

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

In re:	:	Chapter 11
	:	
BURGESS BIOPOWER, LLC, <i>et al.</i> , ¹	:	Case No. 24-10235 (LSS)
	:	(Jointly Administered)
Debtors.	:	
	:	Re: D.I. 11, 17, & 46
	:	Hearing Date: February 21, 2024 at 9:30am. (ET)

**MOTION OF THE DEBTORS FOR LEAVE TO FILE DEBTORS’ REPLY
TO THE OBJECTION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE TO
(1) MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION CLAIMS OF
CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF; AND (2) DEBTORS’
MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS
TO CONTINUE PERFORMING UNDER CERTAIN SHARED SERVICES
AGREEMENTS AND HONOR OBLIGATIONS RELATED THERETO;
AND (II) GRANTING RELATED RELIEF**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), by and through their counsel, submit this motion (the “Motion for Leave”) for entry of an order, substantially in the form attached hereto as **Exhibit 1** (the “Proposed Order”) granting the Debtors leave to file a reply (the “Reply”) in support of the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief* [D.I. 11] (the “Critical Vendor Motion”) and the *Debtors’ Motion for Interim and Final Orders (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief* [D.I. 17] (the “SSA Motion”) and in response to the *Objection of Public*

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.

Service Company of New Hampshire to (1) Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief; and (2) Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief [D.I. 46] (the "Objection"). A copy of the Reply is attached hereto as **Exhibit 2**. In support of the Motion for Leave, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider and determine the Motion for Leave pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"), and Rule 9006-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

3. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order or judgment with respect to the Motion for Leave if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

1. On February 9, 2024, (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court.

2. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession, pursuant to Bankruptcy Code sections 1107(a) and 1108. As of the date of the Motion for Leave, no trustee, examiner, or statutory committee has been appointed in the Chapter 11 Cases.

3. The Debtors filed the Critical Vendor Motion and the SSA Motion on the Petition Date.

4. On February 12, 2024, Public Service Company of New Hampshire, doing business as Eversource Energy (“Eversource”) filed the Objection.

5. On February 13, 2024, the Court held a hearing (the “First Day Hearing”) on the motions that the Debtors filed on the Petition Date (the “First Day Motions”), including the Critical Vendor Motion and the SSA Motion. At the First Day Hearing, the Court set a further hearing (the “Hearing”) on the First Day Motions, including the Critical Vendor Motion and the SSA Motion, as well as the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Reject the Power Purchase Agreement and Option Agreement with Public Service Company of New Hampshire (d/b/a Eversource Energy) Nunc Pro Tunc to the Petition Date and (II) Granting Related Relief* [D.I. 22] (the “Rejection Motion”) and the *Motion of Public Service Company of New Hampshire, Pursuant to 28 U.S.C. § 1412 and Federal Rule of Bankruptcy Procedure 1014(a), To Transfer Venue of Bankruptcy Proceedings to United States Bankruptcy Court for the District of New Hampshire* [D.I. 39] (the “Venue Motion”) filed by Eversource for February 21,

2024 at 9:30 a.m. (ET) and established an objection deadline for the First Day Motions, the Rejection Motion and the Venue Motion as February 20, 2024 at 12:00 p.m. (ET).

RELIEF REQUESTED AND BASIS FOR RELIEF

6. By this Motion for Leave, the Debtors respectfully request entry of the Proposed Order granting the Debtors leave to file a late Reply in support of the Critical Vendor Motion and the SSA Motion and in response to the Objection on or before February 20, 2024 at 1:00 p.m. (ET).

7. Local Rule 9029-3 provides that “Delaware Counsel shall file the agenda in the bankruptcy case . . . with the Bankruptcy Court on or before 12:00 p.m. prevailing Eastern Time two (2) business days before the date of the hearing.” Due to the intervening Federal holiday, the deadline to file the agenda for the Hearing was Friday, February 16, 2024, at 12:00 p.m. (ET).

8. Pursuant to Local Rule 9006-1(d), “reply papers . . . may be filed and, if filed, shall be served so as to be received by 4:00 p.m. prevailing Eastern Time the day prior to the deadline for filing the agenda.” Accordingly, pursuant to Local Rule 9006-1(d), the deadline for the Debtors to file a Reply (the “Reply Deadline”) was 4:00 p.m. on Thursday, February 15, 2024, two days after the First Day Hearing.

9. The Debtors have expended a significant amount of time and resources, working to respond to the Objection, the Venue Motion and other objections filed by Eversource. The Debtors also have worked extensively and cooperatively with its lenders and other parties in interest to address various concerns and requests made on an informal basis to certain of the First Day Motions.

10. The Debtors seek to submit the Reply in support of the Critical Vendor Motion and the SSA Motion and to respond to various factual and legal arguments asserted in the Objection. Among other things, the Reply sets forth the reasons why the Objection, to the extent it remains

unresolved by the hearing, should be overruled and the Critical Vendor Motion and the SSA Motion should be granted. Accordingly, the Debtors submit that the Reply will assist the Court in its consideration of the Critical Vendor Motion, the SSA Motion, and the Objection . Further, the Debtors submit that no parties will be prejudiced by the filing of a late Reply.

NOTICE

11. Notice of the Motion has been provided to (a) the U.S. Trustee (Attn: Jane M. Leamy); (b) the holders of the twenty (20) largest unsecured claims against each Debtor; (c) counsel to Deutsche Bank Trust Company Americas in its capacity as Collateral Agent, Hogan Lovells LLP; (d) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP; (e) Berlin Biopower Investment Fund, LLC, with a copy to Murray Plumb & Murray; (f) Greenline CDF Subfund XVIII LLC, with a copy to Kutak Rock LLP, U.S. Bancorp Community Development Corporation and Leverage Law Group, LLC; (g) Public Service of New Hampshire d/b/a Eversource Energy, with a copy to Hunton Andrews Kurth LLP; (h) the United States Attorney's Office for the District of Delaware; (i) the United States Attorney's Office for the District of New Hampshire; (j) the United States Environmental Protection Agency; (k) the Nuclear Regulatory Commission; (l) the United States Department of Energy; (m) the Federal Energy Regulatory Commission; (n) New Hampshire Department of Environmental Services; (o) New Hampshire Public Utilities Commission; (p) New Hampshire Site Evaluation Committee; (q) New Hampshire Department of Energy; (r) City of Berlin; (s) ISO New England, Inc.; (t) the United States Securities and Exchange Commission; (u) the Internal Revenue Service; (v) CS Operations; (w) CS Berlin Ops; and (y) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice of this Motion for Leave need be provided.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit 1**, granting the Debtors leave and permission to file the Reply after the Reply Deadline and such other and further relief as the Court deems just and proper.

Dated: February 20, 2024

/s/ Chantelle D. McClamb
Chantelle D. McClamb (No. 5978)
GIBBONS P.C.
300 Delaware Avenue, Suite 1015
Wilmington, Delaware 19801
Telephone: (302) 518-6300
Email: cmcclamb@gibbonslaw.com

-and-

Robert K. Malone (admitted *pro hac vice*)
Kyle P. McEvelly (admitted *pro hac vice*)
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Telephone: (973) 596-4500
Email: rmalone@gibbonslaw.com
kmcevilly@gibbsonlaw.com

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

Alison D. Bauer (admitted *pro hac vice*)
William F. Gray, Jr. (admitted *pro hac vice*)
Jiun-Wen Bob Teoh (admitted *pro hac vice*)
FOLEY HOAG LLP
1301 Avenue of the Americas, 25th Floor
New York, New York 10019
Telephone: (212) 812-0400
Email: abauer@foleyhoag.com
wgray@foleyhoag.com
jteoh@foleyhoag.com

-and-

Kenneth S. Leonetti (admitted *pro hac vice*)
Christian Garcia (admitted *pro hac vice*)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Massachusetts 02210
Telephone: (617) 832-1000
Email: ksl@foleyhoag.com
cgarcia@foleyhoag.com

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

EXHIBIT 1

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

In re:	:	Chapter 11
	:	
BURGESS BIOPOWER, LLC, <i>et al.</i> , ¹	:	Case No. 24-10235 (LSS)
	:	(Jointly Administered)
Debtors.	:	
	:	Re: D.I. 11, 17, 46 &
	:	

ORDER GRANTING THE DEBTORS LEAVE TO FILE DEBTORS’ REPLY TO THE OBJECTION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE TO (1) MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION CLAIMS OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF; AND (2) DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO CONTINUE PERFORMING UNDER CERTAIN SHARED SERVICES AGREEMENTS AND HONOR OBLIGATIONS RELATED THERETO; AND (II) GRANTING RELATED RELIEF

Upon the *Motion of the Debtors for Leave to File Debtors’ Reply in Response to the Objection of Public Service Company of New Hampshire to (1) Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief; and (2) Debtors’ Motion for Interim and Final Orders (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief* (the “Motion for Leave”);² and due and proper notice of the Motion for Leave having been given; and it appearing that no other or further notice of the Motion for Leave is required; and it appearing that this Court has jurisdiction to consider the Motion for Leave in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the

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

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion for Leave.

District of Delaware dated as of February 29, 2012; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion for Leave is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion for Leave and provided for herein is in the best interest of the Debtors, their estates and creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to Local Rule 9006-1(d), the Debtors are granted leave and permission to file the Reply, and the Reply is deemed timely filed and a matter of record in these bankruptcy cases.
3. This Court shall retain jurisdiction to interpret and enforce this Order.

EXHIBIT 2

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

In re:	:	Chapter 11
	:	
BURGESS BIOPOWER, LLC, <i>et al.</i> , ¹	:	Case No. 24-10235 (LSS)
	:	(Jointly Administered)
Debtors.	:	
	:	Re: D.I. 11, 17, & 46
	:	Hearing Date: February 21, 2024 at 9:30 am (ET)

**DEBTORS’ REPLY TO THE OBJECTION OF PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE TO (1) MOTION OF THE DEBTORS FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION
CLAIMS OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF; AND
(2) DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING
THE DEBTORS TO CONTINUE PERFORMING UNDER CERTAIN SHARED
SERVICES AGREEMENTS AND HONOR OBLIGATIONS RELATED THERETO;
AND (II) GRANTING RELATED RELIEF**

Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”), the debtors and debtors in possession in the above captioned cases (collectively, the “Debtors”), by and through their co-counsel, submit this Reply (the “Reply”) to the *Objection of Public Service Company of New Hampshire to (1) Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief; and (2) Debtors’ Motion for Interim and Final Orders (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief* [D.I. 46] (the “Objection”) in the above captioned chapter 11 case. In support of the Reply, the Debtors rely on the *Declaration of Dean Vomero In Support of Debtors’ Reply to the Objection of Public Service Company of New Hampshire to (1) Motion of*

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.

the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief; and (2) Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief (the "Vomero Declaration"), filed contemporaneously herewith and incorporated herein by reference, and respectively state as follows:

BACKGROUND

1. On February 9, 2024, (the "Petition Date"), the Debtors commenced the above-captioned chapter 11 cases (the "Chapter 11 Cases") by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1 [D.I. 92].

2. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession, pursuant to Bankruptcy Code Sections 1107(a) and 1108. As of the date of this Motion, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

3. Additional information regarding the circumstances leading to the commencement of the Chapter 11 Cases and information regarding the Debtors' business and capital structure is set forth in detail in the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"), incorporated herein by reference.²

² The First Day Declaration and other relevant case information are available on the following website maintained by the Debtors' proposed claims and noticing agent, Epiq: <https://dm.epiq11.com/Burgess>

4. On February 16, 2024, the Court entered the *Interim Order (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Relief* [D.I. 105] authorizing the Debtors to continue performing under the Shared Services Agreements only to honor or otherwise satisfy the Pre-Funded Employee Expenses.

REPLY

5. In its Objection, Public Service Company of New Hampshire doing business as Eversource Energy (“Eversource”) seeks to deprive the Debtors of critical first-day relief necessary to operate their business as debtors in possession in these Chapter 11 Cases, namely (i) the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief* [D.I. 11] (the “Critical Vendors Motion”) and (ii) *Debtors’ Motion for Interim and Final Orders (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief* [D.I. 17] (the “Shared Services Motion,” and together with the Critical Vendors Motion, the “Vendor Motions”).

6. The Objection is centered around Eversource’s misleading allegation that the Vendor Motions would “inappropriately authorize payments of prepetition debts to the Debtors’ affiliates...,” Objection ¶ 2, in a reference to non-debtor affiliates that provide critical services necessary to conduct the Debtors’ business: CS Berlin Ops, Inc. (“CS Berlin”) and CS Operations, Inc. (“CS Operations”), and together with CS Berlin, the “Non-Debtor Affiliates”). In fact, (i) there are unaffiliated critical vendors that provide fuel, maintenance, repairs and other goods and services that are essential to the Debtors’ ongoing operations (the “Critical Vendors”) who directly invoice a Debtor and are paid from accounts of a Debtor and (ii) the Debtors were not seeking to pay all prepetition amounts owed to the Non-Debtor Affiliates but rather a subset of amounts

necessary to continue performance under the Shared Services Agreements for the continued operation of the Debtors. In fact, the most significant expenses provided by the Non-Debtor Affiliates are employee related expenses (payroll and benefits).

I. The Relief Sought in the Critical Vendors Motion Should Be Granted.

7. A rather common first-day motion, the Critical Vendors Motion seeks authority to pay the Critical Vendors to prevent disruption of essential goods and services. Among the types of Critical Vendors identified by the Debtors are certain providers of consumables used in the operation of the 75-megawatt biomass plant (the “Facility”) and certain providers of maintenance, operations, and other technical services necessary for the operation of the Facility. They include suppliers for fuel, maintenance, operating supplies, equipment, chemicals, as well as servicers who dispose of ash and chemicals inherent to the Facility’s operations and provide employee uniforms and safety supplies. *See, e.g.*, First Day Decl. ¶ 13 (“The Debtors are the largest buyer of biomass in New Hampshire, buying approximately 800,000 tons of low-grade wood each year....”).

8. Contrary to Eversource’s contention, there are indeed third-party Critical Vendors of the Debtors, not non-debtor affiliates, who the Debtors seek to pay to continue operations in an uninterrupted fashion. The Critical Vendors bill the Debtors for goods and services delivered to the Facility. The Non-Debtor Affiliates only provide an administrative service by processing and accounting for the invoices, which are sent by the Critical Vendors to the Debtors directly.

9. As Eversource pointed out in the Objection, it was listed as a non-insider unsecured creditor for utility payments. Similar to all the other Critical Vendors, Eversource invoiced the Debtors directly, rather than the Non-Debtor Affiliates. Eversource’s invoices were in turn sent to the Non-Debtor Affiliates for review and payment from the Debtors’ bank accounts. In fact, at the February 13, 2024 hearing (the “Hearing”), Eversource’s own counsel admitted that the Debtors were the entities that had an account with Eversource:

Mr. Johnson: But I did confirm, I will say for the record that my client, Public Service Company of New Hampshire, does have utility accounts with them that they identified....

Hearing Tr. at 47:1-47:3.

10. Eversource's counsel also admitted that its assertions in the Objection were factually incorrect in that there are other creditors of the Debtors:

Mr. Johnson: ...there's a lot of utilities listed on that which seem to be creditors, as well, including one that contacted me.

Hearing Tr. at 47:8-47:9.

11. Prior to the commencement of these Chapter 11 Cases, the Debtors paid substantially all known unsecured trade creditors in full. Vomero Decl. ¶ 4. Goods and services are ordered by or on behalf of the Debtors. *Id.* The vast majority of Critical Vendors provide maintenance, repair and operating products or services. *Id.* Obligations for invoiced goods or services are not typically tracked in accounting systems on a vendor-by-vendor basis. *Id.* In fact, the Debtors' purchase order system is not integrated with the main accounting system - the systems are separate. *Id.* The Debtors' accounting system does not capture obligations for goods and services until an invoice is received from the vendor and approved by the appropriate personnel. *Id.* Until such time as an invoice is received, the Debtors do not know how much is potentially owed to any given vendor as a contingent liability or to which vendors accounts payable are owing. *Id.*

12. For example, with respect to the Debtors purchases of wood chips, the fuel used to power the Facility, the Debtors receive approximately seventy (70) truckloads per day Monday through Saturday. Vomero Decl. ¶ 5. The cost per truckload varies based on the distance from the Facility, which in turn makes it difficult for the Debtors to estimate the amount of unbilled fuel and impossible to verify the amount of wood that will be delivered at any given point in time until

the invoice from the Critical Vendor is received. *Id.* On the Petition Date, all open invoices with the fuel supplier were paid in full.³ *Id.*

13. This accounting system is relatively common with respect to maintenance, operations and repairs in most industries. As Mr. Leonetti explained at the Hearing:

We suspect that there may be a few general unsecured creditors who trickle in. For instance, we buy wood every day. You know, every day there's trucks that show up at the plant with wood, but we just haven't been invoiced, so we just don't know how much they are owed.

Hearing Tr. 11:10-11:14. The combination of the lack of identifiable contingent liabilities for trade creditors and a delay in processing of obligations owing to Critical Vendors explains why the Debtors did not identify additional creditors on the List of Creditors Who Have the 20 Largest Unsecured Claims attached to their bankruptcy petitions. Vomero Decl. ¶ 6. In the Motion, however, the Debtors estimated what amounts could conceivably be outstanding prepetition based upon past practices.

14. Accordingly, the Debtors respectfully request that the Critical Vendors Motion be approved on an interim basis as set forth in the proposed order attached thereto.

II. The Relief Sought in the Shared Services Motion Should Be Granted.

15. As described in detail in the First Day Declaration, the Debtors do not have any employees and, as a result, rely on the Non-Debtor Affiliates to provide essential services, consisting of operational services provided by CS Berlin Ops and managerial services provided by CS Operations, pursuant to two separate agreements (together, the "Shared Services Agreements"). By the Shared Services Motion, the Debtors are seeking authority to continue performing under the Shared Services Agreements.

³ Pursuant to a certain Consent and Agreement, Debtor Berlin Station agreed to use funds from a certain Reserve Account held by the Collateral Agent to pay the wood supplier, Richard Carier Trucking in the event of a default by Berlin Station under the fuel supply agreement.

16. The Shared Services Motion is part of first-day relief sought by the Debtors because the Debtors' operations would be severely disrupted, potentially permanently, if they were forced to prematurely discontinue the services provided by the Non-Debtor Affiliates, as finding replacements would be particularly difficult. Moreover, this type of arrangement is not uncommon in the energy space:

Mr. Leonetti: They are both affiliated entities. There is, at some level, some common ownership at some level up the chain. Without either of those entities we would not be able to run the plant on a day-to-day basis since the debtor, itself, has no employees and has not administrative capabilities.

The Court: Well, my last energy case was this way. Is this a model for these kinds of company?

Mr. Leonetti: I think it's not uncommon, Your Honor. I mean, I think there are some who operate it themselves, but I think there are some who take advantage of outside service providers as well, yeah.

Hearing Tr. at 10:7-10:17. This Court has granted similar relief in a recent energy case. *See Interim Order (I) Authorizing the Debtors to Continue Performing Under Certain Shared Services Agreements and Honor Obligations Related Thereto; and (II) Granting Related Relief*, In re Lincoln Power, L.L.C., *et. al.*, Case No. 23-10382 (LSS) (authorizing debtors to continue performing under Shared Services Agreements).

17. After extensive arms-length negotiations with the Prepetition Senior Secured Noteholders and the proposed DIP Lenders, the Non-Debtor Affiliates (who were represented by their own counsel and who have filed notices of appearance in these Chapter 11 Cases) agreed to waive certain prepetition obligations and expenses associated with the Shared Services Agreements. Almost \$900,000 was waived under the amendment to the PMA negotiated immediately prior to the filing and another \$200,000 owing under the O&M Agreement is subject to waiver under the Restructuring Support Agreement. These waivers are very beneficial to the estate because any purchaser of assets who desires to assume the Shared Services Agreements will

not have to cure those defaults. Further, the relief sought in the Shared Services Motion specifically excludes payment of Past Due O&M Obligations, Past Due PMA Obligations and Excluded O&M Expenses, and on an interim basis, caps the amount of certain affiliated reimbursable costs at \$100,000 (which such amounts subject to DIP Lender review). Therefore, while the Shared Services Motion seeks to authorize the Debtors to continue paying for certain current services provided under the Shared Services Agreement, such as personnel at the Facility, which are critical to their ongoing operation, there are numerous limitations on prepetition amounts that would be paid.

18. Accordingly, the Debtors respectfully request that the Shared Services Motion be approved on an interim basis as set forth in the proposed order attached thereto.

CONCLUSION

19. For the reasons set forth herein, the Debtors respectfully ask this Court to overrule the Objection and grant the relief sought in the Vendor Motions.

Dated: February 20, 2024

/s/ Chantelle D. McClamb
Chantelle D. McClamb (No. 5978)
GIBBONS P.C.
300 Delaware Avenue, Suite 1015
Wilmington, Delaware 19801
Telephone: (302) 518-6300
Email: cmcclamb@gibbonslaw.com

-and-

Robert K. Malone (admitted *pro hac vice*)
Kyle P. McEvilly (admitted *pro hac vice*)
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Telephone: (973) 596-4500
Email: rmalone@gibbonslaw.com
kmcevilly@gibbsonlaw.com

Alison D. Bauer (admitted *pro hac vice*)
William F. Gray, Jr. (admitted *pro hac vice*)
Jiun-Wen Bob Teoh (admitted *pro hac vice*)
FOLEY HOAG LLP
1301 Avenue of the Americas, 25th Floor
New York, New York 10019
Telephone: (212) 812-0400
Email: abauer@foleyhoag.com
wgray@foleyhoag.com
jteoh@foleyhoag.com

-and-

Kenneth S. Leonetti (admitted *pro hac vice*)
Christian Garcia (admitted *pro hac vice*)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Massachusetts 02210

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

Telephone: (617) 832-1000
Email: ksl@foleyhoag.com
cgarcia@foleyhoag.com

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