherwise obtains their agreement to be bound by the releases contained in the Plan.

AS A “RELEASING PARTY” UNDER THE PLAN, YOU ARE DEEMED TO PROVIDE THE RELEASES CONTAINED IN ARTICLE VIII.A.3 OF THE PLAN, AS SET FORTH ABOVE.

Item 4. Certifications

By signing this Class 3A Ballot, the undersigned certifies to the Bankruptcy Court and the Debtors:

- (a) that, as of the Voting Record Date, either: (i) the Entity is the holder of the Berlin Senior Notes Claim voted; or (ii) the Entity is an authorized signatory for an Entity that is a holder of the Berlin Senior Notes Claim being voted;
- (b) that the Entity (or in the case of an authorized signatory, the holder) has received a copy of the Disclosure Statement and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
- (c) that the Entity has cast the same vote with respect to all its Berlin Senior Notes Claims; and
- (d) that no other Class 3A Ballots with respect to the amount of the Berlin Senior Notes Claim identified in Item 1 have been cast or, if any other Class 3A Ballots have been cast with respect to such Berlin Senior Notes Claim, then any such earlier Class 3A Ballots are hereby revoked.

Name of Holder:	
	(Print or Type)
Signature:	
Name of Signatory:	
	(If other than holder)
Title:	
Address:	
Telephone Number:	
Email:	
Date Completed:	

**PLEASE COMPLETE, SIGN, AND DATE THIS BALLOT AND
RETURN IT (WITH AN ORIGINAL SIGNATURE) *PROMPTLY*:**

**VIA FIRST-CLASS MAIL (OR THE
ENCLOSED REPLY ENVELOPE
PROVIDED) TO:**

**Burgess BioPower, LLC
c/o Epiq Ballot Processing
P.O. Box 4422
Beaverton, OR 97076-4422**

**VIA OVERNIGHT COURIER, OR
HAND DELIVERY TO:**

**Burgess BioPower, LLC
c/o Epiq Ballot Processing
10300 SW Allen Boulevard
Beaverton, OR 97005**

OR

**RETURN THE ELECTRONIC VERSION OF YOUR BALLOT PROMPTLY VIA
“E-BALLOT” SUBMISSION. PLEASE VISIT
[HTTPS://DM.EPIQ11.COM/CASE/BURGESS](https://dm.epiq11.com/case/burgess)**

TO CAST YOUR BALLOT VIA “E-BALLOT” SUBMISSION.

**BALLOTS CAST BY FACSIMILE AND/OR ELECTRONIC
MAIL TRANSMISSION WILL NOT BE COUNTED.**

**IF THE SOLICITATION AGENT DOES NOT *ACTUALLY RECEIVE* THIS CLASS 3A
BALLOT ON OR BEFORE MAY 14, 2024 AT 4:00 P.M. PREVAILING EASTERN
TIME (AND IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE
TRANSMITTED BY THIS CLASS 3A BALLOT MAY BE COUNTED TOWARD
CONFIRMATION OF THE PLAN ONLY IN THE DISCRETION OF THE DEBTORS.**

Class 3A — Berlin Senior Notes Claims

INSTRUCTIONS FOR COMPLETING THIS CLASS 3A BALLOT

1. The Debtors are soliciting the votes of holders of Claims with respect to the Plan attached as Exhibit A to the Disclosure Statement. Capitalized terms used in the Class 3A Ballot or in these instructions (the “Ballot Instructions”) but not otherwise defined therein or herein shall have the meaning set forth in the Disclosure Statement, a copy of which also accompanies the Class 3A Ballot. **PLEASE READ THE PLAN AND DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**
2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims in at least one class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by section 1129 of the Bankruptcy Code. Please review the Disclosure Statement for more information.
3. To ensure that your Class 3A Ballot is counted, you must: (a) complete your Class 3 Ballot in accordance with these instructions; (b) clearly indicate your decision either to accept or reject the Plan in Item 2 of the Class 3A Ballot; and (c) clearly sign and submit your Class 3A Ballot as instructed herein. For the avoidance of doubt, electronic Ballots submitted via the Solicitation Agent’s E-Ballot system will be deemed to contain an original signature.
4. Your Class 3A Ballot *must* be returned to the Solicitation Agent so as to be *actually received* by the Solicitation Agent on or before the Voting Deadline. **The Voting Deadline is May 14, 2024, at 4:00 p.m. prevailing Eastern Time.**
5. If a Class 3A Ballot is received after the Voting Deadline and if the Voting Deadline is not extended, it may be counted only in the sole and absolute discretion of the Debtors. Additionally, **the following Class 3A Ballots will *not* be counted:**
 - (a) any Class 3A Ballot that partially rejects and partially accepts the Plan;
 - (b) Class 3A Ballots sent to the Debtors, the Debtors’ agents (other than the Solicitation Agent), or the Debtors’ financial or legal advisors;
 - (c) Class 3A Ballots sent by facsimile or e-mail;
 - (d) any Class 3A Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim;
 - (e) any Class 3A Ballot cast by an Entity that does not hold a Claim in Class 3A;
 - (f) any Class 3A Ballot submitted by a holder not entitled to vote pursuant to the Plan;
 - (g) any unsigned Class 3A Ballot;

- (h) any non-original Class 3A Ballot; and/or
 - (i) any Class 3A Ballot not marked to accept or reject the Plan or any Class 3A Ballot marked both to accept and reject the Plan.
6. The method of delivery of Class 3A Ballots to the Solicitation Agent is at the election and risk of each holder of a Berlin Senior Notes Claim. Except as otherwise provided herein, such delivery will be deemed made only when the Solicitation Agent **actually receives** the originally executed Class 3A Ballot. In all cases, holders should allow sufficient time to assure timely delivery.
 7. If multiple Class 3A Ballots are received from the same holder of a Berlin Senior Notes Claim with respect to the same Berlin Senior Notes Claim prior to the Voting Deadline, the latest, timely received, and properly completed Class 3A Ballot will supersede and revoke any earlier received Class 3A Ballots.
 8. You must vote all of your Berlin Senior Notes Claims within Class 3A either to accept or reject the Plan and may **not** split your vote. Further, if a holder has multiple Berlin Senior Notes Claims within Class 3A, the Debtors may, in their discretion, aggregate the Claims of any particular holder with multiple Berlin Senior Notes Claims within Class 3A for the purpose of counting votes.
 9. This Class 3A Ballot does **not** constitute, and shall not be deemed to be, (a) a Proof of Claim or (b) an assertion or admission of a Claim.
 10. **Please be sure to sign and date your Class 3A Ballot.** If you are signing a Class 3A Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you must indicate such capacity when signing and, if required or requested by the Solicitation Agent, the Debtors, or the Bankruptcy Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Class 3A Ballot.
 11. If you hold Claims in more than one Class under the Plan you may receive more than one ballot coded for each different Class. Each ballot votes **only** your Claims indicated on that ballot, so please complete and return each ballot that you received.

PLEASE SUBMIT YOUR CLASS 3A BALLOT PROMPTLY

IF YOU HAVE ANY QUESTIONS REGARDING THIS CLASS 3A BALLOT, THESE VOTING INSTRUCTIONS OR THE PROCEDURES FOR VOTING, PLEASE CALL THE RESTRUCTURING HOTLINE AT: (877) 556-2937 (DOMESTIC, TOLL-FREE) OR +1 (503) 843-8526 (INTERNATIONAL) OR E-MAIL BURGESS@EPIQGLOBAL.COM (WITH “BURGESS BIOPOWER SOLICITATION” IN THE SUBJECT LINE).

IF THE SOLICITATION AGENT DOES NOT *ACTUALLY RECEIVE* THIS CLASS 3A BALLOT ON OR BEFORE THE VOTING DEADLINE, WHICH IS ON MAY 14, 2024 AT 4:00 P.M. PREVAILING EASTERN TIME, (AND IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE TRANSMITTED HEREBY MAY BE COUNTED ONLY IN THE DISCRETION OF THE DEBTORS.

Exhibit 2B

Class 3B Ballot

**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)

**BALLOT FOR VOTING TO ACCEPT OR REJECT THE JOINT CHAPTER 11 PLAN
OF BURGESS BIOPOWER, LLC AND BERLIN STATION, LLC**

**CLASS 3B BALLOT FOR HOLDERS OF SENIOR NOTES CLAIMS OF BURGESS
BIOPOWER, LLC**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR
COMPLETING BALLOTS CAREFULLY *BEFORE* COMPLETING THIS BALLOT.**

**FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE COMPLETED,
EXECUTED, AND RETURNED SO AS TO BE
*ACTUALLY RECEIVED***

**BY THE SOLICITATION AGENT BY MAY 14, 2024 AT 4:00 P.M.
PREVAILING EASTERN TIME (THE “VOTING DEADLINE”) IN ACCORDANCE
WITH THE FOLLOWING:**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), are soliciting votes with respect to the *Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as modified, amended, or supplemented from time to time, the “Plan”) as described in the *Disclosure Statement for Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as amended, supplemented, or otherwise modified from time to time, the “Disclosure Statement”). The United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) has approved the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code, by entry of an order on April [●], 2024 (the “Disclosure Statement Order”). Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Disclosure Statement.

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.

You are receiving this Class 3B ballot (this “Class 3B Ballot”) because you are a holder of a Burgess Senior Notes Claim in Class 3B as of April 8, 2024 (the “Voting Record Date”). Accordingly, you have a right to vote to accept or reject the Plan.

Your rights are described in the Disclosure Statement, which was included in the package (the “Solicitation Package”) you are receiving with this Class 3B Ballot (as well as the Plan, Disclosure Statement Order, and certain other materials). If you received Solicitation Package materials in electronic format and desire paper copies, or if you need to obtain additional Solicitation Packages, you may obtain them from Epiq Corporate Restructuring, LLC (the “Solicitation Agent”) at no charge by: (a) calling the Debtors’ restructuring hotline at **(877) 556-2937 (Domestic, toll-free)** or **+1 (503) 843-8526 (International)**; (b) visiting the Debtors’ restructuring website at: <https://dm.epiq11.com/case/burgess>; and/or (c) emailing Burgess@epiqglobal.com (with “Burgess BioPower Solicitation” in the subject line). You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at <http://www.deb.uscourts.gov>.

This Class 3B Ballot may not be used for any purpose other than for casting votes to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe you have received this Class 3B Ballot in error, or if you believe that you have received the wrong ballot, please contact the Solicitation Agent *immediately* at the address, telephone number, or e-mail address set forth above.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Claim. Notwithstanding anything to the contrary herein, the vote you cast shall be null and void ab initio upon termination of the RSA pursuant to Section 10 thereof, and you may cast a new Ballot promptly thereafter.

Item 1. Amount of Claim

The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the holder of a Burgess Senior Note Claim in the following unpaid aggregate principal amount:

\$ _____

Item 2. Vote on Plan

The holder of the Burgess Senior Note Claim against Debtor Burgess BioPower, LLC set forth in Item 1 votes to (please check one):

<input type="checkbox"/> <u>ACCEPT</u> (vote FOR) the Plan	<input type="checkbox"/> <u>REJECT</u> (vote AGAINST) the Plan
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Item 3. Important information regarding the Third-Party Release

If you vote to accept the Plan, you shall be deemed to have consented to the Plan's Third-Party Release described in this Item 3 below. If (a) you do not vote either to accept or reject the Plan, or (b) if you vote to reject the Plan, and you do not check the box in Item 3 below, you shall be deemed to have consented to the Plan's Third-Party Release provision described in this Item 3 below and be bound by it.

The Holder of the Burgess Senior Note Claim set forth in Item 1 elects to (optional):

- ☐ The undersigned has elected (i) not to vote on the Plan or (ii) to vote to reject the Plan in Item 2, and elects to **Opt Out** of the below Third-Party Release.

Article VIII.A.3 of the Plan contains the following provision:

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Plan Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part: any of the Debtors (including the capital structure, management, ownership, or operation thereof); any security of any of the Debtors or any of the Reorganized Debtors; the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in

the Plan; the business or contractual arrangements between any Debtor and any Released Party; the Senior Notes Documents; the assertion or enforcement of rights and remedies against any of the Debtors; the Debtors' in- or out-of-court restructuring efforts; any Avoidance Actions held by any of the Debtor(s) or their Estates; intercompany transactions between or among a Debtor and another Debtor; the Chapter 11 Cases; the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring Support Agreement, the DIP Facility, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; the Filing of the Debtors' Chapter 11 Cases; the Disclosure Statement, the Plan, the solicitation of votes with respect to the Plan, the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, the distribution of property under the Plan or any other related agreement, or any cancellation of debt income realized in connection with the Plan; or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Plan Effective Date, other than Claims and liabilities resulting therefrom arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (i) any party of any obligations related to customary banking products, banking services or other financial accommodations (except as may be expressly amended or modified by the Plan or any other financing document under and as defined therein) or (ii) any post-Plan Effective Date obligations of any Person under the Plan, the Confirmation Order, any Stand-Alone Restructuring Transaction, any Definitive Document or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the New Note Documents, if any, the Purchase Agreement(s), if any, or any Claim or obligation arising under the Plan.

In addition, the Plan contains the following related definitions:

- **"Released Party"** means, in its capacity as such, each of: (a) the Debtors and their Estates; (b) the officers of each of the Debtors and the members of any board of managers or directors of each Debtor, and employees of each Debtor; (c) the DIP Lenders and the DIP Agent and their respective Related Parties; (d) the Senior Lenders and their respective Related Parties; (e) the Senior Notes Agent and its Related Parties; (f) all holders of Claims or Interests that (A) vote to accept the Plan; (B) vote to reject the Plan and do not elect to opt out of the releases contained in Article VIII of the Plan; or (C) are Unimpaired and do not timely File an objection to the releases contained in Article VIII of the Plan that is not resolved before Confirmation; and (g) in the event of one or more Sale Transaction(s), each Purchaser and the Plan Administrator (if applicable); provided, however, that no Person (other than the Debtors and the employees of each of the Debtors) shall be a Released Party unless such Person is also a Releasing Party hereunder; **provided further**, that if any Person that otherwise would qualify as a Sponsor has not signed

the Restructuring Support Agreement on or prior to the Petition Date, then such Person shall not be a Released Party in any capacity.

- **“Releasing Party”** means, in its capacity as such, each of: (a) the officers of each of the Debtors, the members of any board of managers of each Debtor and the managing members (or comparable governing bodies or Persons) of any Debtor; (b) the DIP Lenders and the DIP Agent; (c) the Senior Lenders; (d) the Senior Notes Agent; (e) the Sponsors and their Related Parties; (f) all holders of Claims or Interests that (A) vote to accept the Plan; or (B) vote to reject the Plan and do not elect to opt out of the releases contained in Article VIII of the Plan; (g) in the event of one or more Sale Transaction(s), each Purchaser and the Plan Administrator (if applicable); and (h) each Related Party of each Person in clause (a) through clause (g), but solely in their capacity as such, and solely to the extent the Person to whom they are related can bind them to releases under the terms of applicable non-bankruptcy law or otherwise obtains their agreement to be bound by the releases contained in the Plan.

AS A “RELEASING PARTY” UNDER THE PLAN, YOU ARE DEEMED TO PROVIDE THE RELEASES CONTAINED IN ARTICLE VIII.A.3 OF THE PLAN, AS SET FORTH ABOVE.

Item 4. Certifications

By signing this Class 3B Ballot, the undersigned certifies to the Bankruptcy Court and the Debtors:

- (a) that, as of the Voting Record Date, either: (i) the Entity is the holder of the Burgess Senior Notes Claim voted; or (ii) the Entity is an authorized signatory for an Entity that is a holder of the Burgess Senior Notes Claim being voted;
- (b) that the Entity (or in the case of an authorized signatory, the holder) has received a copy of the Disclosure Statement and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
- (c) that the Entity has cast the same vote with respect to all of its Burgess Senior Notes Claims; and
- (d) that no other Class 3B Ballots with respect to the amount of the Burgess Senior Notes Claims identified in Item 1 have been cast or, if any other Class 3B Ballots have been cast with respect to such Burgess Senior Notes Claims, then any such earlier Class 3B Ballots are hereby revoked.

Name of Holder:	
	(Print or Type)
Signature:	
Name of Signatory:	
	(If other than holder)
Title:	
Address:	
Telephone Number:	
Email:	
Date Completed:	

**PLEASE COMPLETE, SIGN, AND DATE THIS BALLOT AND
RETURN IT (WITH AN ORIGINAL SIGNATURE) *PROMPTLY*:**

**VIA FIRST-CLASS MAIL (OR THE
ENCLOSED REPLY ENVELOPE
PROVIDED) TO:**

**Burgess BioPower, LLC
c/o Epiq Ballot Processing
P.O. Box 4422
Beaverton, OR 97076-4422**

**VIA OVERNIGHT COURIER, OR
HAND DELIVERY TO:**

**Burgess BioPower, LLC
c/o Epiq Ballot Processing
10300 SW Allen Boulevard
Beaverton, OR 97005**

OR

**RETURN THE ELECTRONIC VERSION OF YOUR BALLOT PROMPTLY VIA
“E-BALLOT” SUBMISSION. PLEASE VISIT
[HTTPS://DM.EPIQ11.COM/CASE/BURGESS](https://dm.epiq11.com/case/burgess)
TO CAST YOUR BALLOT VIA “E-BALLOT” SUBMISSION.**

**BALLOTS CAST BY FACSIMILE AND/OR ELECTRONIC
MAIL TRANSMISSION WILL NOT BE COUNTED.**

**IF THE SOLICITATION AGENT DOES NOT *ACTUALLY RECEIVE* THIS CLASS 3B
BALLOT ON OR BEFORE MAY 14, 2024 AT 4:00 P.M. PREVAILING EASTERN
TIME (AND IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE
TRANSMITTED BY THIS CLASS 3B BALLOT MAY BE COUNTED TOWARD
CONFIRMATION OF THE PLAN ONLY IN THE DISCRETION OF THE DEBTORS.**

Class 3B — Burgess Senior Notes Claims

INSTRUCTIONS FOR COMPLETING THIS CLASS 3B BALLOT

1. The Debtors are soliciting the votes of holders of Claims with respect to the Plan attached as Exhibit A to the Disclosure Statement. Capitalized terms used in the Class 3B Ballot or in these instructions (the “Ballot Instructions”) but not otherwise defined therein or herein shall have the meaning set forth in the Disclosure Statement, a copy of which also accompanies the Class 3B Ballot. **PLEASE READ THE PLAN AND DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**
2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims in at least one class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by section 1129 of the Bankruptcy Code. Please review the Disclosure Statement for more information.
3. To ensure that your Class 3B Ballot is counted, you must: (a) complete your Class 3 Ballot in accordance with these instructions; (b) clearly indicate your decision either to accept or reject the Plan in Item 2 of the Class 3B Ballot; and (c) clearly sign and submit your Class 3B Ballot as instructed herein. For the avoidance of doubt, electronic Ballots submitted via the Solicitation Agent’s E-Ballot system will be deemed to contain an original signature.
4. Your Class 3B Ballot ***must*** be returned to the Solicitation Agent so as to be ***actually received*** by the Solicitation Agent on or before the Voting Deadline. **The Voting Deadline is May 14, 2024 at 4:00 p.m. prevailing Eastern Time.**
5. If a Class 3B Ballot is received after the Voting Deadline and if the Voting Deadline is not extended, it may be counted only in the sole and absolute discretion of the Debtors. Additionally, **the following Class 3B Ballots will *not* be counted:**
 - (a) any Class 3B Ballot that partially rejects and partially accepts the Plan;
 - (b) Class 3B Ballots sent to the Debtors, the Debtors’ agents (other than the Solicitation Agent), or the Debtors’ financial or legal advisors;
 - (c) Class 3B Ballots sent by facsimile or e-mail;
 - (d) any Class 3B Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim;
 - (e) any Class 3B Ballot cast by an Entity that does not hold a Claim in Class 3B;
 - (f) any Class 3B Ballot submitted by a holder not entitled to vote pursuant to the Plan;
 - (g) any unsigned Class 3B Ballot;

- (h) any non-original Class 3B Ballot; and/or
 - (i) any Class 3B Ballot not marked to accept or reject the Plan or any Class 3B Ballot marked both to accept and reject the Plan.
6. The method of delivery of Class 3B Ballots to the Solicitation Agent is at the election and risk of each holder of a Burgess Senior Notes Claim. Except as otherwise provided herein, such delivery will be deemed made only when the Solicitation Agent ***actually receives*** the originally executed Class 3B Ballot. In all cases, holders should allow sufficient time to assure timely delivery.
 7. If multiple Class 3B Ballots are received from the same holder of a Burgess Senior Notes Claim with respect to the same Burgess Senior Notes Claim prior to the Voting Deadline, the latest, timely received, and properly completed Class 3B Ballot will supersede and revoke any earlier received Class 3B Ballots.
 8. You must vote all of your Burgess Senior Notes Claims within Class 3B either to accept or reject the Plan and may **not** split your vote. Further, if a holder has multiple Burgess Senior Notes Claims within Class 3B, the Debtors may, in their discretion, aggregate the Claims of any particular holder with multiple Burgess Senior Notes Claims within Class 3B for the purpose of counting votes.
 9. This Class 3B Ballot does ***not*** constitute, and shall not be deemed to be, (a) a Proof of Claim or (b) an assertion or admission of a Claim.
 10. **Please be sure to sign and date your Class 3B Ballot.** If you are signing a Class 3B Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you must indicate such capacity when signing and, if required or requested by the Solicitation Agent, the Debtors, or the Bankruptcy Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Class 3B Ballot.
 11. If you hold Claims in more than one Class under the Plan you may receive more than one ballot coded for each different Class. Each ballot votes ***only*** your Claims indicated on that ballot, so please complete and return each ballot that you received.

PLEASE SUBMIT YOUR CLASS 3B BALLOT PROMPTLY

IF YOU HAVE ANY QUESTIONS REGARDING THIS CLASS 3B BALLOT, THESE VOTING INSTRUCTIONS OR THE PROCEDURES FOR VOTING, PLEASE CALL THE RESTRUCTURING HOTLINE AT: (877) 556-2937 (DOMESTIC, TOLL-FREE) OR +1 (503) 843-8526 (INTERNATIONAL) OR E-MAIL BURGESS@EPIQGLOBAL.COM (WITH “BURGESS BIOPOWER SOLICITATION” IN THE SUBJECT LINE).

IF THE SOLICITATION AGENT DOES NOT *ACTUALLY RECEIVE* THIS CLASS 3B BALLOT ON OR BEFORE THE VOTING DEADLINE, WHICH IS ON MAY 14, 2024 AT 4:00 P.M. PREVAILING EASTERN TIME, (AND IF THE VOTING DEADLINE IS NOT EXTENDED), YOUR VOTE TRANSMITTED HEREBY MAY BE COUNTED ONLY IN THE DISCRETION OF THE DEBTORS.

Exhibit 3

Unimpaired Non-Voting Status Notice

**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)

**NOTICE OF NON-VOTING STATUS TO HOLDERS OF
UNIMPAIRED CLAIMS CONCLUSIVELY PRESUMED TO ACCEPT THE PLAN**

PLEASE TAKE NOTICE THAT, on April [•], 2024, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order (the “Disclosure Statement Order”), (a) authorizing Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”) and together with Burgess, the “Debtors”), to solicit acceptances for the *Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as modified, amended, or supplemented from time to time, the “Plan”); (b) approving the *Disclosure Statement for the Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages; and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

PLEASE TAKE FURTHER NOTICE THAT because of the nature and treatment of your Claim under the Plan, **you are not entitled to vote on the Plan**. Specifically, under the terms of the Plan, as a holder of a Claim (as currently asserted against the Debtors) that is unimpaired under the Plan, you are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote on the Plan.

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider Confirmation of the Plan (the “Confirmation Hearing”) will commence on **May 21, 2024 at 10:00 a.m. prevailing Eastern Time**, before the Honorable Laurie Selber Silverstein, in the United States Bankruptcy Court for the District of Delaware, located at 824 Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT the deadline for filing objections to the Plan is **May 14, 2024 at 4:00 p.m. prevailing Eastern Time** (the “Plan Objection Deadline”).

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 and not defined have the meanings given to them in the Disclosure Statement and Plan, as applicable.

Any objection to the Plan **must**: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state, with particularity, the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be **actually received** on or before the Plan Objection Deadline: (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: Katharina Earle (kearle@gibbonslaw.com) Chantelle D. McClamb, Esq. (cmclamb@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.leafy@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), One Vanderbilt Avenue, New York, New York 10017, Attn: Oscar N. Pinkas (pinkaso@gtlaw.com), Brian E. Greer (greerb@gtlaw.com), and Leo Muchnik (muchnikl@gtlaw.com), and 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801, Attn: Dennis Meloro (melorod@gtlaw.com).

PLEASE TAKE FURTHER NOTICE THAT if you would like to obtain a copy of the Disclosure Statement, the Plan, the Plan Supplement, or related documents, you should contact Epiq Corporate Restructuring LLC (the “Solicitation Agent”) at no charge by: (a) calling the Debtors’ restructuring hotline at (877) 556-2937 (Domestic, toll-free) or +1 (503) 843-8526 (International); (b) visiting the Debtors’ restructuring website at: <https://dm.epiq11.com/case/burgess>; and/or (c) emailing Burgess@epiqglobal.com (with “Burgess BioPower Solicitation” in the subject line). You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at <http://www.deb.uscourts.gov>.

PLEASE TAKE FURTHER NOTICE THAT AS A “RELEASING PARTY” UNDER THE PLAN, YOU ARE DEEMED TO PROVIDE THE RELEASES CONTAINED IN ARTICLE VIII.A.3. OF THE PLAN. YOU MAY ELECT TO OPT OUT OF THE RELEASES CONTAINED IN ARTICLE VIII.A.3. OF THE PLAN BY COMPLETING AND SUBMITTING THE OPT-OUT FORM ATTACHED HERETO AS ANNEX A BY THE OBJECTION DEADLINE. THE THIRD-PARTY RELEASE PROVISION SET FORTH IN ARTICLE VIII.A.3. OF THE PLAN IS SET FORTH IN ANNEX A ATTACHED HERETO.

[Remainder of page intentionally left blank]

Dated: April [•], 2024

*Counsel to the Debtors and
Debtors in Possession*

ANNEX A

THIRD-PARTY RELEASE OPT-OUT FORM

YOU MAY ELECT TO OPT OUT OF THE RELEASE CONTAINED IN ARTICLE VIII.A.3. OF THE PLAN ONLY IF YOU CHECK THE BOX BELOW AND RETURN THIS FORM (THIS “OPT-OUT FORM”) TO THE DEBTORS’ SOLICITATION AGENT SO THAT IT IS ACTUALLY RECEIVED BY 4:00 P.M. (PREVAILING EASTERN TIME) ON MAY 14, 2024. IF YOU FAIL TO TIMELY SUBMIT THIS FORM WITHOUT CHECKING THE BOX BELOW, YOU WILL BE DEEMED TO CONSENT TO THE RELEASES SET FORTH IN ARTICLE VIII.A.3. OF THE PLAN.

Article VIII.A.3 of the Plan contains the following provision:

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Plan Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part: any of the Debtors (including the capital structure, management, ownership, or operation thereof); any security of any of the Debtors or any of the Reorganized Debtors; the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan; the business or contractual arrangements between any Debtor and any Released Party; the Senior Notes Documents; the assertion or enforcement of rights and remedies against any of the Debtors; the Debtors’ in- or out-of-court restructuring efforts; any Avoidance Actions held by any of the Debtor(s) or their Estates; intercompany transactions between or among a Debtor and another Debtor; the Chapter 11 Cases; the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring Support Agreement, the DIP Facility, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; the Filing of the Debtors’ Chapter 11 Cases; the Disclosure Statement, the Plan, the solicitation of votes with respect to the Plan, the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, the distribution of property under the Plan or any other related agreement, or any cancellation of debt income realized in connection with the Plan; or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Plan Effective Date, other than Claims and liabilities resulting therefrom arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the

contrary in the foregoing, the releases set forth above do not release (i) any party of any obligations related to customary banking products, banking services or other financial accommodations (except as may be expressly amended or modified by the Plan or any other financing document under and as defined therein) or (ii) any post-Plan Effective Date obligations of any Person under the Plan, the Confirmation Order, any Stand-Alone Restructuring Transaction, any Definitive Document or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the New Note Documents, if any, the Purchase Agreement(s), if any, or any Claim or obligation arising under the Plan.

In addition, the Plan contains the following related definitions:

- **“Released Party”** means, in its capacity as such, each of: (a) the Debtors and their Estates; (b) the officers of each of the Debtors and the members of any board of managers or directors of each Debtor, and employees of each Debtor; (c) the DIP Lenders and the DIP Agent and their respective Related Parties; (d) the Senior Lenders and their respective Related Parties; (e) the Senior Notes Agent and its Related Parties; (f) all holders of Claims or Interests that (A) vote to accept the Plan; (B) vote to reject the Plan and do not elect to opt out of the releases contained in Article VIII of the Plan; or (C) are Unimpaired and do not timely File an objection to the releases contained in Article VIII of the Plan that is not resolved before Confirmation; and (g) in the event of one or more Sale Transaction(s), each Purchaser and the Plan Administrator (if applicable); provided, however, that no Person (other than the Debtors and the employees of each of the Debtors) shall be a Released Party unless such Person is also a Releasing Party hereunder; **provided further**, that if any Person that otherwise would qualify as a Sponsor has not signed the Restructuring Support Agreement on or prior to the Petition Date, then such Person shall not be a Released Party in any capacity.
- **“Releasing Party”** means, in its capacity as such, each of: (a) the officers of each of the Debtors, the members of any board of managers of each Debtor and the managing members (or comparable governing bodies or Persons) of any Debtor; (b) the DIP Lenders and the DIP Agent; (c) the Senior Lenders; (d) the Senior Notes Agent; (e) the Sponsors and their Related Parties; (f) all holders of Claims or Interests that (A) vote to accept the Plan; or (B) vote to reject the Plan and do not elect to opt out of the releases contained in Article VIII of the Plan; (g) in the event of one or more Sale Transaction(s), each Purchaser and the Plan Administrator (if applicable); and (h) each Related Party of each Person in clause (a) through clause (g), but solely in their capacity as such, and solely to the extent the Person to whom they are related can bind them to releases under the terms of applicable non-bankruptcy law or otherwise obtains their agreement to be bound by the releases contained in the Plan.

AS A “RELEASING PARTY” UNDER THE PLAN, YOU ARE DEEMED TO PROVIDE THE RELEASES CONTAINED IN ARTICLE VIII.A.3 OF THE PLAN, AS SET FORTH ABOVE.

Item 1. Amount of Claim

The undersigned hereby certifies that it is a holder of Claims in Class 1A Berlin (Other Secured Claims), Class 1B Burgess (Other Secured Claims), Class 2A Berlin (Other Priority Claims), Class 2B Burgess (Other Priority Claims), Class 4B Burgess (General Unsecured Claims), Class 5B Burgess (510(b) Claims), or Class 6B Burgess (Intercompany Claims) in the following aggregate unpaid amount (insert amount in box below where applicable):¹

Class 1A Berlin (Other Secured Claims)	Amount: \$
Class 1B Burgess (Other Secured Claims)	Amount: \$
Class 2A Berlin (Other Priority Claims)	Amount: \$
Class 2B Burgess (Other Priority Claims)	Amount: \$
Class 4B Burgess (General Unsecured Claims)	Amount: \$
Class 5B Burgess (510(b) Claims)	Amount: \$
Class 6B Burgess (Intercompany Claims)	Amount: \$

Item 2. Important information regarding the Third-Party Release

By checking the box below, the undersigned holder of Claims identified in Item 1 above, having received notice of the opportunity to opt out of granting the releases contained in Article VIII.A.3. of the Plan, elects to opt out of such releases:

☐ The undersigned elects to **Opt Out** of the above Third-Party Release

¹ Nothing herein shall constitute an admission or acknowledgment by the Debtors of any Claim or that any Debtor has any liability with respect thereto, and the Debtors' rights to object are fully preserved.

Item 3. Acknowledgments

By signing this Opt-Out Form, the undersigned certifies that the undersigned has the power and authority to elect whether to grant the releases contained in Article VIII.A.3 of the Plan with respect to the Claims identified in Item 1 above and has elected not to be a Releasing Party under the Plan.

Name of Holder:	_____
	(Print or Type)
Signature:	_____
Name of Signatory:	_____
	(If other than holder)
Title:	_____
Address:	_____

Telephone Number:	_____
Email:	_____
Date Completed:	_____

**IF YOU WISH TO OPT OUT, PLEASE COMPLETE, SIGN, AND DATE THIS FORM
AND RETURN IT (WITH AN ORIGINAL SIGNATURE) *PROMPTLY***

**VIA FIRST-CLASS MAIL (OR THE
ENCLOSED REPLY ENVELOPE
PROVIDED) TO:**

**Burgess BioPower, LLC
c/o Epiq Ballot Processing
P.O. Box 4422
Beaverton, OR 97076-4422**

**VIA OVERNIGHT COURIER, OR
HAND DELIVERY TO:**

**Burgess BioPower, LLC
c/o Epiq Ballot Processing
10300 SW Allen Boulevard
Beaverton, OR 97005**

How to Opt-Out of the Releases Online Through the E-Balloting Portal:

1. Please visit <https://dm.epiq11.com/case/burgess>
2. Access the E-Balloting Portal by clicking on the “Submit E-Ballot” section of the website.
3. Follow the instructions to submit your Opt-Out Form.

IMPORTANT NOTE: You will need the following information to retrieve and submit your customized Opt-Out Form:

Unique E-Ballot ID#: _____

Epiq’s E-Balloting Portal is the sole manner in which Opt-Out Forms will be accepted via electronic or online transmission. Opt-Out Forms submitted by facsimile, email, or other means of electronic transmission will not be counted.

If you submit your Opt-Out Forms via the E-Balloting Portal, you SHOULD NOT also submit the hard copy version of your Opt-Out Form.

IF YOU HAVE ANY QUESTIONS REGARDING THIS OPT-OUT FORM, PLEASE CONTACT THE SOLICITATION AGENT EITHER BY (A) CALLING THE DEBTORS’ RESTRUCTURING HOTLINE AT (877) 556-2937 (DOMESTIC, TOLL-FREE) OR +1 (503) 843-8526 (INTERNATIONAL); (B) VISITING THE DEBTORS’ RESTRUCTURING WEBSITE AT: [HTTPS://DM.EPIQ11.COM/CASE/BURGESS](https://dm.epiq11.com/case/burgess); AND/OR (C) EMAILING BURGESS@EPIQGLOBAL.COM (WITH “BURGESS BIOPOWER SOLICITATION” IN THE SUBJECT LINE). PLEASE BE ADVISED THAT THE SOLICITATION AGENT IS NOT AUTHORIZED TO PROVIDE, AND WILL NOT PROVIDE, LEGAL ADVICE.

Exhibit 4

Impaired Non-Voting Status Notice

**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)

**NOTICE OF NON-VOTING STATUS TO HOLDERS
OF IMPAIRED INTERESTS DEEMED TO REJECT THE PLAN**

PLEASE TAKE NOTICE THAT, on April [•], 2024, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order (the “Disclosure Statement Order”), (a) authorizing Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”) and together with Burgess, the “Debtors”), to solicit acceptances for the *Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as modified, amended, or supplemented from time to time, the “Plan”); (b) approving the *Disclosure Statement for the Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages; and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

PLEASE TAKE FURTHER NOTICE THAT because of the nature and treatment of your Claims or Interests under the Plan, **you are not entitled to vote on the Plan**. Specifically, under the terms of the Plan, as a holder of Class 4A (Subordinated Notes Claims), Class 5A (General Unsecured Claims), Class 6A (510(b) Claims), Class 7A (Intercompany Claims), Class 7B (Interests), or Class 8A (Interests) (as currently asserted against the Debtors) that is receiving no distribution under the Plan, you are deemed to reject the Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote on the Plan.

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider Confirmation of the Plan (the “Confirmation Hearing”) will commence on **May 21, 2024 at 10:00 a.m. prevailing Eastern Time**, before the Honorable Laurie Selber Silverstein, in the United States Bankruptcy Court for the District of Delaware, located at 824 Market Street, 6th Floor Courtroom No. 2, Wilmington, Delaware 19801.

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 and not defined have the meanings given to them in the Disclosure Statement and Plan, as applicable.

PLEASE TAKE FURTHER NOTICE THAT the deadline for filing objections to the Plan is **May 14, 2024 at 4:00 p.m. prevailing Eastern Time** (the “Plan Objection Deadline”). Any objection to the Plan **must**: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state, with particularity, the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be **actually received** on or before the Plan Objection Deadline: (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: Katharina Earle (kearle@gibbonslaw.com) Chantelle D. McClamb, Esq. (cmccclamb@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.leafy@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), One Vanderbilt Avenue, Attn: Oscar N. Pinkas (pinkaso@gtlaw.com), Brian E. Greer (greergb@gtlaw.com), and Leo Muchnik (muchnikl@gtlaw.com); and 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801, Attn: Dennis Meloro (melorod@gtlaw.com).

PLEASE TAKE FURTHER NOTICE THAT if you would like to obtain a copy of the Disclosure Statement, the Plan, the Plan Supplement, or related documents, you should contact Epiq Corporate Restructuring LLC (the “Solicitation Agent”) at no charge by: (a) calling the Debtors’ restructuring hotline at (877) 556-2937 (Domestic, toll-free) or +1 (503) 843-8526 (International); (b) visiting the Debtors’ restructuring website at: <https://dm.epiq11.com/case/burgess>; and/or (c) emailing Burgess@epiqglobal.com (with “Burgess BioPower Solicitation” in the subject line). You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at <http://www.deb.uscourts.gov>.

[Remainder of page intentionally left blank]

Dated: April [•], 2024

*Counsel to the Debtors and
Debtors in Possession*

Exhibit 5

Notice to Disputed Claim Holders

**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)

NOTICE OF NON-VOTING STATUS WITH RESPECT TO DISPUTED CLAIMS

PLEASE TAKE NOTICE THAT, on April [•], 2024, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order (the “Disclosure Statement Order”), (a) authorizing Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin” and together with Burgess, the “Debtors”), to solicit acceptances for the *Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as modified, amended, or supplemented from time to time, the “Plan”); (b) approving the *Disclosure Statement for the Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages; and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

PLEASE TAKE FURTHER NOTICE THAT the Disclosure Statement, Disclosure Statement Order, the Plan, and other documents and materials included in the Solicitation Package, except ballots, may be obtained at no charge from Epiq Corporate Restructuring LLC (the “Solicitation Agent”) at no charge by: (a) calling the Debtors’ restructuring hotline at (877) 556-2937 (Domestic, toll-free) or +1 (503) 843-8526 (International); (b) visiting the Debtors’ restructuring website at: <https://dm.epiq11.com/case/burgess>; and/or (c) emailing Burgess@epiqglobal.com (with “Burgess BioPower Solicitation” in the subject line). You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at <http://www.deb.uscourts.gov>.

PLEASE TAKE FURTHER NOTICE THAT you are receiving this notice because you are the holder of a Claim that is subject to a pending objection by the Debtors. You are not entitled to vote any disputed portion of your Claim on the Plan unless one or more of the following events

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 and not defined have the meanings given to them in the Disclosure Statement and Plan, as applicable.

have taken place before a date that is three (3) business days before the Voting Deadline (each, a “Resolution Event”):

1. an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
2. an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
3. a stipulation or other agreement is executed between the holder of such Claim and the Debtors temporarily allowing the holder of such Claim to vote its Claim in an agreed upon amount; or
4. the pending objection to such Claim is voluntarily withdrawn by the Debtors.

Accordingly, the Debtors have provided you with a copy of this notice for informational purposes. For additional information, please refer to the Disclosure Statement Order and the Solicitation and Voting Procedures attached thereto as Exhibit 1.

PLEASE TAKE FURTHER NOTICE THAT if a Resolution Event occurs, then no later than two (2) business days thereafter, the Solicitation Agent shall distribute a ballot, and a pre-addressed, postage pre-paid envelope to you, which must be returned to the Solicitation Agent no later than the Voting Deadline, which is **May 14, 2024 at 4:00 p.m. prevailing Eastern Time**.

PLEASE TAKE FURTHER NOTICE THAT if you have any questions about the status of any of your Claims, you should contact the Solicitation Agent in accordance with the instructions provided above.

ARTICLE VIII OF THE PLAN CONTAINS RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, AND ARTICLE VIII.A.3 CONTAINS A THIRD-PARTY RELEASE. THUS, YOU ARE ADVISED TO READ AND CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MIGHT BE AFFECTED THEREUNDER.

THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY. IF YOU HAVE QUESTIONS WITH RESPECT TO YOUR RIGHTS UNDER THE PLAN OR ABOUT ANYTHING STATED HEREIN OR IF YOU WOULD LIKE TO OBTAIN ADDITIONAL INFORMATION, YOU MAY WISH TO CONSULT AN ATTORNEY.

Dated: April [•], 2024

*Counsel to the Debtors and
Debtors in Possession*

Exhibit 6

Confirmation Hearing Notice

**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)

**NOTICE OF HEARING TO CONSIDER CONFIRMATION
OF THE CHAPTER 11 PLAN FILED BY THE DEBTORS AND
RELATED VOTING AND OBJECTION DEADLINES**

PLEASE TAKE NOTICE THAT, on April [•], 2022, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order (the “Disclosure Statement Order”), (a) authorizing Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”) and together with Burgess, the “Debtors”), to solicit acceptances for the *Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as modified, amended, or supplemented from time to time, the “Plan”); (b) approving the *Disclosure Statement for the Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages; and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider Confirmation of the Plan (the “Confirmation Hearing”) will commence on **May 21, 2024 at 10:00 a.m. prevailing Eastern Time**, before the Honorable Laurie Selber Silverstein, in the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801.

Please be Advised: The Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice other than by such adjournment being announced in open court.

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 and not defined have the meanings given to them in the Disclosure Statement and Plan, as applicable.

CRITICAL INFORMATION REGARDING VOTING ON THE PLAN

Voting Record Date. The record date to determine which Claims in Class 3A (Berlin Senior Note Claims) and Class 3B (Burgess Senior Note Claims) are entitled to vote on the Plan is April 8, 2024.

Only holders of Class 3A (Berlin Senior Note Claims) and Class 3B (Burgess Senior Note Claims) are entitled to vote to accept or reject the Plan. All other classes of Claims and Interests are deemed either to accept or reject the Plan.

Voting Deadline. The deadline for voting on the Plan is on **May 14, 2024 at 4:00 p.m. prevailing Eastern Time** (the “Voting Deadline”). If you received a Solicitation Package, including a Ballot and intend to vote on the Plan you **must**: (a) follow the instructions carefully; (b) complete **all** of the required information on the ballot; and (c) execute and return your completed Ballot according to and as set forth in detail in the voting instructions so that it is **actually received** by the Debtors’ solicitation agent, Epiq Corporate Restructuring LLC (the “Solicitation Agent”), on or before the Voting Deadline. A failure to follow such instructions may disqualify your vote.

CRITICAL INFORMATION REGARDING OBJECTING TO THE PLAN

Article VIII of the Plan contains Release, Exculpation, and Injunction provisions, and Article VIII.A.3. contains a Third-Party Release. Thus, you are advised to review and consider the Plan carefully because your rights might be affected thereunder.

PLEASE TAKE FURTHER NOTICE THAT the deadline for filing objections to the Plan is **May 14, 2024 at 4:00 p.m. prevailing Eastern Time** (the “Plan Objection Deadline”). Any objection to the Plan **must**: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state, with particularity, the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be **actually received** on or before the Plan Objection Deadline: (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: Katharina Earle (kearle@gibbonslaw.com) Chantelle D. McClamb, Esq. (cmclamb@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.leafy@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), One Vanderbilt Avenue, New York, New York 10017, Attn: Oscar N. Pinkas (pinkaso@gtlaw.com), Brian E. Greer (greerb@gtlaw.com), and Leo Muchnik (muchnikl@gtlaw.com), and 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801, Attn: Dennis Meloro (melorod@gtlaw.com).

UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE (THIS “NOTICE”), IT MAY NOT BE CONSIDERED BY THE COURT.

IF THE PLAN IS CONFIRMED BY THE COURT, IT WILL BE BINDING ON ALL OF THE DEBTORS’ CREDITORS AND INTEREST HOLDERS. FAILURE TO FILE A TIMELY OBJECTION TO THE PLAN OR, WITH RESPECT TO THE RELEASES SET FORTH IN ARTICLE VIII.A.3. OF THE PLAN, TO TIMELY OPT OUT VIA BALLOT OR OPT-OUT FORM, AS APPLICABLE, WILL RESULT, IF THE PLAN IS CONFIRMED, IN THE APPLICATION OF SUCH PROVISIONS OF THE PLAN, INCLUDING THE RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS CONTAINED IN ARTICLE VIII OF THE PLAN, TO EACH OF THE DEBTORS’ CREDITORS AND INTEREST HOLDERS, AS APPLICABLE. YOU ARE ADVISED AND ENCOURAGED TO CAREFULLY REVIEW AND CONSIDER THE PLAN, INCLUDING THE RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, AS YOUR RIGHTS MAY BE AFFECTED.

IMPORTANT INFORMATION REGARDING RELEASES, INJUNCTIONS, AND EXCULPATIONS

The Plan contains the following provisions:

Article VIII.A.2. Releases by the Debtors

Notwithstanding anything in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Plan Effective Date, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released by each of the Debtors, their respective Estates, and any Person seeking to exercise the rights of any of the Debtors or their Estates (including any successors to any of the Debtors or their Estates or any Estate representatives appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code), in each case, on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Persons who may purport to assert any Cause of Action, derivatively, by, through, for, or because of any of the foregoing Persons, from any and all Claims and Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort or otherwise, that any of the Debtors, their Estates, the Reorganized Debtors or Wind-Down Debtor(s), as applicable, or any successors to or representatives of the foregoing appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, would have been legally entitled to assert in their own right (whether individually or collectively) or that any holder of any Claim against or any Interest in, any of the Debtors could have asserted on behalf of any of the Debtors or their Estates, based on, relating to, or in any manner arising from, in whole or in part: any of the Debtors (including the capital structure, management, ownership, or operations thereof); any Security of any of the Debtors; the subject matter of, or the transactions or events giving rise to, any Claim, Cause of Action or Interest; the business or contractual arrangements between any Debtor and a Released Party; the Senior Notes Documents; any of the Debtors’ restructuring efforts; any Avoidance Actions held by any of the Debtors or

their Estates; any intercompany transactions performed by any of the Debtors; the Debtors' Chapter 11 Cases (including the Filing thereof and any relief obtained by the Debtors therein); the formulation, preparation, dissemination, negotiation, or Filing of the Plan, the Plan Supplement, the Restructuring Support Agreement, the DIP Facility, the Disclosure Statement, or the Bidding Procedures Order (and the procedures approved thereby); any Restructuring Transaction, contract, instrument, release, or other agreement or document (including any legal opinion requested by any Person regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order with respect to the Plan in lieu of such legal opinion) created or entered into in connection with the Plan, the Restructuring Support Agreement, or the Bidding Procedures Order; the solicitation of votes on the Plan, the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the implementation of the Plan, including the issuance or distribution of Securities or any other property pursuant to the Plan; or any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Plan Effective Date other than Claims and liabilities resulting therefrom arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, in each case, solely to the extent determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Plan Effective Date Claims or obligations of any Person under the Plan, the Confirmation Order with respect to the Plan, any Restructuring Transaction, any Definitive Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

Article VIII.A.3. Releases by Holders of Claims and Interests In the Debtors

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Plan Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part: any of the Debtors (including the capital structure, management, ownership, or operation thereof); any security of any of the Debtors or any of the Reorganized Debtors; the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan; the business or contractual arrangements between any Debtor and any Released Party; the Senior Notes Documents; the assertion or enforcement of rights and remedies against any of the Debtors; the Debtors' in- or out-of-court restructuring efforts; any Avoidance Actions held by any of the Debtor(s) or their Estates; intercompany transactions between or among a Debtor and another Debtor; the Chapter 11 Cases; the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; any Restructuring Transaction, contract, instrument, release, or other agreement or

document created or entered into in connection with the Restructuring Support Agreement, the DIP Facility, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; the Filing of the Debtors' Chapter 11 Cases; the Disclosure Statement, the Plan, the solicitation of votes with respect to the Plan, the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, the distribution of property under the Plan or any other related agreement, or any cancellation of debt income realized in connection with the Plan; or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Plan Effective Date, other than Claims and liabilities resulting therefrom arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (i) any party of any obligations related to customary banking products, banking services or other financial accommodations (except as may be expressly amended or modified by the Plan or any other financing document under and as defined therein) or (ii) any post-Plan Effective Date obligations of any Person under the Plan, the Confirmation Order, any Stand-Alone Restructuring Transaction, any Definitive Document or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the New Note Documents, if any, the Purchase Agreement(s), if any, or any Claim or obligation arising under the Plan.

Article VIII.A.4. Exculpation from Claims Relating to the Plan

Except as otherwise specifically provided in the Plan or the Confirmation Order with respect to the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby exculpated from, any Claims and Causes of Action related to any act or omission occurring between and including the Petition Date and the Plan Effective Date in connection with, relating to, or arising out of: the Debtors' Chapter 11 Cases (including the Filing thereof); the formulation, preparation, dissemination, negotiation, Filing, or termination of the Restructuring Support Agreement, the Plan, the Disclosure Statement, the Bidding Procedures Order, the DIP Facility, or any contract, instrument, release or other agreement or document created or entered into in connection with the Debtors' Chapter 11 Cases, whether or not included in the Plan Supplement or constituting a Definitive Document; the Restructuring Transactions contemplated by the Plan and any prepetition transactions relating to any of the foregoing; the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the administration and implementation of the Plan, including the issuance and distribution of Securities pursuant to the Plan, or the distribution of property under the Plan; the New Note Documents; any Purchase Agreement(s); or any other related act or omission, transaction, event, or other occurrence taking place on or before or in connection with the Plan Effective Date, except for Claims and liabilities resulting therefrom related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence by an Exculpated Party.

The Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan in all respects.

Article VIII.A.5. Injunction

Except as otherwise expressly provided in the Plan or the Confirmation Order with respect to the Plan, all Persons who have held, hold, or may hold any Claims or Causes of Action against, or Interests in, any of the Debtors that have been released, discharged, or are subject to release or exculpation hereunder are permanently enjoined, from and after the Plan Effective Date, from taking any of the following actions against any of the Debtors, the Reorganized Debtors, the Wind-Down Debtor(s), as applicable, or any of the other Exculpated Parties or any of the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with any such Claim, Cause of Action or Interest; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against any of the Exculpated Parties or Released Parties on account of or in connection with any such Claim, Cause of Action or Interest; (3) creating, perfecting, or enforcing any Lien or encumbrance of any kind against any of the Exculpated Parties, Released Parties or their property on account of or in connection with or with respect to any such Claim, Cause of Action or Interest; and (4) asserting any right of setoff or subrogation against any obligation due from any of the Exculpated Parties, Released Parties or against their property on account of or in connection with any such Claim, Cause of Action or Interest unless, with respect to setoff, such holder has Filed a motion requesting the right to perform such setoff on or before the Plan Effective Date or Filed a Proof of Claim that asserts or preserves any such right, and until such motion has been granted or the Filed Proof of Claim is Allowed.

Upon entry of the Confirmation Order with respect to the Plan, all holders of Claims and Causes of Action against, and Interests in, any of the Debtors and their respective Related Parties shall be enjoined from taking any actions to interfere with the implementation of the Plan or any Sale Transaction(s) (if applicable).

In addition, the Plan contains the following related definitions:

- **“Released Party” means, in its capacity as such, each of: (a) the Debtors and their Estates; (b) the officers of each of the Debtors and the members of any board of managers or directors of each Debtor, and employees of each Debtor; (c) the DIP Lenders and the DIP Agent and their respective Related Parties; (d) the Senior Lenders and their respective Related Parties; (e) the Senior Notes Agent and its Related Parties; (f) all holders of Claims or Interests that (A) vote to accept the Plan; (B) vote to reject the Plan and do not elect to opt out of the releases contained in Article VIII of the Plan; or (C) are Unimpaired and do not timely File an objection to the releases contained in Article VIII of the Plan that is not resolved before Confirmation; and (g) in the event of one or more Sale Transaction(s), each Purchaser and the Plan Administrator (if applicable); provided, however, that no Person (other than the Debtors and the employees of each of the Debtors) shall be a Released Party unless such Person is also a Releasing Party hereunder; provided further, that if any Person that otherwise would qualify as a Sponsor has not signed the Restructuring Support Agreement on or prior to the Petition Date, then such Person shall**

not be a Released Party in any capacity.

- “Releasing Party” means, in its capacity as such, each of: (a) the officers of each of the Debtors, the members of any board of managers of each Debtor and the managing members (or comparable governing bodies or Persons) of any Debtor; (b) the DIP Lenders and the DIP Agent; (c) the Senior Lenders; (d) the Senior Notes Agent; (e) the Sponsors and their Related Parties; (f) all holders of Claims or Interests that (A) vote to accept the Plan; or (B) vote to reject the Plan and do not elect to opt out of the releases contained in Article VIII of the Plan; (g) in the event of one or more Sale Transaction(s), each Purchaser and the Plan Administrator (if applicable); and (h) each Related Party of each Person in clause (a) through clause (g), but solely in their capacity as such, and solely to the extent the Person to whom they are related can bind them to releases under the terms of applicable non-bankruptcy law or otherwise obtains their agreement to be bound by the releases contained in the Plan.
- “Exculpated Parties” means (a) the Debtors; (b) the officers of each of the Debtors and the members of any board of managers or directors of each Debtor, in each case, who served in the Debtors’ Chapter 11 Cases after the Petition Date through the Plan Effective Date; (c) any independent directors of the Debtors; and (d) all Professionals retained by the Debtors or the independent directors in the Debtors’ Chapter 11 Cases.

ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF DEBTORS AND RELATED PROCEDURES

In accordance with Article V of the Plan, if the Stand-Alone Restructuring is consummated, on the Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, all Executory Contracts and Unexpired Leases shall be deemed rejected under section 365 of the Bankruptcy Code (other than the Restructuring Support Agreement, which, if not terminated prior to Confirmation, shall be deemed assumed as of the Confirmation Date), without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) was previously assumed by a Debtor; (2) expired or was terminated pursuant to its own terms or by agreement of the parties thereto; (3) is the subject of a motion to assume Filed by the Debtors on or before the date of entry of the applicable Confirmation Order; or (4) is listed on the Assumed Executory Contracts and Unexpired Leases List; provided, that rejections of Unexpired Leases of non-residential real property shall be effective as of the later of (a) the Plan Effective Date and (b) the date on which the leased premises are unconditionally surrendered to the landlord under such rejected Unexpired Lease.

If the Sale Transaction is consummated, on the Effective Date, (i) each Executory Contract and Unexpired Lease designated for assumption and assignment to a Purchaser in accordance with any Purchase Agreement shall be assumed by the applicable Debtor and assigned to the applicable Purchaser pursuant to the terms of the applicable Purchase Agreement and applicable orders of the Bankruptcy Court, and (ii) all Executory Contracts and Unexpired Leases not designated for assumption and assignment to the Purchaser in any Purchase Agreement, to the extent not previously rejected or terminated, shall be automatically rejected.

Each Executory Contract and Unexpired Lease assumed pursuant to Article V.A.1 of the Plan and assigned to a Purchaser shall vest in and be fully enforceable by the applicable Purchaser in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court. For the avoidance of doubt, any Executory Contract or Unexpired Lease not assumed by the Debtors and assigned to the Purchaser in connection with the Sale Transaction pursuant to the Sale Transaction Documents shall be deemed rejected as of the Effective Date.

ADDITIONAL INFORMATION

Additional Information. Copies of the Plan and the Disclosure Statement, as well as other filings in the chapter 11 cases, may be obtained free of charge by: (a) calling the Debtors' restructuring hotline at (877) 556-2937 (Domestic, toll-free) or +1 (503) 843-8526 (International); (b) visiting the Debtors' restructuring website at: <https://dm.epiq11.com/case/burgess>; and/or (c) emailing Burgess@epiqglobal.com (with "Burgess BioPower Solicitation" in the subject line). You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at <http://www.deb.uscourts.gov>. Please be advised that the Solicitation Agent is authorized to answer questions about, and provide additional copies of, solicitation materials, but may not provide legal advice.

Filing the Plan Supplement. The Debtors will file the initial Plan Supplement (as defined in the Plan) on or before seven (7) days prior to the Voting Deadline and will serve notice on all holders of Claims entitled to vote on the Plan, which will: (a) inform parties that the Debtors filed the Plan Supplement; (b) list the information contained in the Plan Supplement; and (c) explain how parties may obtain copies of the Plan Supplement.

Binding Nature of the Plan:

If confirmed, the Plan will bind all holders of Claims and Interests to the maximum extent permitted by applicable law, whether or not such holder will receive or retain any property or interest in property under the Plan, has filed a Proof of Claim in these chapter 11 cases, failed to vote to accept or reject the Plan, or voted to reject the Plan.

Dated: April [•], 2024

*Counsel to the Debtors and
Debtors in Possession*