

**THE STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**NEW HAMPSHIRE SITE EVALUATION COMMITTEE**

**SEC DOCKET NO. 2024-\_\_**

**Joint Petition of Berlin Station, LLC and North Country Generation Holdings LLC for  
Administrative Approval of a Change in Ownership or the Transfer of a Certificate of Site  
and Facility Issued to Berlin Station, LLC to North Country Generation Holdings LLC**

**April 10, 2024**

**Table of Contents**

**I. Introduction..... 1**

**II. Jurisdiction and Standard of Review ..... 3**

**III. Background ..... 5**

**IV. Proposed Transaction for Change in Ownership or Certificate Transfer ..... 9**

**V. Financial Capability of North Country ..... 11**

**VI. Technical Capability of North Country ..... 12**

**VII. Managerial Capability of North Country ..... 15**

**VIII. Conclusion ..... 16**

**Attachments**

1. Contact Information for Joint Petitioners
2. Joint Chapter 11 Plan for Berlin Station, LLC and Burgess Biopower, LLC
3. Pre-Transaction and Post-Transaction Organizational Charts
4. Pre-filed Testimony of RJ Arsenault (***Redacted***)
  - a. Pre-filed Testimony of RJ Arsenault (***Confidential***)
5. Pre-filed Testimony of Paul Procyk
6. Pre-filed Testimony of David Walker
7. Pre-filed Testimony of Lucas Miller
8. Joint Pre-filed Testimony of John Hallé, Edward (“Ned”) Dwyer, and Sarah Boone
9. North Country Generation Holdings LLC’s *Pro Forma* Statement of Assets and Liabilities (***Confidential***)

## **I. Introduction**

Berlin Station, LLC (“Berlin Station”) and North Country Generation Holdings LLC (“North Country”) (collectively, “Joint Petitioners”) respectfully submit this Joint Petition requesting the appointment of a three-member subcommittee and the expedited review and administrative approval of (1) a change in ownership interests (“Option 1”); or (2) the transfer to North Country of the Certificate of Site and Facility (“Certificate”) for Berlin Station’s approximately 75 megawatt (“MW”) biomass-powered renewable electric generation facility (the “Facility”) in Berlin, New Hampshire (“Option 2”). *See* RSA 162-H:5, I; RSA 162-H:8, VI; RSA 162-H:4,a, III. Joint Petitioners’ contact information is attached to this Petition as **Attachment 1**.

This Joint Petition is submitted as a result of cases commenced under chapter 11 of the U.S. Bankruptcy Code by Berlin Station and Burgess BioPower, LLC (“Burgess”)<sup>1</sup> (the “Chapter 11 Cases”), which are currently pending before the U.S. Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).<sup>2</sup> Pursuant to the Joint Chapter 11 Plan for Berlin Station and Burgess (the “Reorganization Plan”) filed in the Chapter 11 Cases (dated March 11, 2024), a copy of which is attached to this Joint Petition as **Attachment 2**,<sup>3</sup> North Country, either directly or indirectly through a to-be-formed wholly-owned subsidiary, may acquire all or substantially all of the ownership interests or assets of Berlin Station and Burgess under either Option 1 or 2 as follows.<sup>4</sup>

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<sup>1</sup> Berlin Station leases the Facility to Burgess. Burgess is identified as an “Affiliated Entity” in the Certificate and is bound to comply with the Certificate’s terms and conditions.

<sup>2</sup> The Chapter 11 Cases are jointly administered by the Bankruptcy Court in Case No. 24-0235 (LSS).

<sup>3</sup> All descriptions of the Reorganization Plan contained in this Joint Petition are for summary purposes only. To the extent the summary terms herein conflict with the actual terms of the Reorganization Plan, the terms of the Reorganization Plan shall govern.

<sup>4</sup> The Reorganization Plan remains subject to confirmation by the Bankruptcy Court. A hearing in the Bankruptcy Court to confirm the Bankruptcy Plan is scheduled for May 21, 2024. In addition to the two options discussed in

Option 1 – Equity Transaction: If North Country acquires all the *equity* interests in reorganized Berlin Station and Burgess, Joint Petitioners respectfully request administrative approval of the change in ownership of those two entities. The Joint Petitioners also request that the Certificate be amended so that the term, “Affiliated Entities”—currently Burgess and NewCo Energy Holdings, LLC (“NewCo Energy”)—refers instead to Burgess and North Country, as NewCo Energy would no longer be affiliated with the other entities after the transaction.

Option 2 – Asset Transaction: If, instead, North Country takes ownership of all or substantially all of Berlin Station’s and Burgess’s *assets*, including the Facility, Joint Petitioners alternatively request administrative approval of the transfer of the Certificate to North Country. If the Certificate is transferred pursuant to Option 2, the Joint Petitioners also request that the Certificate be amended so that “Applicant” under the Certificate refers to “North Country Generation Holdings LLC” as the new holder of the Certificate and to Burgess as the “Affiliated Entity,” removing NewCo.<sup>5</sup>

As shown in this Joint Petition and attached supporting documents, under either Option 1 or Option 2, North Country has the requisite financial, technical, and managerial capabilities to support the continued operations of the Facility “in continuing compliance with the terms and conditions of” the Certificate. RSA 162-H:8, VI.

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this Joint Petition, the Reorganization Plan also allows for a sale transaction in which substantially all the assets of Berlin Station and Burgess could be purchased. Because no buyer has yet been identified under this third-party sale scenario, this Joint Petition assumes that North Country or a to-be-formed wholly owned subsidiary of North Country will take ownership of all of Berlin Station and Burgess or all or substantially all of those entities’ assets, including the Facility. Per a discussion with Committee staff and a representative of the New Hampshire Department of Justice, which occurred prior to filing this Joint Petition, if the sale transaction to a third party (other than North Country) under the Reorganization Plan does occur, Joint Petitioners will withdraw this Petition, and an updated Petition will be submitted to reflect the change in circumstances.

<sup>5</sup> The nature of the transaction, *i.e.*, whether it will be an equity or asset transaction, is still being determined. Joint Petitioners will promptly notify the Committee regarding the terms of the transaction when they are finalized.

The Joint Petitioners respectfully requests that the Joint Petition be “administratively approve[d]” under RSA 162-H:8, VI.

## **II. Jurisdiction and Standard of Review**

The New Hampshire Site Evaluation Committee’s (the “Committee”) governing statute states that a certificate of site and facility “shall not be transferred or assigned without approval of the committee.” RSA 162-H:5, I. The Facility’s Certificate also states: “Further Ordered that the Applicant [Berlin Station] shall immediately notify the Committee of any change in ownership or ownership structure of the Applicant or the Affiliated Entities and shall seek approval of the Committee of such change.” *Order and Second Amended Certificate of Site and Facility with Conditions*, SEC Docket No. 2011-01, at 2 (Apr. 16, 2013).

Regarding the approval process, the Committee’s governing statute states that the “committee shall *administratively approve* changes of ownership and transfers of certificates within 90 days of a petition if it determines the new certificate holder has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.” RSA 162-H:8, VI (emphasis added). This provision, which was recently added to the statute by legislative amendment and refers specifically to “administrative[] approval,” confirms that the hearing requirements for Certificate applications under RSA 162-H:10, II *do not apply* to this Joint Petition, and that the Committee need only engage in an administrative review, rather than an adjudicative proceeding under RSA 162-H:10 and RSA 541-A. *See* House Bill (“HB”) 281, 2023 N.H. Laws ch. 233:10.

Because this statute was recently amended, and regulations governing the administrative approval of changes in ownership and certificate transfers have yet to be adopted, the Joint Petitioners are guided, but not controlled, by Committee precedent before the statutory

amendment that addressed whether the new owner or new Certificate holder had adequate financial, technical, and managerial capabilities. Given that the Facility is already constructed and has been operating for several years, the Joint Petition focuses specifically on North Country's financial, technical, and managerial capabilities to ensure the Facility's *continued operations* under the Certificate. See *Decision and Order Approving Transfer of Membership Interests in Granite Reliable Power, LLC With Conditions*, SEC Docket No. 2021-03, at 4-5 (Aug. 17, 2021); *Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power, LLC*, SEC Docket No. 2010-03, at 7 (Feb. 8, 2011); *Joint Application of Newington Energy, LLC, et al., Decision and Order Approving Transfer*, SEC Docket No. 2008-01, at 4 (Apr. 18, 2008); *Joint Application by AES Londonderry, LLC, et al. for Approval to Transfer Equity Interests, Decision and Order*, SEC Docket No. 2004-01, at 6 (Oct. 14, 2004).

In determining whether a transferee has the requisite financial, technical, and managerial capabilities before the statutory amendment, the Committee has looked to its regulations, N.H. Admin. Code Site 301.13, regarding when those same factors are met by an applicant for a Certificate. See *Decision and Order Approving Transfer of Ownership Interests in Essential Power Newington, LLC*, SEC Docket No. 2016-02, at 5-8 (June 3, 2016); *Decision and Order Approving Transfer of Ownership Interests in Granite Ridge Energy, LLC*, SEC Docket No. 2015-07, at 5-8 (Feb. 3, 2016).

Those regulations provide as follows. Regarding **financial capability**, the Committee considers:

- (1) The applicant's experience in securing funding to construct and operate energy facilities similar to the proposed facility;
- (2) The experience and expertise of the applicant and its advisors, to the extent the applicant is relying on advisors;

- (3) The applicant's statements of current and pro forma assets and liabilities; and
- (4) Financial commitments the applicant has obtained or made in support of the construction and operation of the proposed facility.

N.H. Admin. Code Site 301.13(a)(1)-(4).

Regarding **technical capability**, the Committee considers:

- (1) The applicant's experience in designing, constructing, and operating energy facilities similar to the proposed facility; and
- (2) The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide technical support for the construction and operation of the proposed facility, if known at the time.

N.H. Admin. Code Site 301.13(b)(1)-(2).

Regarding **managerial capability**, the Committee considers:

- (1) The applicant's experience in managing the construction and operation of energy facilities similar to the proposed facility; and
- (2) The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide managerial support for the construction and operation of the proposed facility, if known at the time.

N.H. Admin. Code Site 301.13(c)(1)-(2).

As described in the following sections, North Country has demonstrated by a preponderance of evidence the requisite financial, technical, and managerial capabilities to ensure the Facility's continuing operations in compliance with the Certificate.

### **III. Background**

#### **a. Facility Description**

The Facility consists of a 75 megawatts ("MW") wood biomass-fired bubbling fluidized bed boiler power generating station in Berlin, New Hampshire. It is located on an approximately 62-acre site that was formerly part of the Fraser Pulp Mill. The Facility has been operating since November 25, 2013. It is capable of reliably producing more than 500,000 megawatt hours

(“MWh”) of renewable electricity for New England’s bulk power grid and supports, both directly and indirectly, over 240 jobs, primarily in Coos County.

Berlin Station owns the Facility and the property where it is located and is identified as the “Applicant” under the Certificate. Berlin Station has leased the Facility to Burgess. Berlin Station and Burgess are indirect subsidiaries of NewCo Energy. Both Burgess and NewCo Energy are identified as “Affiliated Entities” in the Facility’s Certificate and are bound by the Certificate’s terms and conditions. As the lessor with rights to use the Facility, Burgess functions as the seller of the Facility’s products. Those products include energy, capacity, and renewable energy credits (“RECs”).

Operations and maintenance activities at the Facility are currently performed by CS Berlin Ops, Inc. and CS Operations, Inc. primarily under two agreements: (1) an Operations and Maintenance Agreement, dated January 19, 2018, between CS Berlin Ops, Inc and Berlin Station (as amended, the “O&M Agreement”), and (2) a Project Management Agreement between CS Operations, Inc. and Berlin Station, dated June 29, 2011 (as amended, the “Project Management Agreement”). As addressed in more detail below and in the Pre-filed Testimony of Paul Procyk, *see Attachment 5*, both agreements are potentially subject to amendment and assumption or assumption and assignment as part of the Chapter 11 Cases, which means that one of two outcomes will most likely occur: (1) the current operator entities—CS Berlin Ops, Inc. and CS Operations, Inc.—will most likely continue operating the Facility; or (2) the agreements will not be amended or assumed or assigned, in which case, the current operator entities will continue operating the Facility during a transition period while North Country selects similarly experienced operators to take over Facility operations.



Wood biomass fuel for the Facility is procured from Richard Carrier Trucking, Inc. under a 20-year fuel supply agreement. The Facility is interconnected to the New England bulk power grid under a Standard Large Generator Interconnection Agreement, dated July 18, 2011 (the “Interconnection Agreement”), between and among Berlin Station, ISO-New England, and Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”).

**b. Certificate, Transfer, and Amendments**

On November 8, 2010, the Committee granted the Certificate to Laidlaw Berlin BioPower, LLC to site, construct, and operate the Facility, then with a nameplate capacity of 70 MW. *Order and Certificate of Site and Facility with Conditions*, SEC Docket No. 2009-02 (Nov. 8, 2010). The Certificate was issued after a thorough review by the Committee in an adjudicative proceeding in which the Attorney General and several intervenors actively participated. The Certificate incorporates several conditions regarding the Facility’s design and operations as well as several state permits and an agreement with the City of Berlin.

On July 12, 2011, the Committee approved the transfer of the Certificate from Laidlaw Berlin BioPower, LLC to Berlin Station and certain amendments to the Certificate, including allowing Berlin Station to contract with a different biomass fuel supplier and to increase the facility’s nameplate capacity to 75 MW. *See Order and Amended Certificate of Site and Facility with Conditions*, SEC Docket No. 2011-01 (July 12, 2011). On April 16, 2013, the Committee approved a second amendment to the Certificate, which, among other things, allowed for certain modifications to the Facility design and the agreement with the City of Berlin.<sup>6</sup> *See Order and*

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<sup>6</sup> The Second Amendment to the Certificate permitted Berlin Station to reconfigure the woodyard equipment and shift the location of the processing building 250 feet to the south. It also, among other things, eliminated certain provisions from the agreement with the City of Berlin incorporated by the Certificate, including the requirement that the Applicant design and build a “River Walk” along the east bank of the Androscoggin River and that the Applicant build fencing along the property boundary abutting the river, and allowed the Applicant to submit a revised landscaping plan approved by the City of Berlin and the New Hampshire Bureau of Trails.

*Second Amended Certificate of Site and Facility with Conditions*, SEC Docket No. 2011-01 (Apr. 16, 2013).

**c. Power Purchase Agreement and Chapter 11 Proceeding and Restructuring**

Until March 1, 2024, Burgess sold 100 percent of the electricity and capacity and 400,000 MWh annually of RECs produced by the Facility to Eversource under a 20-year Amended and Restated Power Purchase Agreement (“PPA”) dated May 18, 2011, and subsequently amended in 2020 and 2022. The PPA was rejected by Burgess and Berlin Station in the Chapter 11 Cases, and the Bankruptcy Court approved the rejection by order issued February 28, 2024. *See In re Burgess BioPower, LLC*, Case No. 24-10235 (LSS) (Bankr. D. Del.) at Docket No. 203.

The PPA included terms that made it onerous to generate sufficient revenue to sustain the Facility’s operations. Those terms included a mechanism called the “Cumulative Reduction Factor” or “CRF,” which, among other things, allowed for a debit to register every hour in which the PPA’s energy prices exceeded ISO-New England market prices, or a credit to register if the PPA prices fell below the ISO-New England prices. If the total *debited* CRF amount exceeded a cap of \$100 million, the PPA purported to allow Eversource to credit the excess amounts against payments for energy to Burgess.

The CRF reached the \$100 million cap in September 2019; however, the Legislature enacted two statutes, in 2018 and 2022, that suspended the cap and prevented Eversource from attempting to credit any cap exceedances against energy payments to Burgess.<sup>7</sup> Shortly after the suspension ended on November 30, 2023, however, Eversource notified Berlin Station that the

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<sup>7</sup> *See also Consideration of Effects of SB 577 on Order No. 25,213*, Order Amending Order 25,213, Order No. 26,198, at 9, Docket No. DE 10-195 (Dec. 15, 2018); *Rate Recovery of Costs in Excess of the Cumulative Reduction Cap Under the Power Purchase Agreement with Berlin Station LLC Amended Order Approving an Amendment to the Power Purchase Agreement*, Order No. 26, 333, at 3, Docket No. DE 19-142 (Feb. 18, 2020).

CRF balance was over \$171.5 million, or about \$71.5 million beyond the cap, and that Eversource intended to begin pursuing credits under the PPA in monthly (1/12) installments over the course of the next year, as purportedly provided by the PPA terms. The credits Eversource sought to pursue because of the \$71.5 million cap exceedance, almost \$6 million per month, would have severely undermined Burgess's ability to generate enough revenue to sustain Facility operations.

On February 9, 2024, Berlin Station and Burgess commenced the Chapter 11 Cases. *See In re Burgess BioPower, LLC*, Case No. 24-10235 (LSS) (Bankr. D. Del.).<sup>8</sup> Recognizing the uneconomical nature of the PPA, and that continuation of the PPA would make it impossible for Burgess and Berlin Station to generate sufficient revenue to continue operations, the Bankruptcy Court approved the rejection of the PPA. On March 13, 2024, Berlin Station and Burgess received authority from the Bankruptcy Court to enter into a new Lead Market Participant Agreement. *See In re Burgess BioPower, LLC*, Case No. 24-10235 (LSS) (Bankr. D. Del.) at Docket No. 259. Therefore, although Berlin Station is no longer obligated to sell its products to Eversource under the PPA, agreements remain in place to support the Facility's continued operations, including the O&M Agreement, the Project Management Agreement, the Lead Market Participation Agreement, the Interconnection Agreement, and the biomass fuel supply agreement identified above.

#### **IV. Proposed Transaction for Change in Ownership or Certificate Transfer**

The Reorganization Plan for Berlin Station and Burgess was filed in the Chapter 11 Cases and is currently scheduled to be considered for confirmation by the Bankruptcy Court in May

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<sup>8</sup> Pursuant to the Certificate, Berlin Station and Burgess notified the Committee of the Chapter 11 filing shortly after filing on February 9, 2024.

2024. The Reorganization Plan provides for two options that are relevant to this Joint Petition. Option 1 is a debt-for-equity swap under which Berlin Station and Burgess's existing lenders will take ownership of reorganized Berlin Station and Burgess through the newly formed entity North Country, or a to-be-formed wholly owned subsidiary of North Country. North Country, or its to-be-formed wholly owned subsidiary, would effectively step into the shoes of current indirect parent entity, NewCo Energy. Under Option 1, Berlin Station would remain the holder of the Certificate and North Country would be a new owner of Burgess and Berlin Station. Joint Petitioners request Committee approval of this modified upstream ownership structure.

Under Option 2, Berlin Station and Burgess's existing lenders would, through North Country or a to-be-formed wholly owned subsidiary of North Country, purchase all or substantially all of Berlin Station and Burgess's assets, including the Facility, free and clear of all liens, claims, interests, and encumbrances (other than as permitted). Option 2 would require North Country to become the new holder of the Certificate, so under this option, Joint Petitioners are alternatively requesting that the Committee approve the transfer of the Certificate from Berlin Station to North Country.

Whether North Country obtains the equity in Berlin Station and Burgess under Option 1 or obtains all or substantially all their assets under Option 2, this Joint Petition provides the Committee with all requisite information to demonstrate that North Country has the financial, technical, and managerial capabilities to ensure the Facility's continued operations in compliance with the Certificate in either scenario.

Copies of pre-transfer and post-transfer organizational charts are attached to this Petition as **Attachment 3**.

North Country is a Delaware LLC. Its address, principal place of business, and the location where it will conduct its business will be Hutchins Street, Berlin, New Hampshire. There are currently no directors, officers, or stockholders. North Country is owned and controlled by the following creditors of Berlin Station and Burgess: The Prudential Insurance Company of America, Pruco Life Insurance Company, Prudential Legacy Insurance Company of New Jersey, Athene Annuity and Life Company, Royal Neighbors of America,<sup>9</sup> Pacific Life & Annuity Company, and Pacific Life Insurance Company (collectively, “North Country Owners”).

**V. Financial Capability of North Country**

North Country can demonstrate by a preponderance of the evidence that it has the requisite financial capability to ensure the Facility’s continued operations in compliance with the Certificate.

As demonstrated by the pre-filed testimony and Attachments which accompany this petition, North Country and North Country Owners have more than adequate financial capabilities to own the Facility and ensure its operations in continuing compliance with the Certificate. As set forth more particularly in the Pre-Filed Testimony of Paul Procyk (**Attachment 5**) and the Pre-Filed Testimony of RJ Arsenault (**Attachment 4**), North Country is a recently created and initially capitalized entity which provides the corporate vehicle for the North Country Owners to facilitate their acquisition and management of their collective equity interests in Berlin Station and Burgess. Consistent with the requirements of RSA 162-H:8 and Site 301.04 (a)(5), North Country’s *Pro Forma* Statements of Assets and Liabilities have been

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<sup>9</sup> Royal Neighbors of America (“RNA”), an insurance provider in Illinois that is not primarily engaged in energy-related business activities, will acquire a less-than-two percent interest in and will have no ability to exercise control of Burgess or the Facility because of the proposed transaction. In light of its *de minimis* ownership share, RNA’s financial information has not been relied upon in the presentation of financial capabilities.

provided to the Committee, under seal and subject to a Motion for Protective Order and Confidential Treatment. The *Pro Forma* is attached to this Joint Petition as **Attachment 9 (Confidential)**. As discussed by Mr. Arsenault, North Country's *Pro Forma* demonstrates sufficient liquidity and financial capabilities to support the ongoing Certificate-compliant operation of the Facility.

As demonstrated by its *Pro Forma* Statements of Assets and Liabilities, North Country has sufficient financial resources when viewed as a stand-alone entity, to satisfy the statutory standard. However, the strength of North Country's financial capabilities is further enhanced by the substantial financial resources and industry stature of North Country's three major equity holders. As described in the pre-filed testimony of Mr. Arsenault, the North Country Owners are major national and international financial institutions with tens of billions of dollars invested in conventional and renewable energy assets, with deep experience and expertise in the industries and marketplaces in which the Facility operates. The North Country Owners, individually and collectively, possess more than adequate financial resources, and experience to ensure that North Country will be able to own the Facility and ensure that it continues operating in compliance with the Certificate.

#### **VI. Technical Capability of North Country**

North Country can also demonstrate by a preponderance of the evidence that it has or has access to the requisite technical capability to operate the Facility in continuing compliance with the Certificate.

North Country will rely on the experience and expertise of the current plant manager of Berlin Station, David Walker, and his well-qualified team, which will continue operating the Facility following the transaction if the O&M Agreement and Project Management Agreement are amended and assumed or assumed and assigned in the Chapter 11 Cases—or, if they are not,

for a reasonably necessary period of time to allow North Country to enter into new project management and/or operations and maintenance agreements with equally qualified and capable operators.

As set out in more detail in Mr. Walker's pre-filed testimony attached as **Attachment 6**, Mr. Walker has been the Plant Manager at Berlin Station for more than 11 years and draws on his more than 27 years in biomass, fossil fuel, and waste-to-energy operations. Mr. Walker oversees all necessary functions related to Facility operations. Under his leadership, the Facility has been kept in exceptionally good operational condition. The Facility undergoes periodic, thorough inspections by Black & Veatch, a third-party global engineering, procurement, consulting, and construction company with more than 100 years of experience in the industry. Black & Veatch consistently provides excellent reviews of the Facility's technical operations. In connection with the Chapter 11 Cases, Black & Veatch issued a report in February 2024 that found, among other things, that Facility technologies have been operating successfully for decades, the Facility is in good condition compared to other facilities of the same vintage with similar equipment, the Facility is subject to routine maintenance and inspections consistent with good industry practice, the Facility is reasonably staffed consistent with similar facilities, and agreements are in place that support the Facility's continued operations and maintenance. In addition, Black & Veatch found that the Facility operates above industry standards in terms of energy output, including a finding that the Facility achieved an average annual capacity factor of nearly 90 percent from 2019 to 2023 compared to the industry average of 58.5 percent.

North Country will also benefit from the continued service of Lucas Miller, who is the current Vice President of Power & Project Finance. As set out in more detail in the pre-filed testimony of Lucas Miller, attached as **Attachment 7**, Mr. Miller is responsible for, among other

things, working with Plant Manager Walker in managing the Facility's energy input and output to ensure its safe and efficient operations and to generate maximum value from the energy and other products the Facility produces. Among other things, Mr. Miller is responsible for assisting in relations with ISO-New England related to the interconnection and delivery of the Facility's output to the regional electric grid. This is particularly important given that, after the rejection of the PPA with Eversource in the Chapter 11 Cases, the Facility has continued to operate on a merchant basis and is generating power for sale into the ISO-New England day-ahead and real-time energy markets, which requires meticulous coordination between ISO-New England and the Facility.

Mr. Walker's pre-filed testimony and Mr. Miller's pre-filed testimony show that should CS Berlin Ops, CS Operations, and North Country reach agreement on the terms of an amended O&M Agreement and an amended Project Management Agreement, Mr. Walker, Mr. Miller, and the Facility's exceptional operations team is fully capable of operating and maintaining the plant in compliance with the Certificate over the long term. The pre-filed testimony of Mr. Procyk, Mr. Walker and Mr. Miller show that should the parties not reach agreement, the CS Berlin Ops and CS Operations experienced teams will nevertheless operate and maintain the Facility in the interim; and the pre-filed testimony of Mr. Procyk and Mr. Arsenault demonstrate that the industry expertise of Prudential and the other North Country Owners is more than sufficient to recruit and retain a team of equally experienced and capable management professionals to operate and maintain the plant in compliance with the Certificate after an appropriate transition period.



## **VII. Managerial Capability of North Country**

Finally, North Country can demonstrate by a preponderance of the evidence that it has or has access to the requisite managerial capability to ensure the Facility's continued operations in compliance with the Certificate.

As mentioned above in Section III.A, agreements will remain in place following the transaction, that will allow for the Facility's continued operations in compliance with the Certificate. Two of those agreements, however, the O&M Agreement and the Project Management Agreement, are subject to potential amendments or rejection as part of the underlying Chapter 11 Cases. If those Agreements are amended, the amended Agreements will be filed with the Bankruptcy Court prior to its confirmation of the Reorganization Plan.<sup>10</sup>

Alternatively, if the Agreements are rejected or terminated in the Chapter 11 Cases, the Reorganization Plan requires that CS Berlin Ops (and its parent company, CS Operations, Inc., as applicable) continue operating under those Agreements in a manner consistent with past practices (including continued assignment of current personnel) for a period of time reasonably necessary for North Country to enter into new project management or operations and maintenance agreements. Those new agreements can be entered into either with CS Berlin Ops and CS Operations until North Country enters into replacement agreements or with a successor operator, at North Country's sole discretion.<sup>11</sup>

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<sup>10</sup> The Reorganization Plan provides that in the event North Country and the counterparties to the O&M Agreement and/or the Project Management Agreement enter into any amendment in connection with the assumption by Berlin Station and Burgess (the "Debtors" in the Chapter 11 Cases) of the O&M Agreement and Project Management Agreement, the form of the amended O&M Agreement and/or the amended Project Management Agreement (as applicable) shall be included in the Plan Supplement to be filed with the Bankruptcy Court prior to confirmation of the Reorganization Plan. *See* Attachment 2, Reorganization Plan, Section V.A.3.

<sup>11</sup> As mentioned above, in the event there is a change to managerial personnel different than what is presented in this Joint Petition, Joint Petitioners will notify the Committee of the change and, if necessary, amend the Joint Petition or withdraw the Joint Petition and resubmit it with the updated information.

As set out in the joint pre-filed testimony of John Hallé, Edward (“Ned”) Dwyer, and Sarah Boone, *see Attachment 8*, assuming that the current corporate management team and associated operations and management agreements remain in place after the transaction or for a time after the transaction until a successor operator is selected, the Facility will continue to benefit from that team’s significant experience in managing critical aspects of corporate operations, including strategic planning, financial management, investor relations, governmental affairs, public relations, and more. Likewise, the corporate managerial team at CS Berlin Ops and CS Operations collectively brings years of experience specifically managing Facility operations as well as critical managerial experience from previous leadership roles at prominent companies and other organizations.

The joint pre-filed testimony of John Hallé, Ned Dwyer, and Sarah Boone demonstrates by a preponderance of the evidence that North Country will have the requisite managerial capability to ensure the Facility’s continued operations in compliance with the Certificate. Additionally, the pre-filed testimony of Paul Procyk details the substantial industry experience of Prudential Financial, Inc., as well as its subsidiaries and affiliates, its familiarity with the Facility, and its ability to leverage its experience and industry connections to implement an equally capable management team in the event of a transition from the current operators. Finally, the pre-filed testimony of RJ Arsenault describes the same qualifications for the other North Country Owners.

### **VIII. Conclusion**

For the reasons set out above, the Joint Petitioners respectfully request:

- A. Appointment of a three-member subcommittee to act on this Petition on behalf of the Committee;


- B. Expedited administrative approval of the contemplated transaction as set out above and under the terms in the attached Reorganization Plan, as follows:
- a. Option 1: A change in equity ownership interests in which North Country Generation Holdings LLC takes ownership of all of the equity in reorganized Berlin Station, LLC and Burgess BioPower, LLC and requisite amendments to the Certificate reflecting this ownership change; or, in the alternative,
  - b. Option 2: The transfer of the Certificate to North Country Generation Holdings LLC if North Country takes a controlling ownership interest in all or substantially all of the assets of Berlin Station, LLC and Burgess BioPower, LLC, including the Facility, and requisite amendments to the Certificate reflecting this transfer; and
- C. Such further relief as is appropriate, just and equitable.

Respectfully submitted,

**Berlin Station, LLC**

By Its Attorneys,

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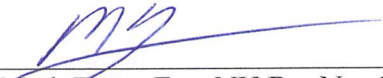
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Dated: April 10, 2024

To the best of my knowledge and belief, the information contained in this Joint Petition relating to Berlin Station, LLC, Burgess BioPower, LLC, CS Berlin Ops, Inc., and CS Operations, Inc. is true and accurate.

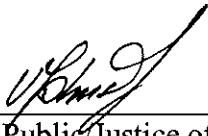
**Berlin Station, LLC**

By: Sarah C. Boone  
Name: Sarah Boone  
Title: Vice President of Corporate Affairs  
CS Berlin Ops, Inc.

STATE OF Maine

COUNTY OF Cumberland

On April 9, 2024, personally appeared before me the above-named Sarah Boone, and swore that this testimony is true and accurate to the best of his knowledge and belief. This notarial act was an online notarization.

  
Notary Public/Justice of the Peace  
My Commission Expires: 8/28/2026

**VICTORIA JOHNSON**  
NOTARY PUBLIC, STATE OF MAINE  
MY COMMISSION EXPIRES AUG. 28, 2026

To the best of my knowledge and belief the information contained in this Joint Petition relating to North Country Generation Holdings LLC is true and accurate.

By: 

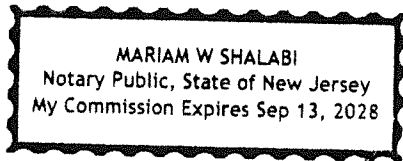
Name: Paul H. Procyk

Title: Authorized Signatory of North Country Generation Holdings LLC

STATE OF NJ  
COUNTY OF Monmouth

On April 5<sup>th</sup>, 2024, personally appeared before me the above-named Paul H. Procyk, and swore that the foregoing statements are true and to the best of his knowledge and belief.

(Seal)



Mariam W Shalabi  
Notary Public/Justice of the Peace  
My Commission Expires: 9/13/2028

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**SEC DOCKET NO. 2024-\_\_**

**Joint Petition of Berlin Station, LLC and North Country Generation Holdings LLC for  
Administrative Approval of a Change in Ownership or the Transfer of a Certificate of Site  
and Facility Issued to Berlin Station, LLC to North Country Generation Holdings LLC**

**CONTACT INFORMATION AND DISCLOSURE OF OWNERSHIP  
PURSUANT TO RSA 162-H:8**

**Berlin Station, LLC**

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**State of Incorporation:** Delaware

**Place of Business:** New Hampshire

**Directors:** John R. Hallé, Edward J. Dwyer, Antonio Bianco, Michelle A. Dreyer, Miranda L.  
Brewer, Drew McManigle

**Stockholders:** BBP #1, LLC, BBP #2, LLC. *See* Attachment 3 (Organizational Charts).

**North Country Generation Holdings LLC**

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**State of Incorporation:** Delaware

**Place of Business:** New Hampshire

**Directors/Officers:** None

**Stockholders:** Prudential Insurance Company of America, Pruco Life Insurance Company, Prudential Legacy Insurance Company of New Jersey, Athene Annuity & Life Company, Royal Neighbors of America, Pacific Life insurance Company, Pacific Life & Annuity Company. *See* Attachment 5 (Pre-filed Testimony of Paul Procyk).



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

In re  
BURGESS BIOPOWER, LLC, *et al.*<sup>1</sup>  
  
Debtors.

Chapter 11  
  
Case No. 24-10235 (LSS)  
(Jointly Administered)

**JOINT CHAPTER 11 PLAN FOR  
BURGESS BIOPOWER, LLC AND BERLIN STATION, LLC**

**THIS IS NOT A SOLICITATION OF AN ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DRAFT PLAN HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT.**

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

Dated: March 11, 2024

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

**TABLE OF CONTENTS**

I.	DEFINED TERMS AND RULES OF INTERPRETATION.....	1
A.	Defined Terms .....	1
B.	Rules of Interpretation .....	16
C.	Computation of Time.....	17
D.	Governing Law .....	17
E.	Reference to Monetary Figures.....	17
F.	Controlling Document .....	17
G.	Nonconsolidated Plan .....	18
H.	Consent Rights of the Consenting Parties.....	18
II.	UNCLASSIFIED CLAIMS .....	18
A.	Administrative Claims .....	18
B.	Professional Fee Claims.....	19
1.	Final Fee Applications and Payment of Professional Fee Claims .....	19
2.	Professional Fee Escrow Accounts.....	19
3.	Professional Fee Escrow Amounts .....	19
4.	Post-Effective Date Fees and Expenses .....	20
C.	Debtors' Restructuring Expenses.....	20
D.	DIP Claims.....	20
E.	Priority Tax Claims.....	21
III.	CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS .....	21
A.	Classification of Claims and Interests.....	21
1.	Berlin Claims .....	22
2.	Burgess Claims .....	22
B.	Treatment of Berlin Claims and Interests .....	22
1.	Class 1A – Other Secured Claims against Berlin .....	23
2.	Class 2A – Other Priority Claims against Berlin .....	23
3.	Class 3A – Senior Notes Claims.....	23
4.	Class 4A – Subordinated Notes Claims .....	24
5.	Class 5A – General Unsecured Claims against Berlin.....	24
6.	Class 6A – 510(b) Claims against Berlin.....	25
7.	Class 7A – Intercompany Claims against Berlin .....	25
8.	Class 8A – Interests in Berlin .....	25
C.	Treatment of Burgess Claims and Interests .....	25
1.	Class 1B – Other Secured Claims against Burgess.....	26
2.	Class 2B – Other Priority Claims against Burgess .....	26
3.	Class 3B – Senior Notes Claims .....	26
4.	Class 4B – General Unsecured Claims against Burgess .....	27
5.	Class 5B – 510(b) Claims against Burgess .....	27
6.	Class 6B – Intercompany Claims against Burgess .....	28
7.	Class 7B – Interests in Burgess.....	28
D.	Special Provision Governing Unimpaired Claims .....	28
E.	Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code .....	29

F.	Subordinated Claims .....	29
G.	Elimination of Vacant Classes .....	30
H.	Controversy Concerning Impairment .....	30
IV.	MEANS FOR IMPLEMENTATION OF THE PLAN.....	30
A.	General.....	30
1.	General Settlement of Claims and Interests.....	30
2.	Restructuring Transactions .....	30
3.	Insurance Policies .....	31
4.	Section 1146 Exemption.....	31
5.	Cancellation of Securities and Agreements .....	32
6.	No Recourse for any Cancellation of Debt Income .....	32
7.	Effectuating Documents; Further Transactions .....	32
8.	Preservation of Causes of Action.....	32
B.	Restructuring of the Debtors Effectuated Through the Sale Scenario .....	33
1.	Closing of the Sale Transaction(s).....	33
2.	Wind-Down and Dissolution of the Debtors .....	34
3.	The Plan Administrator.....	34
4.	Vesting of Assets in the Wind-Down Debtor(s) or Purchaser(s).....	37
5.	Sources of Consideration for Plan Distributions. ....	37
C.	Restructuring of the Debtors Effectuated Through a Stand-Alone Restructuring Transaction.....	37
1.	The New Notes .....	37
2.	Release of Liens.....	38
3.	Sources of Consideration for Plan Distributions .....	38
4.	Issuance of New Reorganized Debtor Equity; Section 1145 Exemption.....	39
5.	Corporate Existence .....	40
6.	New Organizational Documents .....	40
7.	Vesting of Assets in the Reorganized Debtors .....	41
8.	Directors, Managers, and Officers .....	41
9.	Employee and Retiree Benefits.....	41
V.	TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	42
A.	Assumption and Rejection of Executory Contracts and Unexpired Leases .....	42
1.	In a Sale Scenario.....	42
2.	In a Stand-Alone Restructuring Scenario .....	42
3.	O&M Agreement and Project Management Agreement in a Stand- Alone Restructuring Scenario .....	42
4.	Lease and Right to Use Agreement in a Stand-Alone Restructuring Scenario.....	43
B.	Approval of Assumption, Assignment and Rejection.....	43
C.	Claims Based on Rejection of Executory Contracts or Unexpired Leases .....	44
D.	Cure of Defaults for Executory Contracts and Unexpired Leases Assumed .....	44
E.	Preexisting Obligations under Executory Contracts and Unexpired Leases. ....	45

F. Modifications, Amendments, Supplements, Restatements, or Other Agreements ..... 45

G. Reservation of Rights..... 45

H. Nonoccurrence of the Plan Effective Date..... 46

I. Contracts and Leases Entered Into After the Petition Date ..... 46

VI. PROVISIONS GOVERNING DISTRIBUTIONS ..... 46

A. Timing and Calculation of Amounts to Be Distributed..... 46

B. Delivery of Distributions ..... 46

    1. Persons Responsible..... 46

    2. Record Date for Distribution ..... 47

    3. Minimum Distributions..... 47

    4. No Fractional Distributions..... 47

C. Distributions and Undeliverable or Unclaimed Distributions ..... 47

D. Surrender of Cancelled Instruments or Securities ..... 47

E. Compliance with Tax Requirements..... 48

F. Allocations ..... 48

G. No Postpetition Interest on Claims ..... 48

H. Foreign Currency Exchange Rate ..... 48

I. Setoffs and Recoupment ..... 49

J. Claims Paid or Payable by Third Parties ..... 49

    1. Claims Paid by Third Parties ..... 49

    2. Claims Payable by Third Parties..... 49

VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS ..... 50

A. Allowance of Claims..... 50

B. No Distributions Pending Allowance ..... 50

C. Claims Administration Responsibilities ..... 50

D. Disputed Claims Reserve..... 50

E. Estimation of Claims..... 50

F. Time to File Objections to Claims ..... 51

G. Disallowance of Claims ..... 51

H. Distributions After Allowance..... 51

VIII. RELEASES, INJUNCTION AND RELATED PROVISIONS ..... 52

A. Plan Releases, Injunction and Related Provisions ..... 52

    1. Discharge of Claims and Termination of Interests in the Debtors..... 52

    2. **Releases by the Debtors** ..... 52

    3. **Releases by Holders of Claims Against and Interests In the Debtors**..... 53

    4. **Exculpation from Claims Relating to the Plan**..... 54

    5. **Injunction**..... 55

B. Protections Against Discriminatory Treatment ..... 55

C. Document Retention ..... 56

D. Term of Injunctions or Stays..... 56

E. Unknown Claims ..... 56

IX. CONDITIONS PRECEDENT TO CONSUMMATION OF the Plan ..... 56

    A. Conditions Precedent to the Effective Date for the Plan ..... 56

    B. Waiver of Conditions ..... 59

    C. Substantial Consummation ..... 59

    D. Effect of Failure of Conditions ..... 59

X. MODIFICATION, REVOCATION OR WITHDRAWAL OF THE PLAN ..... 59

    A. Sale Transaction(s)..... 59

    B. Modification and Amendments..... 60

    C. Effect of Confirmation on Modifications ..... 60

    D. Revocation or Withdrawal of Plan..... 60

    E. Severance of Burgess from Plan ..... 60

XI. RETENTION OF JURISDICTION ..... 61

XII. MISCELLANEOUS PROVISIONS..... 63

    A. Immediate Binding Effect..... 63

    B. Additional Documents ..... 63

    C. Payment of Statutory Fees ..... 63

    D. Reservation of Rights..... 64

    E. Successors and Assigns..... 64

    F. Notices ..... 64

    G. Entire Agreement ..... 66

    H. Exhibits ..... 66

    I. Non-Severability of Plan Provisions..... 66

    J. Closing of Chapter 11 Cases..... 66

    K. Conflicts ..... 66

    L. Rates..... 67

## INTRODUCTION

Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”), the debtors and debtors in possession in the above captioned cases (collectively, the “Debtors”), propose this Plan for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used but not otherwise defined shall have the respective meanings ascribed to such terms in Article I.A of the Plan.

Holders of Claims and Interests should refer to the Disclosure Statement for a discussion of the Debtors’ history, business, assets, results of operations, and historical financial information, projections, as well as a summary and description of the Plan and certain related matters. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

The Chapter 11 Cases are being jointly administered for procedural purposes only. Notwithstanding the foregoing, the Plan constitutes a separate plan for each Debtor, and each Debtor is a proponent of its own plan within the meaning of section 1129 of the Bankruptcy Code; provided, however, that upon the occurrence of a Severance Trigger Date, the Plan shall apply solely as to Berlin and the Plan as to Burgess shall be withdrawn.

The Debtors shall pursue Confirmation of the Plan and, if one or more Qualified Bidders are designated in accordance with the Bidding Procedures (to the extent Filed), pursue the Sale Transaction(s) on a parallel path and implement such Sale Transaction(s) in connection with Confirmation and Consummation of the Plan. If one or more Successful Bidders is not designated pursuant to the Bidding Procedures and no Sale Transaction(s) are consummated by the applicable Sale Milestone or are otherwise terminated, not consummated, or not capable of being consummated, in each case, by the applicable outside sale date in accordance with the terms of the applicable Sale Transaction Documents, then the Debtors and the Senior Lenders shall seek to consummate the Plan without a Sale Transaction. If the Sale Transaction(s) are consummated, the Sale Proceeds shall be distributed in accordance with the Plan.

This Plan is consistent with the Restructuring Support Agreement, and all Consenting Parties are bound to support the Plan in accordance with the Restructuring Support Agreement.

**All holders of Claims entitled to vote on the Plan are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan.**

### **I. DEFINED TERMS AND RULES OF INTERPRETATION**

#### **A. Defined Terms**

As used in the Plan, capitalized terms have the meanings set forth below.

“510(b) Claim” means any Claim against the applicable Debtor that is subordinated pursuant to section 510(b) of the Bankruptcy Code.

“Administrative Claim” means a Claim entitled to priority for costs and expenses of administration of the applicable Debtor’s Estate under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses

incurred on or after the Petition Date of preserving the applicable Estate and operating the businesses of the Debtors; (b) Allowed Professional Fee Claims in the applicable Chapter 11 Cases; (c) all fees and charges assessed against the applicable Debtors' Estates under chapter 11 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930; (d) Adequate Protection Fees and Expenses (as defined in the DIP Orders); and (e) the Restructuring Expenses.

"Administrative Claims Bar Date" means the deadline for Filing requests for payment of Administrative Claims (other than DIP Claims, the Adequate Protection Claims, the Professional Fee Claims and Restructuring Expenses, which shall be paid in accordance with the DIP Orders and the Plan, as applicable), which shall be thirty (30) days after the Plan Effective Date, except as specifically set forth in the Plan or a Final Order.

"Affiliate" means, with respect to a particular Person, any other Person controlling, controlled by or under common control with such particular Person.

"Allowed" means with respect to a Claim, except as otherwise provided herein: (a) a Claim in a liquidated amount as to which no objection has been Filed prior to or on the applicable objection deadline and that is either evidenced by a timely Filed Proof of Claim or that is not required to be evidenced by a Proof of Claim under the Plan, the Bankruptcy Code, or a Final Order; (b) a Claim that is scheduled by the Debtors on their Schedules as neither disputed, contingent, nor unliquidated, and for which no Proof of Claim has been Filed in an unliquidated or different amount; or (c) a Claim that is deemed "Allowed" (i) pursuant to the Plan, (ii) in any stipulation approved by the Bankruptcy Court, (iii) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or (iv) by Final Order (including any Claim to which the Debtors had objected or which the Bankruptcy Court had allowed prior to such Final Order); provided, that with respect to a Claim described in clauses (a) through (c) above, such Claim shall be considered Allowed only if and to the extent no objection to the allowance of such Claim has been Filed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or if such an objection had been Filed, it was overruled and such Claim was Allowed by a Final Order; provided, further, that no Claim of any Person subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Person pays in full the amount that it owes to the applicable Debtor, Reorganized Debtor, or Wind-Down Debtor, as applicable.

"Assumed Executory Contracts and Unexpired Leases List" means the list compiled by the Debtors, with the consent of the Senior Lenders, of Executory Contracts and Unexpired Leases that will be assumed by the Reorganized Debtors pursuant to the Plan, which list may be amended from time to time with the consent of the Senior Lenders.

"Assumption and Assignment Procedures" has the meaning assigned to it in the Bidding Procedures Order, if applicable.

"Avoidance Actions" means any and all actual or potential avoidance, recovery, subordination, or other Claims, Causes of Action, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including Claims, Causes of Action, or remedies under

sections 502, 510, 542, 544, 545, 547 through and including 553, and 724(a) of the Bankruptcy Code or under similar local, state, federal, or foreign statutes and common law.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as may be amended from time to time to the extent applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware or any other court having jurisdiction over the Chapter 11 Cases.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of title 28 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, each as it may exist on any relevant date to the extent applicable to the Chapter 11 Cases.

“Berlin” has the meaning set forth in the Introduction.

“Berlin Facility” means the 75-megawatt biomass-fueled power plant located on an approximately 62-acre site in Berlin, New Hampshire (and such real property which is owned by Berlin).

“Bidding Procedures” means, if applicable, the procedures governing the sale process with respect to any Sale Transaction(s), as approved by the Bankruptcy Court pursuant to the Bidding Procedures Order (as such procedures may be altered, amended, modified, or supplemented from time to time in accordance with their terms and otherwise in accordance with the Restructuring Support Agreement), which shall provide for the Sale Transaction(s) pursuant to the Plan and be reasonably acceptable to the Debtors and the Senior Lenders.

“Bidding Procedures Motion” means, if Filed, the motion Filed by the Debtors in the Chapter 11 Cases seeking approval of, among other things, the Bidding Procedures.

“Bidding Procedures Order” means, if applicable, that certain order of the Bankruptcy Court approving the relief sought in the Bidding Procedures Motion, the form and substance of which shall be reasonably acceptable to the Debtors and the Senior Lenders.

“Burgess” has the meaning set forth in the Introduction.

“Business Day” means any day other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

“Cash” means legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.

“Causes of Action” means, collectively, any and all Claims, interests, damages, remedies, demands, rights, actions, suits, claims, cross-claims, counterclaims, third-party claims, obligations, liabilities, defenses, offsets, powers, privileges, licenses, indemnities, guaranties, franchises, debts, liens, losses, costs (including attorneys’ fees and costs of defense and investigation), expenses, controversies, assessments, penalties, fines, charges, promises, commitments, appeals, omissions, contingencies, sums of money, judgments, executions and causes of action of any kind,



nature or character whatsoever (whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly, indirectly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise). Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and Claims under contracts or for breaches of duties imposed by applicable law; (b) the right to object to or otherwise contest Claims or Interests; (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) such Claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any Claim under any state, federal or foreign law, including any fraudulent transfer or similar Claim or claim.

“Chapter 11 Case(s)” means, when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, and when used with reference to all of the Debtors, the jointly administered cases pending for the Debtors under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

“Claim” means any claim, as defined in section 101(5) of the Bankruptcy Code, to the extent not paid during the course of the Chapter 11 Cases.

“Claims, Noticing, and Solicitation Agent” means Epiq Corporate Restructuring, LLC, as the noticing, claims, and solicitation agent retained by the Debtors in the Chapter 11 Cases.

“Claims Register” means the official register of Claims maintained by the Claims, Noticing, and Solicitation Agent.

“Class” means a category of Claims or Interests established for the purposes of the Plan pursuant to section 1122(a) of the Bankruptcy Code.

“Compensation and Benefits Programs” means all employment and severance agreements and policies, and all employment, consulting, wages, compensation, and benefit plans and policies, workers’ compensation programs, savings plans, retirement plans, deferred compensation plans, supplemental executive retirement plans, healthcare plans, disability plans, severance benefit plans, incentive and retention plans, programs, and payments, life and accidental death and dismemberment insurance plans and programs, for all employees and consultants of the Debtors, and all amendments and modifications thereto, applicable to the Debtors’ current and former employees, consultants, non-employee directors and managers, in each case existing with the Debtors as of immediately prior to the Plan Effective Date.

“Confirmation” means entry of a Confirmation Order on the docket of the Chapter 11 Cases of the Debtors within the meaning of Bankruptcy Rules 5003 and 9021.

“Confirmation Date” means a date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases of the Debtors.

“Confirmation Hearing” means a hearing before the Bankruptcy Court at which the Debtors seek entry of the Confirmation Order.

“Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, including all exhibits, appendices, supplements and related documents, which shall be in form and substance reasonably acceptable to the Debtors and the Senior Lenders, and, absent repayment in full in Cash of the DIP Facility, the DIP Lenders.

“Consenting Parties” means the parties to the Restructuring Support Agreement.

“Consummation” means the occurrence of the Plan Effective Date.

“Control” (including, with its correlative meanings, “controlling,” “controlled by,” and “under common control with”) means, with respect to any Person, the possession, directly or indirectly, of the power to direct the management and policies of such Person whether through the ownership of voting securities, by contract or otherwise.

“Cure Amount” means the amount, including an amount of \$0.00, required to cure any monetary defaults under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the parties to such Executory Contract or Unexpired Lease) that is to be assumed by the Debtors (and, in a Sale Scenario, potentially assigned to the Purchaser(s)) pursuant to sections 365 or 1123 of the Bankruptcy Code).

“Debtor” or “Debtors” has the meaning set forth in the Introduction.

“Definitive Documents” means all documents implementing the Plan, which shall be consistent with the Restructuring Support Agreement (including the consent rights set forth therein), and shall include, as applicable and dependent upon the Restructuring Transactions actually implemented as determined in accordance with the Restructuring Support Agreement: (a) all pleadings Filed by any Debtor in the Chapter 11 Cases (and related orders), including the First Day Pleadings and all proposed orders sought pursuant thereto; (b) the DIP Facility Documents (as defined in the Restructuring Support Agreement), the DIP Motion, and the DIP Orders; (c) the Plan; (d) the Disclosure Statement; (e) the Solicitation Materials as they relate to the Plan and any motion seeking approval thereof; (f) the memorandum of law in support of approval of the Disclosure Statement and Confirmation of the Plan; (g) the Confirmation Order; (h) each of the documents comprising the Plan Supplement; (i) if applicable, the Bidding Procedures, the Bidding Procedures Motion and Bidding Procedures Order; (j) if applicable, any Purchase Agreement(s) and the order or orders approving the sale or sales contemplated thereby; (k) the Plan Administrator Agreement(s); (l) the New Note Documents; (m) the New Organizational Documents; (n) any and all filings with or notices to any governmental or regulatory authority, in each case, as may be required under applicable law in connection with the Chapter 11 Cases, the Restructuring Transactions, or the occurrence of the Plan Effective Date; and (o) any and all other deeds, agreements, filings, notifications, pleadings, orders, certificates, letters, or instruments or other documents relating to the Restructuring Transactions or reasonably desirable or necessary to consummate and document the Restructuring Transactions or the transactions contemplated by the Restructuring Support Agreement, including any agreements, instruments, pleadings, orders, and/or other documentation Filed in the Chapter 11 Cases (including any exhibits, annexes, schedules, amendments, modifications, or supplements made from time to time thereto in accordance with their terms).

“DIP Agent” means Deutsche Bank Trust Company Americas, in its capacity as administrative agent and collateral agent under the DIP Facility.

“DIP Claims” means all Claims of the DIP Lenders and the DIP Agent derived from, based upon, relating to, or arising under the DIP Facility and Final DIP Order.

“DIP Facility” means the senior secured superpriority debtor in possession financing facility approved pursuant to the DIP Orders.

“DIP Lenders” has the meaning set forth in the Restructuring Support Agreement.

“DIP Motion” means the motion Filed by the Debtors in the Chapter 11 Cases seeking approval of the DIP Facility, the form and substance of which shall be reasonably acceptable to the Debtors, the Senior Lenders and the DIP Lenders.

“DIP Orders” means the Interim DIP Order and the Final DIP Order.

“Disallowed” means, with respect to a Claim, a Claim (or portion thereof) that has been denied, dismissed, or overruled pursuant to the Plan or a Final Order.

“Disclosure Statement” means the disclosure statement for the Plan, including all exhibits and schedules thereto.

“Disputed” means, with respect to a Claim, (a) any such Claim to the extent neither Allowed nor Disallowed under the Plan or a Final Order or deemed Allowed under sections 502, 503 or 1111 of the Bankruptcy Code, or (b) any such Claim to the extent the applicable Debtors or any party in interest have interposed a timely objection to such Claim before the deadlines imposed by the Confirmation Order, which objection has not been withdrawn or determined by a Final Order. To the extent only the Allowed amount of a Claim is disputed, such Claim shall be deemed Allowed in the amount not disputed, if any, and Disputed as to the balance of such Claim.

“Disputed Claims Reserve” means, in the event one or more Sale Transaction(s) are consummated and a Plan Administrator is appointed for the Debtors, a Cash reserve established in accordance with Article VII.D of this Plan, in the amount equal to the aggregate amount that would be distributable to holders of Disputed Claims against the Debtors if such Disputed Claims were Allowed Claims on the Plan Effective Date.

“Distribution Record Date” means, (i) if the Sale Transaction(s) are consummated, seven (7) days prior to the Plan Effective Date; (ii) if the Sale Transaction(s) are not Consummated, ten (10) Business Days after the date the Debtors File a notice of consummation of a Stand-Alone Restructuring Transaction on the docket of the applicable Chapter 11 Cases; or (iii) such other date as agreed upon among the Debtors and the Senior Lenders.

“Estate” or “Estates” means the estate(s) of a Debtor(s) created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Chapter 11 Case.

“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.

“Executory Contract” means a contract to which one or more of the Debtors is a party and that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

“File,” “Filed,” or “Filing” means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court (including requests for allowance of an Administrative Claim) or, with respect to the filing of a Proof of Claim, the Claims, Noticing, and Solicitation Agent.

“Final DIP Order” means the order of the Bankruptcy Court approving the DIP Facility on the final basis, the form and substance of which shall be reasonably acceptable to the Debtors, the DIP Lenders and the Senior Lenders.

“Final Order” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, vacated, stayed, modified, or amended, and as to which the time to appeal, seek leave to appeal, or seek certiorari has expired and no appeal or petition for certiorari or motion for leave to appeal has been timely taken, or as to which any appeal that has been taken or any petition for certiorari or motion for leave to appeal that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari or leave to appeal could be sought or the new trial, reargument, leave to appeal, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice, provided, however, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code has been or may be filed with respect to such order or judgment.

“First Day Pleadings” means those certain motions, applications, and related pleadings Filed by the Debtors on the Petition Date.

“General Unsecured Claim” means any prepetition, general unsecured Claim against one or more of the Debtors (including rejection damages Claims and any deficiency Claim that holders of the Senior Notes Claims may have) that are not Priority Tax Claims or Other Priority Claims, any Claims on account of the Debtors' indemnification obligations in favor of any current or former employee, officer, director, consultant, or independent contractor of the Debtors shall (w) be released pursuant to the Plan, (x) not be considered General Unsecured Claims under the Plan, (y) be deemed Disallowed under the Plan, and (z) receive no recovery under the Plan. For the avoidance of doubt, any deficiency claims that either the holders of the Senior Notes Claims and/or the Subordinated Note Claims may have against Burgess shall not be considered General Unsecured Claims.

“Governance Documents” means, with respect to any Person that is an entity, such entity's organizational and governance documents, including its certificate or articles of incorporation, certificate of formation or certificate of limited partnership, its bylaws, limited liability company

agreement, operating agreement, or limited partnership agreement, and any indemnification agreements, stockholders agreements, or registration rights agreements (or equivalent governing documents of any of the foregoing).

“Governmental Unit” has the meaning set forth in section 101(27) of the Bankruptcy Code.

“Impaired” means with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

“Intercompany Claim” means any Claim against a Debtor held by another Debtor.

“Interest” means the rights of the holders of the common stock, membership interests or other equity interests issued by a Debtor and outstanding immediately prior to the Petition Date, and any options, warrants or other rights with respect thereto, or any other instruments evidencing an ownership interest in the applicable Debtor and the rights of any Person to purchase or demand the issuance of any of the foregoing.

“Interim DIP Order” means the Bankruptcy Court order approving the DIP Facility, on an interim basis, the form and substance of which shall be reasonably acceptable to the Debtors, the DIP Lenders and the Senior Lenders.

“Lease” means the lease by and between lessee Burgess and lessor Berlin dated September 2, 2011.

“Lien” has the meaning set forth in section 101(37) of the Bankruptcy Code.

“New Board” means, in a Stand-Alone Restructuring Scenario or a Sale Scenario involving a Plan Sponsor, the respective board of managers or member managers, as applicable, of the Reorganized Debtors immediately following the occurrence of the Plan Effective Date, to be appointed in accordance with the Plan and the New Organizational Documents.

“New Note Documents” means, collectively, the New Note Purchase Agreement and all other agreements, documents, and instruments to be delivered or entered into in connection therewith, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents, in each case, on terms and conditions determined by, and in form and substance acceptable solely to the Senior Lenders.

“New Note Purchase Agreement” means the note purchase agreement governing the Reorganized Debtors’ issuance of New Notes, which shall be on terms and conditions determined by and acceptable in form and substance solely to the Senior Lenders.

“New Notes” means those senior secured notes issued pursuant to the New Note Purchase Agreement and in connection with the other New Note Documents in the aggregate principal amount of up to \$[\_\_\_] million.

“New Organizational Documents” means, collectively, the Governance Documents of the Reorganized Debtors, which shall be determined by and be acceptable in form and substance solely to the Senior Lenders.

“New Reorganized Debtor Equity” means the equity interests in the applicable Reorganized Debtor (or if neither Reorganized Debtor is specified, in both Reorganized Debtors), to be issued on the Plan Effective Date.

“O&M Agreement” means the Operations and Maintenance Agreement by and between Berlin and CS Berlin Ops, Inc. dated as of January 19, 2018, as amended, assigned, or amended and assigned from time to time.

“Other Priority Claim” means any unsecured Claim other than an Administrative Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

“Other Secured Claim” means any Secured Claim against any applicable Debtor, other than the DIP Claims, the Senior Notes Claims, the Subordinated Claims, and Intercompany Claims.

“Person” means an individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, unlimited liability company, professional corporation, government or any agency or political subdivision thereof or any other entity.

“Petition Date” means February 8, 2024.

“Plan” means this joint plan of reorganization or liquidation, as applicable, as it pertains to the Debtors, including any supplements and exhibits hereto, as it and they may be altered, amended, modified, or supplemented from time to time in accordance with their terms; provided, further, that upon a Severance Trigger Date, then the Plan solely as it applies to Berlin.

“Plan Administrator” means, in the event of a Sale Transaction that results in one or more Wind-Down Debtors, the Person, or any successor thereto, selected by the Senior Lenders to administer such Wind-Down Debtor(s), which will have all powers and authority set forth in Article IV.B.3 of the Plan.

“Plan Administrator Agreement” means, in the event of a Sale Transaction that results in one or more Wind-Down Debtors, the agreement between the Plan Administrator and the Debtors, in form and substance reasonably acceptable to the Plan Administrator, the Debtors and the Senior Lenders, regarding the administration of such Wind-Down Debtor(s)’ assets and other matters related to their applicable Estate(s), which shall be Filed as part of the Plan Supplement.

“Plan Effective Date” means the date that is the first Business Day after the Confirmation Date on which (i) no stay of the Confirmation Order is in effect and (ii) all conditions precedent to the occurrence of the Plan Effective Date set forth in Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan. The Debtors shall File a notice of the occurrence of the Plan Effective Date on the docket of these Chapter 11 Cases.

“Plan Sponsor” means, solely in connection with a Plan Sponsor Alternative, a third party provider of equity financing for the Restructuring.

“Plan Sponsor Alternative” means one or more Sale Transaction(s) whereby a Plan Sponsor provides equity financing and acquires all or a portion of the New Reorganized Debtor Equity.

“Plan Supplement” means the compilation of documents and forms of documents, schedules and exhibits (or substantially final forms thereof), in each case (1) subject to the terms and provisions of the Restructuring Support Agreement (including the consent rights set forth therein), as may be altered, amended, modified, or supplemented from time to time through and including the Plan Effective Date in accordance with the terms of the Plan and the Restructuring Support Agreement and in accordance with the Bankruptcy Code and the Bankruptcy Rules and (2) as applicable and dependent upon the Restructuring Transactions actually implemented as determined in accordance with the Restructuring Support Agreement, including the following documents: (a) the New Organizational Documents; (b) to the extent known, the identities of the members of the New Board; (c) the Schedule of Retained Causes of Action; (d) the Assumed Executory Contracts and Unexpired Leases List; (e) the New Note Documents; (f) the form of the Plan Administrator Agreement, if applicable; (g) the form of the Purchase Agreement(s), if applicable; (h) the form of the amended O&M Agreement (if applicable); (i) the form of the amended Project Management Agreement (if applicable); and (j) any and all other documentation that is contemplated by the Plan.

“Priority Tax Claim” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

“Pro Forma Owners” means the Senior Lenders and/or DIP Lenders.

“Pro Rata” means the proportion that an Allowed Claim or an Allowed Interest in a particular Class bears to the aggregate amount of Allowed Claims or Allowed Interests in that Class.

“Professional” means any Person: (a) retained pursuant to a Final Order of the Bankruptcy Court in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

“Professional Fee Claims” means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

“Professional Fee Escrow Account” means an interest-bearing Cash account funded by the Debtors with Cash on the Plan Effective Date in the Professional Fee Escrow Amount in accordance with Article II.B of the Plan and the DIP Orders, which shall be allocated to the Debtors’ Estates.

“Professional Fee Escrow Amount” means the aggregate amount of Professional Fee Claims and other fees and expenses that the Professionals estimate they have incurred or will incur in rendering services to the Debtors prior to and as of the Plan Effective Date and in accordance

with the Final DIP Order, which estimates shall be delivered by the Professionals to the Debtors and the Senior Lenders as set forth in Article II.B.3 of the Plan, and which shall be allocated to the Debtors' Estates.

"Project Management Agreement" means the Project Management Agreement between Cate Street Capital, Inc. and Berlin, dated as of June 29, 2011, as assigned by Cate Street Capital, Inc. to CS Operations, Inc., and as may have otherwise been amended or assigned from time to time, including by that certain rescission agreement and amendment dated as of February 8, 2024.

"Proof of Claim" means a written proof of Claim Filed against a Debtor in the Chapter 11 Cases.

"Purchase Agreement(s)" means, if applicable, an asset purchase agreement(s) or equity purchase agreement(s) in form and substance reasonably acceptable to the Debtors and the Senior Lenders and as approved by the Bankruptcy Court, that, among other things, (a) does not have any financing or diligence contingency, (b) demonstrates that the Purchaser(s) has the wherewithal to promptly close the subject Sale Transaction(s), and (c) provides that closing thereunder shall occur on or before the applicable Sale Milestone.

"Purchaser(s)" means, if applicable, one or more third-party Persons (including, if applicable, a Plan Sponsor) selected to purchase all or substantially all of (a) the Debtors' assets or (b) the New Reorganized Debtor Equity, in each case, in accordance with the Bidding Procedures Order.

"Qualified Bid" means, if applicable, an offer to purchase all or substantially all of the Debtors' assets or all or a portion of the equity interests in the Reorganized Debtors that complies in all respects with the Bidding Procedures (unless otherwise agreed by the Debtors and the Senior Lenders) or a bid submitted by the Senior Lenders and/or DIP Lenders for all or substantially all of the Debtors' assets or equity interests in the Reorganized Debtors.

"Qualified Bidder" means, if applicable, (a) a party that timely submits a Qualified Bid in accordance with the Bidding Procedures, (b) the DIP Lenders, (c) the Senior Lenders, or (d) the Senior Notes Agent (on behalf of the Senior Lenders).

"Quarterly Fees" has the meaning set forth in Article XII.C.

"Reinstated" means, with respect to a Claim or an Interest, that such Claim or Interest shall be rendered Unimpaired under the Plan in accordance with section 1124(2) of the Bankruptcy Code.

"Related Party" means, each of, and in each case in its capacity as such, current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such equity interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as



director or manager of any Person), accountants, investment bankers, representatives, and other professionals and advisors, and any such Person's respective successors, assigns, heirs, executors, estates, and nominees.

"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 their 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.

"Reorganized Debtors" means the Debtors on and after the Plan Effective Date, together with any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, whether in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Plan Effective Date.

"Restructuring" means the Debtors' restructuring to be consummated pursuant to the Plan and in accordance with the Restructuring Support Agreement, which shall consist of either (a) one or more Sale Transaction(s) or (b) a Stand-Alone Restructuring Transaction.

"Restructuring Expenses" means the reasonable and documented fees and expenses incurred by the Senior Notes Agent, the DIP Agent, the Senior Lenders and the DIP Lenders, in each case, whether incurred prepetition or postpetition.

"Restructuring Support Agreement" means the Restructuring Support Agreement between the Debtors and the Consenting Parties, dated as of February 8, 2024, as may be altered, amended, modified, or supplemented from time to time in accordance with its terms.

“Restructuring Transactions” means any transactions described in, approved by, contemplated by, or necessary to effectuate the Plan and the Restructuring Support Agreement.

“Right to Use Agreement” means the Right to Use Agreement between Berlin and Burgess, dated as of September 2, 2011.

“Sale Milestone” means the date upon which the Debtors, with the consent and at the direction of the Senior Lenders, will take certain actions in connection with the pursuit of a Sale Transaction(s) pursuant to the Plan, as set forth in the Restructuring Support Agreement.

“Sale Proceeds” means, with respect to any Sale Transaction, the net Cash proceeds, debt or equity interests in the Purchaser(s), and/or other proceeds or consideration received by the Debtors or the Reorganized Debtors (whether directly or on account of the purchase of their interests in the Debtors) in connection with such Sale Transaction(s).

“Sale Scenario” means the event in which the Debtors and the Senior Lenders agree that one or more actionable Qualified Bids has been received on or prior to the applicable Sale Milestone set forth in the Restructuring Support Agreement, such Qualified Bid(s) are pursued with respect to one or more Sale Transaction(s) at the direction of the Senior Lenders, and such Sale Transaction(s) are consummated pursuant to the Plan. For the avoidance of doubt, the Sale Scenario may include a Plan Sponsor Alternative.

“Sale Transaction(s)” means a sale or sales of (a) all or substantially all of the right, title, and interest in the assets of the Debtors or (b) all or substantially all of the Interests in either of the Reorganized Debtors, including through a Plan Sponsor Alternative, pursuant to sections 1129 and 363 of the Bankruptcy Code and one or more Purchase Agreement(s), which sale shall be acceptable to and at the direction of the Senior Lenders and consummated pursuant to the Plan.

“Sale Transaction Documents” means all documents executed and delivered by the Debtors and, as applicable, the Senior Lenders, and the Purchaser(s), in connection with the Sale Transaction(s), which shall be reasonable acceptable to the Debtors and the Senior Lenders.

“Schedule of Retained Causes of Action” means the schedule of the Causes of Action of the Debtors or the Debtors’ Estates that are not released, waived, or transferred pursuant to the Plan, to be Filed as part of the Plan Supplement, as the same may be amended, modified, or supplemented from time to time by the Debtors, with the consent of the Senior Lenders. Without limiting the foregoing, the Schedule of Retained Causes of Action shall include all Causes of Action that any Debtor may have against Public Services Company of New Hampshire (d/b/a Eversource Energy), all of which shall vest with the Reorganized Berlin in a Stand-Alone Restructuring Scenario; provided, further, that in the event the Plan as to Burgess is severed and withdrawn as provided for in Article X.E, then the Causes of Action that Burgess may have against Public Services Company of New Hampshire (d/b/a Eversource Energy) shall be transferred to Berlin in connection with the sale of Burgess’s assets to the Pro Forma Owners.

“Schedules” means, if Filed, the schedules of assets and liabilities and the statement of financial affairs Filed by each Debtor with the Bankruptcy Court pursuant to sections 521 and 1106(a)(2) of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules and statement may be amended or supplemented by such Debtor at any point prior to the Plan Effective Date.

“Secured Claim” means a Claim (a) secured by a Lien on property in which any of the Debtors has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Final Order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in such Debtor’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to the Plan, or separate order of the Bankruptcy Court, as a Secured Claim.

“Securities Act” means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a-77aa.

“Security” means a security, as defined in Section 2(a)(1) of the Securities Act.

“Senior Lenders” means the beneficial holders or investment advisors, sub-advisors, or managers of funds or discretionary accounts that hold the Senior Notes.

“Senior Notes” means, collectively, the Series A Fixed Rate Notes, Series B Fixed Rate Notes and Floating Rate Notes (each as defined in the Senior Notes Purchase Agreement) issued pursuant to the Senior Notes Documents.

“Senior Notes Agent” means Deutsche Bank Trust Company Americas, the collateral agent and depository under the Senior Notes Documents, and any successor thereto.

“Senior Notes Claims” means all Claims of the holders of the Seniors Notes in an aggregate principal amount of at least \$115,350,000 plus interest, fees, premiums, and expenses, and, if applicable, the Senior Notes Agent derived from, based upon, relating to, or arising under the Senior Notes Purchase Agreement and Senior Notes Documents.

“Senior Notes Documents” means the Senior Notes Purchase Agreement and all agreements, documents, notes and instruments in respect thereof, in each case as amended or modified from time to time.

“Senior Notes Purchase Agreement” means that certain Note Purchase Agreement, dated as of September 2, 2011 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof), pursuant to which Berlin issued the Senior Notes.

“Severance Trigger Date” means the conditions under Article X.E of the Plan are met and the Plan as it relates to Burgess is withdrawn.

“Solicitation Materials” means the materials to be distributed together with the Plan and Disclosure Statement to holders of Claims entitled to vote on the Plan, which shall be in form and substance reasonably acceptable to the Debtors and the Senior Lenders.

“Sponsors” means, collectively, BBP #1, LLC, BBP #2, LLC and Burgess Holding, LLC; provided, that if any such Person has not signed the Restructuring Support Agreement on or prior to the Petition Date, then such Person shall not be (i) entitled to receive or have the benefit of any release, exculpation, injunction, indemnification or insurance provisions in the Plan or any of the Definitive Documents in any respect (whether directly or indirectly as a Related Party of any Released Party or any other Person) and (ii) provided any consent rights under the Restructuring Support Agreement or this Plan.

“Stand-Alone Restructuring Scenario” means the pursuit of Confirmation and Consummation of the Plan where the Debtors and the Senior Lenders agree not to pursue any Sale Transaction(s).

“Stand-Alone Restructuring Transaction(s)” means all actions and transactions as may be necessary or appropriate to effectuate the Stand-Alone Restructuring Scenario, which transactions shall be approved by the Debtors and the Senior Lenders.

“Subordinated Note Claims” means Claims arising under or related to (1) the CDE Subordinated Loan Agreement, dated as of September 2, 2012, by and between Berlin and the lenders party thereto, (2) the Greenline Subordinated Loan Agreement, dated as of October 25, 2012, by and between Berlin and the lender party thereto, or (3) the Berlin BioPower Investment Fund, LLC, a Missouri limited liability company, and non-debtor affiliate of the Debtors, in accordance with those certain Allonges to Notes dated September 5, 2018, (collectively, the “QLICI Berlin Bio Investment Notes”), in each case, as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified.

“Subordination Agreement” means the Subordination Agreement dated as of November 19, 2013 by Deutsche Bank trust Company Americas as Collateral Agent filed at the Coos County Registry of Deeds at Book 1390, page 285.

“Successful Bidder” means, if applicable, a third party, any or all of the Senior Lenders (or their designees), the Senior Notes Agent on behalf of the Senior Lenders (or their designees), or a Plan Sponsor whose Qualified Bid is determined by the Debtors and the Senior Lenders to be the highest or otherwise best Qualified Bid, in accordance with the Bidding Procedures Order.

“U.S. Trustee” means the Office of the United States Trustee for the District of Delaware.

“Unexpired Lease” means a lease to which one or more Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“Unimpaired” means with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Impaired within the meaning of section 1124 of the Bankruptcy Code.

“Wind Down” means, in a Sale Scenario, following the closing of the Sale Transaction(s), the process to wind down, dissolve and liquidate the applicable Debtors’ Estates and distribute the Wind-Down Assets in accordance with Article III of the Plan.

“Wind-Down Assets” means, in a Sale Scenario, the assets of the Debtors’ Estates to vest in the Wind-Down Debtors on the Plan Effective Date, which shall be administered by the Plan Administrator, including but not limited to, (i) if applicable, the Sale Proceeds to the extent not distributed on the Plan Effective Date and (ii) any Causes of Action retained by the Debtors.

“Wind-Down Budget” means a budget for the reasonable activities and expenses necessary to effectuate the Wind Down of the Debtors’ Estates, which budget, activities, and reasonable expenses shall be subject to the consent of the Senior Lenders and, absent repayment in full in Cash of the DIP Facility, the DIP Lenders. The Wind-Down Budget shall include line-item

estimates for, among other things, such reasonable post-Plan Effective Date fees and expenses incurred by the Wind-Down Debtor(s)' retained professionals.

“Wind-Down Debtor(s)” means, in a Sale Scenario, any Debtor on or after the Plan Effective Date to the extent the Interests in such Debtor are not acquired directly or indirectly by the Purchaser(s) in connection with the Sale Transaction(s). For the avoidance of doubt, the term “Reorganized Debtor” includes a Wind-Down Debtor.

## **B. Rules of Interpretation**

For purposes of the Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, includes both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; provided, that nothing in this clause (2) shall affect any party's consent rights over any of the Definitive Documents or any amendments thereto as provided for in the Restructuring Support Agreement and related exhibits; (3) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, restated, supplemented, or otherwise modified in accordance with the Plan; (4) any reference to a Person as a holder of a Claim or Interest includes that Person's successors and assigns; (5) unless otherwise specified, all references herein to “Articles” are references to Articles of the Plan; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (8) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with, applicable federal law, including the Bankruptcy Code and the Bankruptcy Rules, or, if no rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (12) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time and as applicable to the Chapter 11 Cases, unless otherwise stated; (13) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words “without limitation”; (14) references to “Proofs of Claim,” “holders of Claims,” “Disputed Claims,” and the like shall include “Proofs of Interest,” “holders of Interests,” “Disputed Interests,” and the like, as applicable; (15) any immaterial effectuating provisions may be interpreted in a manner that is consistent with the overall purpose and intent of the Plan; (16) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are

defined under the applicable state limited liability company laws; (17) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; and (18) any term used in capitalized form that is not otherwise defined but that is used in the Bankruptcy Code or Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

### **C. Computation of Time**

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Subject to the requirements of any Definitive Document, any action to be taken on the Plan Effective Date may be taken on or as soon as reasonably practicable after the Plan Effective Date.

### **D. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); provided, however, that corporate or limited liability company governance matters relating to the Debtors or the Reorganized Debtors, as applicable, shall be governed by the laws of the state of incorporation or formation of the applicable Debtor or the Reorganized Debtors, as applicable.

### **E. Reference to Monetary Figures**

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

### **F. Controlling Document**

In the event of an inconsistency between the Plan and the Plan Supplement with respect to the Plan, the terms of the relevant document in the Plan Supplement with respect to the Plan shall control unless otherwise specified in such Plan Supplement document with respect to the Plan. In the event of an inconsistency between the Plan and any other instrument or document created or executed pursuant to the Plan, or between the Plan and the Disclosure Statement, the Plan shall control. The provisions of the Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effectuate the purposes of each; provided, however, that if there is determined to be any inconsistency between any provision of the Plan and any provision of the Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of the Plan.

### **G. Nonconsolidated Plan**

The Plan is being proposed as a joint chapter 11 plan of the Debtors for administrative purposes only and constitutes a separate chapter 11 plan for each Debtor; provided, however, that upon the occurrence of a Severance Trigger Date, the Plan shall apply solely as to Berlin and the Plan as to Burgess shall be withdrawn. The Plan is not premised upon the substantive consolidation of the Debtors' Estates.

### **H. Consent Rights of the Consenting Parties**

Notwithstanding anything in the Plan to the contrary, any and all information, consultation, and consent rights of the Consenting Parties set forth in the Restructuring Support Agreement with respect to the form and substance of the Plan, all exhibits to the Plan, and the Plan Supplement, and any other Definitive Documents, including any amendments, restatements, supplements, or other modifications to such agreements and documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by reference and fully enforceable as if stated in full herein until such time as the Restructuring Support Agreement is terminated in accordance with its terms. Failure to reference the rights referred to in the immediately preceding sentence in the Plan shall not impair such rights. In case of any conflict between the consent rights of the Consenting Parties that are set forth in the Restructuring Support Agreement and those parties' consent rights that are set forth in the Plan or the Plan Supplement, the consent rights set forth in the Restructuring Support Agreement shall control.

The signing of the applicable Definitive Documents will be subject to, among other things, the negotiation by the Debtors, the Senior Lenders, and, to the extent applicable, the Successful Bidder, the Plan Sponsor, and/or the Plan Administrator, of acceptable terms and conditions for the Definitive Documents as well as additional legal, accounting, financial, tax, business and regulatory due diligence.

## **II. UNCLASSIFIED CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, DIP Claims and Priority Tax Claims have not been classified against the Debtors.

### **A. Administrative Claims**

Requests for payment of Administrative Claims (except for DIP Claims, Adequate Protection Claims, Professional Fee Claims and Restructuring Expenses) must be Filed and served, if with respect to the Debtors, on the Reorganized Debtors or Wind-Down Debtor(s), as applicable, no later than the applicable Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order(s). Holders of Administrative Claims that are required to File and serve a request for payment of such Claims that fail to do so shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, the Reorganized Debtors, or Wind-Down Debtor(s), as applicable, or their respective property, and such Administrative Claims shall be deemed discharged as of the Plan Effective Date without the need for any objection or any notice to any Person or an order of the Bankruptcy Court.

Except to the extent that a holder of an Allowed Administrative Claim agrees to a less favorable treatment, to the extent an Allowed Administrative Claim has not been paid in full or otherwise satisfied during the Chapter 11 Cases, each holder of an Allowed Administrative Claim (other than Professional Fee Claims, DIP Claims, Adequate Protection Claims and Restructuring Expenses) shall receive, in full and final satisfaction of its Allowed Administrative Claim, payment in full in Cash in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Plan Effective Date, on the Plan Effective Date; (2) if such Administrative Claim is not Allowed as of the Plan Effective Date, no later than thirty (30) days after the date on which such Administrative Claim is Allowed; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim; or (4) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

## **B. Professional Fee Claims**

### **1. Final Fee Applications and Payment of Professional Fee Claims**

All final requests for payment of Professional Fee Claims must be Filed no later than forty-five (45) days after the Plan Effective Date. The Bankruptcy Court shall determine the Allowed amounts of all Professional Fee Claims in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior Bankruptcy Court orders.

### **2. Professional Fee Escrow Accounts**

On the Plan Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals in respect of Allowed Professional Fee Claims until all Allowed Professional Fee Claims have been paid in full, and the funds held in the Professional Fee Escrow Account shall not be considered property of the Debtors' Estates. No Liens, Claims, or Interests shall encumber the Professional Fee Escrow Account or Cash held therein.

The applicable Debtors' obligations to pay the Allowed Professional Fee Claims shall be limited to the funds held in the Professional Fee Escrow Accounts. When all Allowed Professional Fee Claims have been paid in full, any remaining funds held in the applicable Professional Fee Escrow Accounts shall be returned to the Senior Lenders, the Reorganized Debtors or the Wind-Down Debtors, as applicable.

### **3. Professional Fee Escrow Amounts**

The Professionals shall provide a reasonable and good-faith estimate of the Professional Fee Claims projected to be outstanding as of the Plan Effective Date, and shall deliver such estimate to the Debtors at least three (3) Business Days before the anticipated Plan Effective Date; provided, however, that such estimate shall not be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of the Professional's final request for payment of Professional Fee Claims and such Professionals are not bound by such



estimates. If a Professional does not provide an estimate, the Debtors, with the consent of the Senior Lenders, may estimate the unpaid and unbilled fees and expenses of such Professional.

#### 4. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Plan Effective Date, the Reorganized Debtors or the Plan Administrator, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation of the Plan incurred by the Reorganized Debtors, as determined by the Reorganized Debtors or the Plan Administrator, as applicable. Upon the Plan Effective Date, any requirement that the Reorganized Debtors' or Wind-Down Debtors' Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention for services rendered after such date shall terminate, and the Reorganized Debtors and the Plan Administrator, as applicable, may employ any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

#### **C. Debtors' Restructuring Expenses**

On the Plan Effective Date or as reasonably practicable thereafter (to the extent not previously paid during the course of the Debtors' Chapter 11 Cases), the Debtors shall pay in full in Cash all outstanding Restructuring Expenses incurred or estimated to be incurred by the Senior Notes Agent, the DIP Agent, the Senior Lenders and the DIP Lenders through and including the Plan Effective Date in accordance with, and subject to, the terms set forth herein and in the Restructuring Support Agreement and/or the DIP Orders (as applicable), without any requirement to File a fee application with the Bankruptcy Court, without the need for itemized time detail, and without any requirement for Bankruptcy Court review or approval.

All Restructuring Expenses to be paid by the Debtors on the Plan Effective Date shall be estimated prior to and as of the Plan Effective Date and such estimates shall be delivered to the Debtors at least three (3) Business Days before the anticipated Plan Effective Date; provided, however, that such estimates shall not be considered an admission or limitation with respect to such Restructuring Expenses. On the Plan Effective Date or as soon as reasonably practicable thereafter, invoices for all Restructuring Expenses incurred by the Senior Notes Agent, the DIP Agent, the Senior Lenders or the DIP Lenders prior to and as of the Plan Effective Date shall be submitted to the Debtors. In addition, the Debtors, the Reorganized Debtors, and the Wind-Down Debtor(s) (as applicable) shall continue to pay, when due and payable in the ordinary course, Restructuring Expenses related to implementation, consummation, and defense of the Plan, whether incurred before, on, or after the Plan Effective Date.

#### **D. DIP Claims**

The DIP Claims shall be Allowed in the amount outstanding under the DIP Facility on the Plan Effective Date. In full and final satisfaction thereof, each Allowed DIP Claim shall (a) in a Sale Scenario, be paid in full in Cash (unless an Allowed DIP Claim is being credit bid as part of the bid by the Successful Bidder, in which case such Allowed DIP Claim shall be satisfied in accordance with the order approving the Sale Transaction); or (b) in a Stand-Alone Restructuring

Scenario, be converted into [\_\_\_\_\_] % of the New Reorganized Debtor Equity in Berlin and 100% of the New Reorganized Debtor Equity in Burgess, and in either the Sale Scenario or the Stand-Alone Restructuring Scenario be afforded such other treatment as is acceptable to the DIP Lenders in their sole discretion; provided, that each holder of an Allowed DIP Claim shall receive the same treatment under the Plan unless a holder agrees to less favorable treatment.

#### **E. Priority Tax Claims**

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, the Allowed Priority Tax Claims, each holder of an Allowed Priority Tax Claim shall receive treatment consistent with section 1129(a)(9) of the Bankruptcy Code by the applicable Debtor against which such Allowed Priority Tax Claims are validly asserted.

### **III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

#### **A. Classification of Claims and Interests**

The Classes of Claims and Interests listed below classify Claims and Interests for all purposes, including voting on, and distributions pursuant to, the Plan in accordance with sections 1122 and 1123(a) of the Bankruptcy Code. The Plan deems a Claim or Interest to be classified in a particular Class only to the extent that (i) the Claim or Interest is an Allowed Claim or Interest and qualifies within the description of that Class and it shall be deemed classified in a different Class to the extent that it qualifies within the description of such different Class and (ii) such Allowed Claim or Allowed Interest has not been satisfied, released, or otherwise settled prior to the Plan Effective Date.

The Plan provides for separate treatment of Claims against and Interests in the Debtors. The Plan groups the Debtors together solely for the purpose of describing their treatment under the Plan, tabulating votes on and Confirmation of the Plan, and making distributions. Such groupings shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, or cause the transfer of any assets. Except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities.

The following table designates the Classes of Claims against and Interests in the Debtors and specifies which Classes are (i) Impaired and Unimpaired under the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, and (iii) presumed to accept or deemed to reject the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Claims, and Priority Tax Claims have not been classified. The classification of Claims and Interests set forth herein shall apply separately to each Debtor. Certain of the Debtors may not have Claims or Interests in a particular Class, and any such Classes shall be treated as set forth in Article III.B of the Plan.

1. Berlin Claims

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

2. Burgess Claims

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

**B. Treatment of Berlin Claims and Interests**

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.

1. Class 1A – Other Secured Claims against Berlin

- (a) *Classification:* Class 1A consists of all Other Secured Claims against Berlin.

*Treatment:* 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.

- (b) *Voting:* Class 1A is Unimpaired under the Plan. Holders of Claims in Class 1A are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

2. Class 2A – Other Priority Claims against Berlin

- (a) *Classification:* Class 2A consists of all Other Priority Claims against Berlin.

- (b) *Treatment:* 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.

- (c) *Voting:* Class 2A is Unimpaired under the Plan. Holders of Claims in Class 2A are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

3. Class 3A – Senior Notes Claims

- (a) *Classification:* Class 3A consists of all Senior Notes Claims.
- (b) *Allowance:* On the Plan Effective Date, the Senior Notes Claims shall be Allowed in the principal amount of at least \$115,350,000, plus any accrued and unpaid interest and all accrued and unpaid fees, expenses, premiums and indemnities.

- (c) *Treatment*: 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:
- (i) Stand-Alone Restructuring Scenario: In a Stand-Alone Restructuring Scenario, 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
- (ii) Sale Scenario: In a Sale Scenario, 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, and (y) all rights to, and proceeds of, the Wind-Down Assets.
- (d) *Voting*: Class 3A is Impaired under the Plan. Holders of the Senior Notes Claims are entitled to vote to accept or reject the Plan.

4. Class 4A – Subordinated Notes Claims

- (a) *Classification*: Class 4A consists of all Subordinated Notes Claims.
- (b) *Treatment*: On the Plan Effective Date, all Subordinated Notes Claims will be cancelled and released.
- (c) *Voting*: Class 4A is Impaired under the Plan. Holders of Claims in Class 4A are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

5. Class 5A – General Unsecured Claims against Berlin

- (a) *Classification*: Class 5A consists of all General Unsecured Claims against Berlin.
- (b) *Treatment*: On the Plan Effective Date, all General Unsecured Claims against Berlin will be cancelled and released.
- (c) *Voting*: Class 5A is Impaired under the Plan. Holders of Claims in Class 5 are conclusively deemed to have rejected the Plan pursuant

to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

6. Class 6A – 510(b) Claims against Berlin

- (a) *Classification:* Class 6A consists of all 510(b) Claims against Berlin.
- (b) *Treatment:* On the Plan Effective Date, all 510(b) Claims against Berlin will be cancelled and released.
- (c) *Voting:* Class 6A is Impaired under the Plan. Holders of Claims in Class 6A are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

7. Class 7A – Intercompany Claims against Berlin

- (a) *Classification:* Class 7A consists of all Intercompany Claims against Berlin.
- (b) *Treatment:* 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.
- (c) *Voting:* Class 7A is Impaired under the Plan. Holders of Claims in Class 7A are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

8. Class 8A – Interests in Berlin

- (a) *Classification:* Class 8A consists of all Interests in Berlin.
- (b) *Treatment:* On the Plan Effective Date, all Interests in Berlin will be cancelled and released.
- (c) *Voting:* Class 8A is Impaired under the Plan. Holders of Interests in Class 8A are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

**C. Treatment of Burgess Claims and Interests**

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.

1. Class 1B – Other Secured Claims against Burgess

- (a) *Classification:* Class 1B consists of all Other Secured Claims against Burgess.

*Treatment:* 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.

- (b) *Voting:* Class 1B is Unimpaired under the Plan. Holders of Claims in Class 1B are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

2. Class 2B – Other Priority Claims against Burgess

- (a) *Classification:* Class 2B consists of all Other Priority Claims against Burgess.

- (b) *Treatment:* 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.

- (c) *Voting:* Class 2B is Unimpaired under the Plan. Holders of Claims in Class 2B are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

3. Class 3B – Senior Notes Claims

- (a) *Classification:* Class 3B consists of all Senior Notes Claims.

- (b) *Allowance:* On the Plan Effective Date, the Senior Notes Claims shall be Allowed in the principal amount of \$[\_\_\_\_\_] plus any accrued and unpaid interest and all accrued and unpaid fees, expenses, premiums and indemnities.

- (c) *Treatment*: 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:
- (i) Stand-Alone Restructuring Scenario: In a Stand-Alone Restructuring Scenario, 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
- (ii) Sale Scenario: In a Sale Scenario, 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.
- (d) *Voting*: Class 3B is Impaired under the Plan. Holders of the Senior Notes Claims are entitled to vote to accept or reject the Plan

4. Class 4B – General Unsecured Claims against Burgess

- (a) *Classification*: Class 4B consists of all General Unsecured Claims against Burgess.
- (b) *Treatment*: 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.
- (c) *Voting*: Class 4B is Unimpaired under the Plan. Holders of Claims in Class 4B are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

5. Class 5B – 510(b) Claims against Burgess

- (a) *Classification*: Class 5B consists of all 510(b) Claims against Burgess.



- (b) *Treatment:* 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.
- (c) *Voting:* Class 5B is Unimpaired under the Plan. Holders of Claims in Class 5B are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

6. Class 6B – Intercompany Claims against Burgess

- (a) *Classification:* Class 6B consists of all Intercompany Claims against Burgess.
- (b) *Treatment:* On the Plan Effective Date, all Intercompany Claims against Burgess will be Reinstated.
- (c) *Voting:* Class 6B is Unimpaired under the Plan. Holders of Claims in Class 6B are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

7. Class 7B – Interests in Burgess

- (a) *Classification:* Class 7B consists of all Interests in Burgess.
- (b) *Treatment:* 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] in accordance with the Plan.
- (c) *Voting:* Class 7B is Impaired under the Plan. Holders of Interests in Class 7B are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

**D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing herein shall affect the rights of the Debtors, Reorganized Debtors, or Wind-Down Debtors, as applicable, in respect of any Unimpaired Claims, including all legal and equitable defenses to such Claims or rights of setoffs or recoupments. Unless expressly Allowed herein, Unimpaired Claims shall remain Disputed Claims.

Notwithstanding anything to the contrary in the Plan, Plan Supplement or Confirmation Order, until an Unimpaired Claim (including cure claims related to the assumption of Executory Contracts and Unexpired Leases, and claims for damages related to the rejection of the same), or which is an Administrative Claim or Priority Tax Claim has been (x) paid in full in accordance with applicable law, or on terms agreed to between the holder of such Claim and the Debtors, the Reorganized Debtors or Wind-Down Debtors, as applicable, or (y) otherwise satisfied or disposed of as determined by a court of competent jurisdiction: (a) the provisions of Article VIII.A hereof (but as to Article VIII.A.2 only to the extent that such provision releases claims that could be asserted derivatively by the holder of such Claim) shall not apply or take effect with respect to such Claim, (b) such Claim shall not be deemed settled, satisfied, resolved, released, discharged, barred or enjoined, (c) the property of each of the Debtors' Estates that vests in the applicable Reorganized Debtor pursuant to the Plan shall not be free and clear of such Claims, and (d) any Liens of holders of Unimpaired Claims, Administrative Claims or Priority Tax Claims shall not be deemed released.

Holders of Unimpaired Claims shall not be required to File a Proof of Claim with the Bankruptcy Court. Holders of Unimpaired Claims shall not be subject to any claims resolution process in Bankruptcy Court in connection with their Claims, and shall retain all their rights under applicable non-bankruptcy law to pursue their Claims against the Debtors or Reorganized Debtors or other entity in any forum with jurisdiction over the parties. The Debtors and Reorganized Debtors shall retain all defenses, counterclaims, rights to setoff, and rights to recoupment as to Unimpaired Claims. If the Debtors or the Reorganized Debtors dispute any Unimpaired Claim, such dispute shall be determined, resolved or adjudicated in the manner as if the Chapter 11 Cases had not been commenced.

**E. Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims entitled to vote against each Debtor (if there exists one Class of Claims that is Impaired against a given Debtor). The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

**F. Subordinated Claims**

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective treatment thereof under the Plan take into account the relative priority of the Claims in each Class, whether arising under a contract, principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, and subject to the Restructuring Support Agreement, the Debtors reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

### **G. Elimination of Vacant Classes**

Any Class that does not have a Claim or Interest in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for all purposes.

### **H. Controversy Concerning Impairment**

If a controversy arises as to whether any Claims or any Class of Claims are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

## **IV. MEANS FOR IMPLEMENTATION OF THE PLAN**

### **A. General**

#### **1. General Settlement of Claims and Interests**

After the Plan Effective Date, the Reorganized Debtors and/or the Wind-Down Debtor(s), as applicable, may compromise and settle any Claim and/or Cause of Action against the Debtors' Estate(s) without any further notice to or action, order, or approval of the Bankruptcy Court.

#### **2. Restructuring Transactions**

On or about the Plan Effective Date, the Debtors, the Reorganized Debtors, and the Wind-Down Debtor(s) (in each case with the consent of the Senior Lenders), may take all actions as may be necessary or appropriate to effectuate the Restructuring Transactions, including: (a) the execution and delivery of any appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, formation, organization, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Persons may agree, including the documents comprising the Plan Supplement; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable Persons agree; (c) the execution, delivery, and filing, if applicable, of appropriate certificates or articles of incorporation, formation, reincorporation, merger, amalgamation, consolidation, conversion, arrangement, continuance, or dissolution pursuant to applicable law; (d) the Sale Transaction(s), if any; (e) such other transactions that are required to effectuate the Restructuring Transactions in the most efficient manner for the Debtors and the Senior Lenders, including in regard to tax matters and any mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (f) the selection of the New Board; (g) the authorization, issuance, and distribution of the New Reorganized Debtor Equity; (h) execution, delivery, and filing, if applicable, of the New Note Documents; (i) the appointment of the Plan Administrator; (j) the execution, delivery, and adoption of the New Organizational Documents; and (k) all other act or actions contemplated or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions, including making filings or recordings that may be required by applicable law.

### 3. Insurance Policies

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under the Plan. On the Plan Effective Date, unless an insurance policy (i) was specifically designated for assignment to the Purchaser, if applicable, (ii) was rejected by the Debtors pursuant to a Bankruptcy Court order, or (iii) is the subject of a motion to reject Filed by the Debtors that remains pending on the date of the Confirmation Hearing with respect to the Plan, (a) the Reorganized Debtors or the Wind-Down Debtor(s), as applicable, shall be deemed to have assumed each such insurance policy and any agreements, documents, and instruments relating to coverage of all insured Claims and (b) such insurance policy and any agreements, documents, or instruments relating thereto shall vest in the Reorganized Debtors or the Wind-Down Debtor(s), as applicable.

### 4. Section 1146 Exemption

To the maximum extent permitted pursuant to section 1146(a) of the Bankruptcy Code, any transfer of property (whether from a Debtor to a Reorganized Debtor or to any other Person) under, in furtherance of, or in connection with the Plan, including pursuant to any Sale Transaction(s) or a Stand-Alone Restructuring Transaction (in each case, as applicable) or (1) the issuance, distribution, transfer, or exchange of any debt, equity Security, or other interest in the Debtors or the Reorganized Debtors, including the New Reorganized Debtor Equity, if applicable, (2) the Restructuring Transactions; (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (4) the making, assignment, or recording of any lease or sublease; (5) the grant of collateral as security for the Reorganized Debtors' obligations under and in connection with the New Notes, if applicable; or (6) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any tax or governmental assessment under any law imposing a document recording tax, stamp tax, conveyance tax, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee regulatory filing or recording fee, sales and use tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment against the Debtors and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forgo the collection of any such tax, recordation fee, or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. The Bankruptcy Court shall retain specific jurisdiction with respect to these matters.

5. Cancellation of Securities and Agreements

On the Plan Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of the Debtors under any certificate, Security, share, note, bond, credit agreement, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Interest (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligation of or ownership interest in the Debtors that are Reinstated pursuant to the Plan, if any) shall be cancelled solely as to the Debtors, and the Reorganized Debtors or the Wind-Down Debtors, as applicable, shall not have any continuing obligations thereunder or relating to the cancellation thereof; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in such Debtors (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligation of or ownership interest in such Debtors that are specifically Reinstated pursuant to the Plan) shall be released and discharged.

6. No Recourse for any Cancellation of Debt Income

No party, including Governmental Units, the Sponsors or any Related Party of any Sponsor, shall have any recourse to the Debtors, the Reorganized Debtors, the Wind-Down Debtors, the Senior Lenders, the Senior Notes Agent, the DIP Agent, the DIP Lenders, the holders of the New Reorganized Debtor Equity the holders of the New Notes, or any Related Party of the foregoing, on account of any cancellation of debt income, whether on a theory of contribution, indemnification, or otherwise, stemming from the Restructuring Transactions.

7. Effectuating Documents; Further Transactions

On and after the Plan Effective Date, the Reorganized Debtors or Wind-Down Debtors, as applicable, and the officers and members of the New Board or the Plan Administrator, as applicable, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the New Note Documents and the New Organizational Documents, and the Securities issued pursuant to the Plan in the name of and on behalf of the applicable Reorganized Debtors or the Wind-Down Debtors, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

8. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, unless expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or assigned to the Purchaser(s) in any Sale Transaction(s), the Reorganized Debtors and Wind-Down Debtors, as applicable, shall retain and may enforce all rights to commence or pursue any and all Causes of Action of the applicable Debtors' Estates, not otherwise so waived, relinquished, exculpated,

released, compromised, settled or assigned (as the case may be), whether arising before or after the Petition Date, including, but not limited to, any actions specifically enumerated in the Schedule of Retained Causes of Action, and the Reorganized Debtors' or the Wind-Down Debtor(s)' rights to commence, prosecute, compromise, settle or release such Causes of Action shall be preserved notwithstanding the occurrence of the Plan Effective Date, other than the Claims and Causes of Action released pursuant to the releases and exculpations contained in Article VIII hereof. Unless any Cause of Action is expressly waived, relinquished, exculpated, released, compromised, or settled under the Plan or a Final Order, such Cause of Action is preserved for later adjudication, and no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to any such Cause of Action upon, after, or as a consequence of the Confirmation of the Plan or the occurrence of the Plan Effective Date.

**No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors, the Reorganized Debtors or the Wind-Down Debtor(s), as applicable, will not pursue any and all available Causes of Action against it. The Debtors, the Reorganized Debtors, and the Wind-Down Debtor(s), as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan, including Article VIII of the Plan.**

The Reorganized Debtors and Wind-Down Debtor(s), as applicable, (i) reserve and shall retain all Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan and (ii) shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

#### **B. Restructuring of the Debtors Effectuated Through the Sale Scenario**

In a Sale Scenario, the following provisions shall apply. The Confirmation Order with respect to the Plan shall authorize, pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code, all actions necessary or appropriate to effectuate the Sale Transaction(s), including, (i) the execution and delivery of the Purchase Agreement(s) and all other Sale Transaction Documents, (ii) the transfer of the purchased assets or the New Reorganized Debtor Equity free and clear of all Liens, Claims, charges, or other encumbrances, to the applicable Purchaser(s), (iii) all transactions contemplated by the Purchase Agreement(s), including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code, (iv) if applicable, the appointment of the Plan Administrator, and (v) if applicable, the execution and delivery of the Plan Administrator Agreement.

##### **1. Closing of the Sale Transaction(s)**

On the Plan Effective Date, the Debtors shall be authorized to consummate the Sale Transaction(s) with the Purchaser(s) and/or any other applicable party and, among other things, the Debtors' assets specified in the Purchase Agreement(s) (including any Executory Contracts

and Unexpired Leases the applicable Purchaser(s) wish to assume) or the New Reorganized Debtor Equity, as applicable, shall be transferred to and vest in the applicable Purchaser(s) free and clear of all Liens, Claims, Interests, charges or other encumbrances, purchase rights, options or rights of first refusal, pursuant to the terms of the applicable Sale Transaction Documents and the order of the Bankruptcy Court approving the Sale Transaction(s) contemplated thereby, which may be the Confirmation Order, and the Purchaser(s) may operate the purchased assets in the ordinary course, without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

## 2. Wind-Down and Dissolution of the Debtors

In a Sale Scenario, to the extent there is at least one Wind-Down Debtor on the Plan Effective Date, then such Wind-Down Debtor(s) shall continue in existence after the Plan Effective Date for purposes of: (a) winding down the Debtors' businesses and affairs as expeditiously as reasonably possible and liquidating any assets held by the Wind-Down Debtor(s) after the Plan Effective Date; (b) performing the Debtors' remaining obligations under any Sale Transaction Documents, if any; (c) resolving any Disputed Claims against the Debtors; (d) making distributions on account of Allowed Claims against the Debtors in accordance with the Plan to the extent not made on the Plan Effective Date; (e) filing appropriate tax returns, if any; and (f) administering the Plan in an efficient manner. The Wind-Down Debtor(s) shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (x) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, and (y) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.

On the Plan Effective Date, any assets of the Debtors' Estates remaining after the closing of the Sale Transaction(s) shall vest in the Wind-Down Debtor(s) for the purpose of liquidating the Debtors' Estates and Consummation of the Plan. Such assets shall be held free and clear of all Liens, Claims, Interests, charges or other encumbrances, purchase rights, options or rights of first refusal, except as otherwise provided in the Plan. Any distributions to be made under the Plan from such assets shall be made by the Plan Administrator or its designee. The Wind-Down Debtor(s) and the Plan Administrator shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

Any contrary provision hereof notwithstanding, following the occurrence of the Plan Effective Date and the making of distributions on the Plan Effective Date pursuant hereto, (i) any of the Debtors' Cash held by the Wind-Down Debtor(s) in excess of the Wind-Down Budget and (ii) the proceeds of any non-Cash assets of the Debtors' Estates vested in the Wind-Down Debtor(s), shall be payable to holders of DIP Claims and Senior Notes Claims until such claims are indefeasibly paid in full in Cash. The Plan Administrator shall make such distributions in Cash in accordance with Article III hereof.

## 3. The Plan Administrator

On and after the Plan Effective Date, to the extent applicable, the Plan Administrator, shall be appointed by the Debtors with the consent of the Senior Lenders.

The Plan Administrator shall not be required to post any bond or surety or other security for the performance of its duties hereunder unless otherwise ordered by the Bankruptcy Court. In the event that the Plan Administrator is so ordered, all costs and expenses of procuring any such bond or surety shall be paid for with Cash from the Wind-Down Assets.

The Plan Administrator may resign at any time upon thirty (30) days' written notice to the Bankruptcy Court; provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Plan Administrator relating to the Wind-Down Debtor(s) shall be terminated.

(a) The Plan Administrator's Rights and Powers

The powers of the Plan Administrator shall include any and all powers and authority necessary or helpful to implement and carry out the provisions of the Plan and any applicable orders of the Bankruptcy Court. The Plan Administrator shall be the representative of the Debtors' Estates appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

Without limiting the foregoing, the Plan Administrator shall (a) hold, liquidate, invest, supervise, and protect the Wind-Down Assets; (b) effectuate the distributions contemplated under the Plan; (c) object to or settle Disputed Claims against the Debtors; (d) establish and maintain the Disputed Claims Reserve with respect to the Disputed Claims against the Debtors or their Estates; (e) prosecute any or all of the Causes of Action retained by the Wind-Down Debtor(s); (f) pay all reasonable fees, expenses, debts, charges, and liabilities of the Wind-Down Debtor(s); (g) file tax returns for, pay taxes of, and represent the interests of the Wind-Down Debtor(s) or the Debtors' Estates, as applicable, before any taxing authority in all matters, including any action, suit, proceeding, or audit; (h) File the operating report for the Debtors' Estates for the month in which the Plan Effective Date occurs and all subsequent quarterly reports; (i) take any action necessary to wind down the business and affairs of the Wind-Down Debtor(s); and (j) file appropriate certificates of dissolution of the Wind-Down Debtor(s) pursuant to applicable state or provincial law.

As soon as practicable after the Plan Effective Date, the Plan Administrator shall cause the Wind-Down Debtor(s) to comply with, and abide by, the terms of the Plan and take any actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. Except to the extent necessary to complete the Wind-Down of any of the Debtors' remaining assets or operations from and after the Plan Effective Date, the Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from the State of New Hampshire and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have canceled pursuant to the Plan all Interests in the Debtors, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Plan Effective Date. The Filing of the final monthly operating report for the Debtors' Estates (for the month in which the Plan Effective Date occurs) and all subsequent quarterly post-Confirmation reports shall be the responsibility of the Plan Administrator.



The Plan Administrator shall act for the Wind-Down Debtor(s) in the same fiduciary capacity as applicable to a board of directors and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Plan Effective Date, the persons acting as members, managers, or officers of the Debtor(s) shall be deemed to have resigned and a representative of the Plan Administrator shall be appointed as the sole manager and sole officer of the Wind-Down Debtor(s) and shall succeed to the powers of the Debtors' directors, managers and officers. From and after the Plan Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Wind-Down Debtor(s). For the avoidance of doubt, the foregoing shall not limit the authority of the Wind-Down Debtor(s) or the Plan Administrator, as applicable, to continue the employment of any former member, manager, or officer, including pursuant to any transition services or other agreement, in each case, to the extent permitted by applicable law.

(b) Retention of the Plan Administrators' Professionals

The Plan Administrator shall have the right to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of its duties. The reasonable fees and expenses of such professionals shall be paid from the Wind-Down Assets upon the monthly submission of statements to the Plan Administrator. The payment of the reasonable fees and expenses of the Plan Administrator's retained professionals shall be made in the ordinary course of business in accordance with the Wind-Down Budget and shall not be subject to the approval of the Bankruptcy Court.

(c) Compensation of the Plan Administrator

All reasonable costs, expenses, and obligations incurred by the Plan Administrator in administering the Plan, the Wind-Down Debtor(s)' Estates, or in any manner connected, incidental, or related thereto, shall be paid from the Wind-Down Assets in accordance with the Wind-Down Budget and on the terms set forth in the Plan Administrator Agreement. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator on or after the Plan Effective Date (including taxes imposed on the Wind-Down Debtors) in connection with its duties hereunder and the Plan Administrator Agreement shall be paid without any further notice to, or action, order, or approval of, the Bankruptcy Court.

(d) Indemnification, Insurance, and Liability Limitation

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed indemnified by the Wind-Down Debtor(s) to the fullest extent permitted by applicable law from any claims or Causes of Action relating to or arising in connection with the performance of its duties hereunder or under the Plan Administrator Agreement, except for claims and Causes of Action related to any act or omission that is determined by Final Order of a court of competent jurisdiction to have constituted fraud, willful misconduct, or gross negligence. The Plan Administrator may obtain, at the expense of the Wind-Down Debtor(s) and in accordance with the Plan Administrator Agreement, commercially reasonable liability or other appropriate insurance with respect to the foregoing indemnification

obligations. Any such insurance shall be paid solely from the Wind-Down Assets in accordance with the Wind-Down Budget. The Plan Administrator may rely upon all written information previously generated by the Debtors.

Notwithstanding anything to the contrary contained herein, the Plan Administrator in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Wind-Down Debtor(s).

(e) Tax Returns

The Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Wind-Down Debtor(s) and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of any Wind-Down Debtor or the Estate of its predecessor Debtor, as determined under applicable tax laws.

4. Vesting of Assets in the Wind-Down Debtor(s) or Purchaser(s)

Except as otherwise provided herein, on the Plan Effective Date, all Wind-Down Assets shall vest in the Wind-Down Debtor(s), free and clear of all Liens, Claims, Interests, charges, or other encumbrances, purchase rights, options or rights of first refusal, unless expressly provided otherwise by the Plan or the Confirmation Order. On and after the Plan Effective Date, the Wind-Down Debtor(s) may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

5. Sources of Consideration for Plan Distributions.

The Plan Administrator shall fund distributions under the Plan, to the extent not made on the Plan Effective Date, with Cash on hand, the Sale Proceeds, if any, and proceeds of the Debtors' retained Causes of Action not settled, released, discharged, enjoined, or exculpated on or prior to the Plan Effective Date.

**C. Restructuring of the Debtors Effectuated Through a Stand-Alone Restructuring Transaction**

If a Stand-Alone Restructuring Transaction occurs, the following provisions shall apply:

1. The New Notes

On the Plan Effective Date, the Reorganized Debtors shall enter into the New Note Documents. The Confirmation Order shall approve the New Notes and the New Note Documents (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations and guarantees to be incurred and fees paid in connection therewith), and all Claims, Liens, and security interests to be granted in accordance with the terms of the New Note Documents, if any, (a) shall be deemed to be granted, (b) shall be legal, binding, and enforceable Claims and Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the New Note Documents, (c) shall be deemed automatically attached

and perfected on the Plan Effective Date, subject only to the Liens and security interests as may be permitted under the New Note Documents, and (d) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law. The Debtors and the Reorganized Debtors, as applicable, and the Persons granting such Liens and security interests are authorized to make all filings and recordings and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order with respect to the Plan, and any such filings, recordings, approvals, and consents shall not be required) and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

## 2. Release of Liens

Subject to the distributions provided for in the Plan, except as otherwise provided herein, in the New Note Documents, or any contract, agreement, instrument, or another document created pursuant to or in connection with the Plan, on the Plan Effective Date, all mortgages, deeds of trust, Liens, pledges, rights, or other security interests against any property of the applicable Debtors' Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, rights, or other security interests shall revert automatically to the applicable Debtor. All holders of Secured Claims against the Debtors or any of their property (and such holders' agents) shall release any collateral or other property of the applicable Debtor (including any cash collateral and possessory collateral) held by such holder (or such holders' agents), and take such actions as may be reasonably requested by the Reorganized Debtors to evidence the release of the applicable security interests, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such security interests.

## 3. Sources of Consideration for Plan Distributions

The Reorganized Debtors shall fund distributions under the Plan with the New Reorganized Debtor Equity, Cash on hand, and Cash generated from operations.

From and after the Plan Effective Date, the Reorganized Debtors, subject to any applicable limitations set forth in any post-Plan Effective Date agreement (including the New Note Documents and New Organizational Documents), shall have the right and authority without further notice to or action, order, or approval of the Bankruptcy Court to raise additional capital and obtain additional financing as the New Board of the applicable Reorganized Debtors deems appropriate.

4. Issuance of New Reorganized Debtor Equity; Section 1145 Exemption

On the Plan Effective Date, the Reorganized Debtors shall issue the New Reorganized Debtor Equity to the holders of [the Allowed DIP Claims,] Allowed Senior Notes Claims[, in each case, as applicable and] without the need for any further corporate action or further notice to, action or order of the Bankruptcy Court. The shares of the New Reorganized Debtor Equity issued under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance of the New Reorganized Debtor Equity under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Person receiving such distribution or issuance. The issuance of the New Reorganized Debtor Equity by the Reorganized Debtors shall be authorized without the need for any further corporate action or without any further action by the Debtors or Reorganized Debtors or by holders of any Claims or Interests against the Debtors, as applicable. As a condition to receiving the New Reorganized Debtor Equity, each holder entitled to a distribution of New Reorganized Debtor Equity, including holders of Senior Notes Claims [and DIP Claims], will be required to execute and deliver the New Organizational Documents, as applicable; provided however, that, notwithstanding any failure to execute the New Organizational Documents, as applicable, any Person that is entitled to and accepts a distribution of New Reorganized Debtor Equity under the Plan, by accepting such distribution, will be deemed to have accepted and consented to the terms of the New Organizational Documents, without the need for execution by any party thereto. The New Reorganized Debtor Equity will not be registered under the Securities Act or listed on any exchange as of the Plan Effective Date.

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of the New Reorganized Debtor Equity after the Petition Date shall be exempt from, among other things, the registration requirements of Section 5 of the Securities Act or any similar federal, state, or local law in reliance on section 1145 of the Bankruptcy Code or, only to the extent such exemption under section 1145 of the Bankruptcy Code is not available, any other available exemption from registration under the Securities Act. Pursuant to section 1145 of the Bankruptcy Code, such New Reorganized Debtor Equity will be freely tradable in the United States without registration under the Securities Act by the recipients thereof, subject to the provisions of (1) section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in Section 2(a)(11) of the Securities Act and compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments, (2) any other applicable regulatory approvals, and (3) any restrictions in the New Organizational Documents.

Any Securities distributed pursuant to Section 4(a)(2) of the Securities Act will be considered “restricted securities” as defined by Rule 144 of the Securities Act and may not be resold under the Securities Act or applicable state securities laws absent an effective registration statement, or pursuant to an applicable exemption from registration, under the Securities Act and applicable state securities laws and subject to any restrictions in the New Organizational Documents.

Notwithstanding anything to the contrary in the Plan, no Person shall be entitled to require a legal opinion regarding the validity of any transaction contemplated by the Plan, including, for

the avoidance of doubt, whether the issuance of the New Reorganized Debtor Equity is exempt from the registration requirements of Section 5 of the Securities Act.

Recipients of the New Reorganized Debtor Equity are advised to consult with their own legal advisors as to the availability of any exemption from registration under the Securities Act and any applicable state securities laws.

#### 5. Corporate Existence

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on and after the Plan Effective Date, each Reorganized Debtor, as applicable, shall continue to exist as a separate corporation, limited liability company, partnership, or other form of entity, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form of entity, as the case may be, pursuant to the applicable law in the jurisdiction in which the particular Debtor is incorporated or formed and pursuant to their respective certificate of incorporation and bylaws (or other similar Governance Documents) in effect prior to the Plan Effective Date, except to the extent such certificate of incorporation and bylaws (or other similar Governance Documents) are amended under the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law).

After the Plan Effective Date, the respective certificate of incorporation and bylaws (or other formation documents) of one or more of the Reorganized Debtors may be amended or modified in accordance with their terms without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. On or after the Plan Effective Date, one or more of the Reorganized Debtors may be disposed of, dissolved, wound down, or liquidated without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

#### 6. New Organizational Documents

On or immediately prior to the Plan Effective Date, the New Organizational Documents shall be adopted automatically by the Reorganized Debtors. To the extent required under the Plan or applicable non-bankruptcy law, the Reorganized Debtors shall file their respective New Organizational Documents with the applicable Secretaries of State and/or other applicable authorities in their respective states, provinces, or countries of incorporation in accordance with the corporate laws of the respective states, provinces, or countries of incorporation. The New Organizational Documents shall, among other things: (1) authorize the issuance of the New Reorganized Debtor Equity; (2) not provide for any indemnification, contribution, reimbursement, or any other liability for the Reorganized Debtors to the Sponsors or their Related Parties for any claim whatsoever, including but not limited to on account of cancelation of debt income; and (3) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting equity securities of the Debtors. After the Plan Effective Date, each Reorganized Debtor may amend and restate its limited liability company agreement, certificate of incorporation and other formation and constituent documents as permitted

by the laws of its respective jurisdiction of formation and the terms of the New Organizational Documents.

7. Vesting of Assets in the Reorganized Debtors

Except as otherwise provided herein, or in any agreement, instrument or other document incorporated in the Plan, on the Plan Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property in each Debtor's Estate, all Causes of Action of the Debtors' Estates (other than any Causes of Action that are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan) and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges and/or other encumbrances, purchase rights, options or rights of first refusal. On and after the Plan Effective Date, except as otherwise provided herein, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and pursue, compromise or settle any Claims, Interests, or Causes of Action with respect to the Debtors without further notice to, action, or approval of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

8. Directors, Managers, and Officers

As of the Plan Effective Date, the term of the current members of the boards of directors or managers or any managing member of the Debtors shall expire, and the New Board and the officers or managers of each of the Reorganized Debtors shall be appointed in accordance with the respective New Organizational Documents.

Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtors shall disclose, in advance of the Confirmation Hearing, the identity and affiliations of any Person proposed to serve on the New Board or be an officer of any of the Reorganized Debtors. To the extent any such director, manager or officer is an "insider" (as defined in the Bankruptcy Code), the Debtors also shall disclose the nature of any compensation to be paid to such director, manager or officer. Each such director, manager and officer shall serve from and after the Plan Effective Date pursuant to the terms of the New Organizational Documents.

9. Employee and Retiree Benefits

To the extent that the Debtors and Senior Lenders determine that any Compensation and Benefits Programs shall remain in place after the Plan Effective Date, the Debtors, with the consent of the Senior Lenders, will list such agreement on the Assumed Executory Contracts and Unexpired Leases List, and such agreement will be assumed as of the Plan Effective Date. If the Debtors do not list such agreement on the Assumed Executory Contracts and Unexpired Leases List, such agreement shall be deemed rejected in accordance with Article V of the Plan without any resulting Claims assertable against the Debtors or their Estates.

## V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

### A. Assumption and Rejection of Executory Contracts and Unexpired Leases

#### 1. In a Sale Scenario

On the Plan 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 this Article V.A.1 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.

#### 2. In a Stand-Alone Restructuring Scenario

On the Plan 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, to the extent not previously rejected or terminated, 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 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.

Each Executory Contract and Unexpired Lease assumed pursuant to this Article V.A.2 of the Plan, shall re-vest in and be fully enforceable by the applicable Reorganized Debtor in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court.

#### 3. O&M Agreement and Project Management Agreement in a Stand-Alone Restructuring Scenario

In the Stand-Alone Restructuring Scenario, on the Plan Effective Date, the following Executory Contracts shall be, at the election of the Senior Lenders, deemed either (1) rejected or (2) assumed under section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court.

In the event the Pro Forma Owners and the counterparties to the O&M Agreement and/or the Project Management Agreement enter into any amendment in connection with the assumption of the O&M Agreement and Project Management Agreement, the form of the amended O&M Agreement and/or the amended Project Management Agreement (as applicable) shall be included in the Plan Supplement.

In the event of rejection or termination of the Project Management Agreement and/or O&M Agreement (as applicable), CS Berlin Ops, Inc. and CS Operations, Inc. (as applicable) shall (x) continue to perform under such rejected or terminated contract in a manner consistent with past practices (including continued assignment of current personnel) for a period of time as reasonably necessary for the Debtors or the Pro Forma Owners to enter into a new project management agreement or operations and maintenance agreement (as applicable) with either (i) CS Berlin Ops, Inc. and CS Operations, Inc. (as applicable) until such time as replacement agreements acceptable to the Pro Forma Owners are executed and in full force and effect or (ii) a successor operator(s) until such time that a successor operator has effective agreements, and all of the information and resources needed, to operate the Debtors' or the Reorganized Debtors' business, in the sole discretion of the Pro Forma Owners and (y) in the case of a successor operator(s), to assist the successor operator(s) through the conclusion of such transition; provided, however, that the obligations of CS Berlin Ops, Inc. and CS Operations, Inc. under this paragraph are conditioned upon each such entity being compensated for its services in a manner and amount consistent with past practices on a monthly basis as had been provided for in the rejected and/or terminated Project Management Agreement and O&M Agreement (as applicable).

#### 4. Lease and Right to Use Agreement in a Stand-Alone Restructuring Scenario

In the Stand-Alone Restructuring Scenario, on the Plan Effective Date, the Lease and Right to Use Agreement shall be deemed assumed by both Berlin and Burgess; provided, further, in the event the Plan as to Burgess is severed and withdrawn as provided for in Article X.E, then, in connection with the Pro Forma Owners' acquisition of Burgess' assets through a sale, the Lease and Right to Use Agreement shall, at the Pro Forma Owners' discretion, be either: (1) terminated by both parties thereto in form and substance acceptable to the Pro Forma Owners, (2) assumed by Berlin and shall be assumed and assigned by Burgess to the Reorganized Berlin or to a third party designated by the Pro Forma Owners, or (3) rejected by Burgess.

#### **B. Approval of Assumption, Assignment and Rejection**

Entry of the Confirmation Order shall, subject to and upon the occurrence of the Plan Effective Date, constitute the Bankruptcy Court's approval of the assumptions, assignments or rejections, as applicable, of the Executory Contracts and Unexpired Leases under the Plan. Any motion of the Debtors to assume an Executory Contract or Unexpired Lease pending on the Plan Effective Date shall be subject to approval by the Bankruptcy Court by a Final Order.

Notwithstanding anything to the contrary in the Plan, the Debtors and the Reorganized Debtors, as applicable, reserve the right to amend, modify, or supplement the Assumed Executory Contracts and Unexpired Leases List to add or remove any Executory Contract or Unexpired Lease to such list at any time prior to the Plan Effective Date (or prior to such later date as may be designated in any Purchase Agreement, as applicable), subject to the consent of the Senior Lenders.



The Debtors or the Reorganized Debtors shall provide notice of any amendments to the Assumed Executory Contracts and Unexpired Leases List to their counterparties affected thereby.

### **C. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Unless otherwise provided by a Final Order, Proofs of Claim with respect to 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. All Allowed Claims arising from the rejection of a Debtor's Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims against such Debtor. No non-Debtor party to a rejected Executory Contract or Unexpired Lease shall be permitted to setoff or recoup any amounts owed to the Debtors under such rejected Executory Contract or Unexpired Lease against any Allowed rejection damages.

**Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time shall be automatically Disallowed, released, and discharged, and forever barred from assertion without the need for any objection or further notice to, or action, order, or approval of, the Bankruptcy Court or any other Person, any such Claim shall be released, and discharged, notwithstanding anything in the Schedules or any Proof of Claim to the contrary, and such Claim shall not be enforceable against the Debtors, the Reorganized Debtors, the Debtors' Estates, or the Wind-Down Debtor(s) as applicable, or their respective properties.**

### **D. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed**

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied by the applicable Debtor(s) party to such Executory Contract or Unexpired Lease, pursuant to section 365(b)(1) of the Bankruptcy Code, (i) in a Stand-Alone Restructuring Scenario, by payment of the Cure Amount in Cash on the Plan Effective Date by the Debtors or on such other terms as the parties to such Executory Contracts or Unexpired Leases, with the consent of the Senior Lenders, may agree, and (ii) in a Sale Scenario, in accordance with the Assumption and Assignment Procedures and the terms of the applicable Purchase Agreement(s). In the event of an unresolved dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of the Reorganized Debtors or Purchaser(s) (as applicable) or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code), or (3) any other matter pertaining to assumption, the payment of the Cure Amount required by section 365(b)(1) of the Bankruptcy Code shall be resolved by a Final Order.

The Debtors shall serve on the applicable counterparties notices of proposed assumption and proposed Cure Amounts pursuant to the terms of the Bidding Procedures. **Any objection by a counterparty to an Executory Contract or Unexpired Lease to the proposed assumption or Cure Amount must be Filed and served to be actually received by no later than the applicable objection deadline set forth in the Bidding Procedures Order.** Any counterparty to an Executory Contract or Unexpired Lease designated for assumption that fails to object timely to the

proposed assumption, Cure Amount or adequate assurance of future performance shall be deemed to have consented to all of the foregoing.

Assumption (or assumption and assignment, as applicable) of an Executory Contract or Unexpired Lease pursuant to the Plan shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under such Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.**

**E. Preexisting Obligations under Executory Contracts and Unexpired Leases.**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the applicable Debtor(s) thereunder. In particular, notwithstanding any non-bankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, outstanding Cash payments, warranties or continued maintenance obligations on any goods previously purchased by the Debtors from a non-Debtor counterparty to a rejected Executory Contract or Unexpired Lease.

**F. Modifications, Amendments, Supplements, Restatements, or Other Agreements**

Unless otherwise provided in the Plan, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to the Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Debtors' Chapter 11 Cases shall not be deemed to alter the prepetition nature of the applicable Executory Contracts or Unexpired Leases, or the validity, priority, or amount of any Claims that may arise in connection therewith.

**G. Reservation of Rights**

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Assumed Executory Contracts and Unexpired Leases List, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Reorganized Debtors, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease under the Plan.

#### **H. Nonoccurrence of the Plan Effective Date**

In the event that the Plan Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases of nonresidential property pursuant to section 365(d)(4) of the Bankruptcy Code.

#### **I. Contracts and Leases Entered Into After the Petition Date**

Contracts and leases entered into by a Debtor after the Petition Date, as well as any Executory Contracts and Unexpired Leases assumed by a Debtor, shall be performed by the applicable Debtor, Reorganized Debtor(s), Purchaser(s), or Plan Administrator, as applicable, in the ordinary course of business. Such contracts and leases that are not rejected under the Plan shall survive and remain unaffected by entry of the Confirmation Order.

### **VI. PROVISIONS GOVERNING DISTRIBUTIONS**

#### **A. Timing and Calculation of Amounts to Be Distributed**

Unless otherwise provided in the Plan, on the Plan Effective Date (or if a Claim is not an Allowed Claim on the Plan Effective Date, on the date that such Claim becomes an Allowed Claim), each holder of an Allowed Claim shall receive, subject to the provisions of Article VII hereof, the full amount of the distribution that the applicable Plan provides on account of Allowed Claims in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as otherwise provided in the Plan, holders of Allowed Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or after the Plan Effective Date.

#### **B. Delivery of Distributions**

##### **1. Persons Responsible**

Distributions under the Plan shall be made by (i) in a Sale Scenario, by the Plan Administrator or the Debtors and (ii) in a Stand-Alone Restructuring Scenario, by the Reorganized Debtors.

Except as otherwise provided herein, all distributions shall be made to the holders of Allowed Claims at the address for each such holder as indicated in the applicable Debtor's records as of the date of the relevant distribution; provided, however, that the address for each holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that holder; provided further, however, that the manner of distributions shall be determined at the discretion of the Reorganized Debtors or the Plan Administrator, as applicable.

2. Record Date for Distribution

On the Distribution Record Date, the Claims Register shall be closed with respect to Claims held against the Debtors and any party responsible for making distributions under the Plan shall be authorized and entitled to recognize only those record holders of such Claims that are listed on the Claims Register as of the close of business on the Distribution Record Date.

3. Minimum Distributions

Notwithstanding any other provision of the Plan, the Reorganized Debtors, the Wind-Down Debtor(s), or the Plan Administrator, as applicable, shall not be required to make distributions of less than \$50 in value (whether Cash or otherwise), and each Claim to which this limitation applies shall be discharged, and its holder shall be forever barred pursuant to Article VIII of the Plan from asserting such Claim against the Debtors, their applicable Estates, the Reorganized Debtors, the Wind-Down Debtors, as applicable, or their respective property, as applicable.

4. No Fractional Distributions

No fractional shares of the New Reorganized Debtor Equity shall be distributed and no Cash shall be distributed in lieu of such fractional shares. When any distribution pursuant to the Plan on account of an Allowed Claim would otherwise result in the issuance of a number of shares of New Reorganized Debtor Equity that is not a whole number, the number of shares of New Reorganized Debtor Equity to be distributed shall be rounded as follows: (a) fractions of one-half (1/2) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half (1/2) shall be rounded to the next lower whole number. The total number of authorized shares or units of New Reorganized Debtor Equity to be distributed to holders of Allowed DIP Claims, Allowed Senior Notes Claims shall be adjusted as necessary to account for the foregoing rounding.

**C. Distributions and Undeliverable or Unclaimed Distributions**

In the event that a distribution to any holder of an Allowed Claim is returned as undeliverable, no distribution to such holder shall be made unless and until the Reorganized Debtors or the Plan Administrator, as applicable, have determined the then-current address of such holder, at which time the distribution shall be made to such holder without interest; provided, however, that, at the expiration of six (6) months from the Plan Effective Date, any such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code. After such date, all unclaimed property shall automatically revert to the Reorganized Debtors or the Wind-Down Debtors, as applicable, without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any holder to such property shall be discharged and forever barred.

**D. Surrender of Cancelled Instruments or Securities**

On the Plan Effective Date or as soon as reasonably practicable thereafter, each holder of a certificate or instrument evidencing a Claim or an Interest that has been cancelled in accordance with Article IV.A.5 hereof shall be deemed to have surrendered such certificate or instrument.

Such surrendered certificate or instrument shall be cancelled solely with respect to the applicable Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis à vis one another with respect to such certificate or instrument, including with respect to any indenture or agreement that governs the rights of the holder of a Claim or Interest, which shall continue in effect for purposes of allowing holders to receive distributions under the Plan, charging liens, priority of payment, and indemnification rights. Notwithstanding anything to the contrary herein, this paragraph shall not apply to certificates or instruments evidencing Claims that are Unimpaired under the Plan.

#### **E. Compliance with Tax Requirements**

The Debtors, Reorganized Debtors or Wind-Down Debtors, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, with respect to the distributions pursuant to the Plan, and all such distributions shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors or the Plan Administrator shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such compliance, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtors and the Plan Administrator, as applicable, reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

#### **F. Allocations**

Distributions on account of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to accrued but unpaid prepetition interest.

#### **G. No Postpetition Interest on Claims**

Unless otherwise specifically provided for in the Plan, Confirmation Order or DIP Order, or required by applicable bankruptcy and non-bankruptcy law, postpetition interest shall not accrue or be paid on any Claim, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any such Claim.

#### **H. Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency published in *The Wall Street Journal*, National Edition, on the Petition Date.

## **I. Setoffs and Recoupment**

Except as expressly provided in the Plan, each Reorganized Debtor or Wind-Down Debtor, as applicable, may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any Plan distributions to be made on account of an Allowed Claim any and all Claims, rights, and Causes of Action that such Reorganized Debtor or Wind-Down Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim shall constitute a waiver or release by a Reorganized Debtor, a Wind-Down Debtor or its successor of any and all Claims, rights, and Causes of Action that such Reorganized Debtor or Wind-Down Debtor may have against the applicable claimholder. In no event shall any holder of a Claim, notwithstanding any indication in such holder's Proof of Claim that such holder asserts, has, or intends to preserve any right of setoff or recoupment pursuant to section 553 of the Bankruptcy Code or otherwise, be entitled to set off or recoup its Claim against any claim, right, or Cause of Action of the Debtor, Reorganized Debtor or Wind-Down Debtor(s), as applicable.

## **J. Claims Paid or Payable by Third Parties**

### **1. Claims Paid by Third Parties**

To the extent the holder of a Claim receives payment in full on account of such Claim from a third party, such Claim shall be Disallowed and expunged from the Claims Register without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a holder of a Claim receives a distribution on account of such Claim and thereafter receives payment from a third party on account of such Claim, such holder shall, within two weeks of receipt of the latter, repay or return to the applicable Reorganized Debtor or Wind-Down Debtors, as applicable, the portion of the received Plan distribution, if any, by which its total recovery on account of the Claim exceeds the Allowed amount of such Claim.

### **2. Claims Payable by Third Parties**

The availability, if any, of any insurance policy for the satisfaction of an Allowed Claim shall be determined by the terms of the applicable Debtor(s)'s insurance policies. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part any Allowed Claim (if and to the extent adjudicated by a court of competent jurisdiction), then, immediately upon such insurers' agreement, the applicable portion of such Claim may be Disallowed and expunged from the Claims Register without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

Nothing contained in the Plan shall constitute or be deemed a waiver of any Claim or Cause of Action that any Debtor or any Person may hold against any insurer under any insurance policies, nor shall anything contained herein constitute a waiver by any insurer of any defenses, including coverage defenses.

## **VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS**

### **A. Allowance of Claims**

After the Plan Effective Date, the Reorganized Debtors and Wind-Down Debtors, as applicable, shall have and retain any and all rights and defenses the applicable Debtor had immediately before the Plan Effective Date. No Claim shall be deemed an Allowed Claim unless and until such Claim is Allowed under the Plan or under any order entered in the Chapter 11 Cases before the Plan Effective Date (including the Confirmation Order), when such order becomes a Final Order.

### **B. No Distributions Pending Allowance**

If an objection to a Claim or a portion thereof is Filed, no distribution shall be made on account of such Claim or the applicable portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

### **C. Claims Administration Responsibilities**

Except as otherwise specifically provided in the Plan, after the Plan Effective Date, the Reorganized Debtors and the Plan Administrator, as applicable, shall have the authority to: (1) File, withdraw, or litigate to judgment objections to Claims against the applicable Estate; (2) settle, compromise, or otherwise resolve Disputed Claims against the applicable Estate without any further notice to or action, order, or approval by the Bankruptcy Court; (3) administer any applicable Disputed Claims Reserve; and (4) administer and adjust the applicable Claims Register to reflect any settlements, compromises or Final Orders resolving Disputed Claims or the fact that any Claim has been paid or satisfied, or that any Proof of Claim that has been amended or superseded, cancelled or otherwise expunged (including pursuant to the Plan), in each case without any further notice to or action, order, or approval by the Bankruptcy Court.

### **D. Disputed Claims Reserve**

In a Sale Scenario, on the Plan Effective Date, the Plan Administrator shall establish a reserve in the amount equal to the aggregate amount that would be distributable to holders of Disputed Claims against any of the Debtors if such Disputed Claims were Allowed Claims on the Plan Effective Date; provided, for the avoidance of doubt, the Reorganized Debtors shall not be required to reserve any amount on account of Disputed Claims which shall be satisfied, resolved, litigated, or otherwise disputed in the ordinary course of business.

To the extent any funds remain in the Disputed Claims Reserve after all Disputed Claims against any of the Debtors have been either Allowed and paid or Disallowed, such funds shall revert to the Wind-Down Debtors.

### **E. Estimation of Claims**

Before or after the Plan Effective Date, the Debtors, Reorganized Debtors, or Wind-Down Debtor(s), as applicable, may (but are not required to) at any time request that the Bankruptcy

Court estimate any Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to such Claim or during the appeal relating to such objection. Notwithstanding any provision in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or that otherwise has not yet been resolved by a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the relevant Debtor, Reorganized Debtor or Wind-Down Debtor, as applicable, may elect to pursue a supplemental proceeding to object to any ultimate allowance of such Claim.

#### **F. Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the later of (1) 180 days after the Plan Effective Date and (2) such other period of limitation as may be fixed by the Bankruptcy Court.

#### **G. Disallowance of Claims**

Any Claims held by Persons from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code, or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Person have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, from that Person have been turned over or paid to the Reorganized Debtors or Wind-Down Debtors, as applicable.

All Claims against any Debtor, whether Filed or listed in any of the Debtor's Schedules, on account of an indemnification, surety and/or contribution obligation to any of the following Persons or entities shall be deemed satisfied and expunged from the Claims Register as of the Plan Effective Date, without any further notice to or action, order, or approval of the Bankruptcy Court: (i) current or former director of any Debtor, (ii) current or former officer of any Debtor; (iii) current or former employee of any Debtor; (iv) current or former insider of any Debtor; (v) holder, whether directly or indirectly, of an Interest in any Debtor; (vi) current or former operator of any Debtor, including the operator pursuant to the O&M Agreement; (vii) current or former project manager of any Debtor, including the manager under the Project Management Agreement; and (viii) any Affiliate of the Persons or entities set forth in the foregoing clauses (i) through (vii); provided, further, that the holder of any such Claim shall not be entitled to any distributions under the Plan on account of such Claims.

#### **H. Distributions After Allowance**

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order allowing a Disputed Claim becomes a



Final Order, the Reorganized Debtors, the Wind-Down Debtor(s) or Plan Administrator, as applicable, shall provide to the holder of such Claim the distribution (if any) to which such holder is entitled, without interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law.

## VIII. RELEASES, INJUNCTION AND RELATED PROVISIONS

### A. Plan Releases, Injunction and Related Provisions

#### 1. Discharge of Claims and Termination of Interests in the Debtors

In the Stand-Alone Restructuring Scenario or any Sale Scenario involving a Plan Sponsor, upon entry of the Confirmation Order, and except as otherwise provided in the Plan, the Debtors shall be discharged to the fullest extent permitted by section 1141(d) of the Bankruptcy Code. The Confirmation Order shall be a judicial determination of the discharge of all Claims against, and Interests in, the Debtors subject to the occurrence of the Plan Effective Date, including any claims, causes of action, or prayers for relief seeking substantive consolidation, successor liability, alter ego liability and other theories of liability between and among the Debtors, any of their current or former affiliated entities, or any other Person.

In a Sale Scenario (other than a Sale Scenario involving a Plan Sponsor), pursuant to the provisions of section 1141(d)(3) of the Bankruptcy Code, the Debtors shall not be entitled to a discharge and shall be wound down as set forth in the Plan and the Plan Administrator Agreement.

#### 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.

### 3. Releases by Holders of Claims Against 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.**

**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.

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).

**B. Protections Against Discriminatory Treatment**

To the maximum extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Persons, including all Governmental Units, shall not discriminate against the Reorganized Debtors or Wind-Down Debtor(s), as applicable, or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors or Wind-Down Debtor(s), as applicable, or another Person with whom the Reorganized Debtors or Wind-Down Debtor(s), as applicable, have been associated, solely because the relevant Debtor has been a debtor under chapter 11 of the Bankruptcy Code, was insolvent before the commencement of or during the Debtors' Chapter 11 Cases, or did not pay a debt that is discharged hereunder.

**C. Document Retention**

On and after the Plan Effective Date, the Reorganized Debtors, or the Wind-Down Debtor(s), as applicable, may maintain documents in accordance with their prepetition standard document retention policy, as may be altered, amended, modified, or supplemented.

**D. Term of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court in effect on the applicable Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Plan Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

**E. Unknown Claims**

The waivers and releases provided in this Plan are intended to include both known and unknown Claims and Causes of Action. The Debtors and the other Releasing Parties understand that they may later discover Claims, Causes of Action or facts that may be different than, or in addition to, those which the Debtors or any other Releasing Party now knows or believes to exist with respect to the Debtors, and which, if known at the Plan Effective Date may have materially affected the decision of the Debtors and any other Releasing Party to enter into it. Nevertheless, the Debtors and the Releasing Parties hereby waive any right, Causes of Action or Claim that might arise as a result of such different or additional Claims, Causes of Action or facts. The Debtors and the Releasing Parties are aware of, read, understand and have been fully advised by their attorneys as to the contents of the provisions of California Civil Code section 1542 and any other similar state, federal or foreign law and hereby expressly waive any and all rights, benefits and protections of such section 1542 and each such other similar law, which provides:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

**IX. CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN****A. Conditions Precedent to the Effective Date for the Plan**

It shall be a condition to the occurrence of the Plan Effective Date that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.B hereof:

1. The Restructuring Support Agreement shall remain in full force and effect and shall not have been terminated by the Senior Lenders;

2. No termination event under Section 10.1 of the Restructuring Support Agreement shall have occurred and no default thereunder shall exist that would permit the Senior Lenders to terminate the Restructuring Support Agreement, in each case that is not expressly waived in writing by the Senior Lenders;

3. The Bankruptcy Court shall have entered the DIP Orders, and the Final DIP Order shall be in full force and effect, and no termination event shall have occurred under the DIP Facility that is not expressly waived in writing by the DIP Lenders;

4. The Bankruptcy Court shall have approved the Disclosure Statement, which may be approved by the Confirmation Order, with respect to the Plan;

5. The Confirmation Order approving the Plan is in form and substance consistent in all respects with the Restructuring Support Agreement and otherwise in form and substance reasonably acceptable to the Senior Lenders, shall be a Final Order (unless otherwise waived by the Senior Lenders) and shall:

- (a) Authorize the Debtors to take all actions necessary to enter into, implement, and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with the Plan;
- (b) Authorize the Debtors, if applicable, to execute and deliver all Purchase Agreements, if any;
- (c) Decree the provisions in the Confirmation Order with respect to the Plan and the Plan to be non-severable and mutually dependent;
- (d) Authorize the Reorganized Debtors or Wind-Down Debtor(s), as applicable, to: (i) implement the Restructuring; (ii) make all distributions required under the Plan, including any Cash, the New Reorganized Debtor Equity, and New Notes, in each case, as applicable; and (iii) enter into any applicable agreements, transactions, and sales of property as set forth in the Plan Supplement as applicable to the Debtors and the Plan;
- (e) Decree that the Restructuring Transactions under the Plan are not subject to the Subordination Agreement and that the Senior Notes Agent, the holders of the Senior Notes Claims, the DIP Agent and the DIP Lenders shall have no liability whatsoever under the Subordination Agreement;
- (f) Provide for the Bankruptcy Court's retention of jurisdiction over implementation of the Plan and the issues set forth in Article XI of the Plan; and
- (g) Authorize the implementation of the Plan in accordance with its terms;

6. The final version of each Definitive Document, including each document contained in the Plan Supplement, to the extent applicable to the Plan (including any exhibits, amendments, modifications, or supplements thereto) shall (a) be in form and substance consistent in all material

respects with the Restructuring Support Agreement and otherwise approved by the applicable parties thereto consistent with their respective consent and approval rights as set forth in the Restructuring Support Agreement, (b) have been executed or deemed executed and delivered by each party thereto and any conditions precedent related thereto shall have been satisfied or waived by the applicable party or parties, if applicable, and (c) shall be adopted on terms consistent with the Restructuring Support Agreement;

7. In the Stand-Alone Restructuring Scenario, (a) the Debtors shall have delivered to the Senior Lenders (1) a Phase I Environmental Assessment by TRC Environmental Corp. (or a similarly reputable firm) and (2) a detailed engineering report by Black & Veatch Management Consulting (or a similarly reputable firm), and which reports in greater detail than the annual engineering reports routinely performed by the Debtors, in each case of (1) and (2), in form and substance acceptable to the Senior Lenders in their sole discretion, (b) the Berlin Facility shall have continuously been in operation in the ordinary course of business since the Petition Date, (c) the Debtors shall have in place an agreement to sell power in form and substance acceptable to the Senior Lenders in their sole discretion; and (d) the Debtors shall have obtained any and all necessary regulatory certifications, authorizations and approvals, including any required from the Federal Energy Regulatory Commission and ISO New England;

8. In the Stand-Alone Restructuring Scenario, in the event of a rejection of any of the O&M Agreement or Project Management Agreement that would occur on or before the Plan Effective Date, then the Pro Forma Owners shall have in place an agreement with an asset manager and an agreement with an operator that each have the employees required to continue the Reorganized Debtors' operations in the ordinary course of business on or before the Plan Effective Date;

9. Any and all authorizations, certifications, consents, regulatory approvals, rulings, actions, documents and agreements necessary to implement, consummate and effectuate the applicable Restructuring Transactions shall have been obtained, effected and executed, including prior approval by FERC under Federal Power Act Section 203 of the transactions contemplated herein and continued effectiveness of Burgess market-based rate authorization and related tariff to sell wholesale electric energy and related services at market-based rates (FERC Docket No. ER14-16), and certifications as a qualifying small power production facility (FERC Docket No. QF11-238) and exempt wholesale generator (FERC Docket No. EG14-1), and related rights and exemptions; provided, further, in the event the Plan as to Burgess is severed and withdrawn as provided for in Article X.E, then Berlin shall be required to obtain the necessary certification, including certifications of the Berlin Facility as a qualifying small power production facility and Berlin itself as an exempt wholesale generator, and market-based rate authorization and related tariff to sell wholesale electric energy and related services, on or prior to the Plan Effective Date;

10. In a Stand-Alone Restructuring Scenario, all conditions precedent to the effectiveness of the New Note Documents shall have been satisfied or duly waived;

11. In a Stand-Alone Restructuring Scenario, in the event the Plan as to Burgess is severed and withdrawn as provided for in Article X.E, then the closing of the sale of Burgess' assets shall occur simultaneously with the Plan Effective Date or as otherwise agreed to by the Pro Forma Owners.

12. In a Sale Scenario, all conditions precedent (except for the occurrence of the Plan Effective Date) to the closing under each Purchase Agreement have been satisfied or waived in accordance therewith;

13. In a Stand-Alone Restructuring Scenario or a Sale Scenario involving the sale of equity in the Reorganized Debtors, the New Reorganized Debtor Equity shall have been issued on or immediately before the Plan Effective Date;

14. The Professional Fee Escrow Account shall have been established and funded in accordance with Article II.B hereof; and

15. All Restructuring Expenses allocable to the Debtors pursuant to the Restructuring Support Agreement and the Plan and all fees and expenses payable under the DIP Orders by the Debtors shall have been paid in full.

#### **B. Waiver of Conditions**

The conditions to the occurrence of the Plan Effective Date set forth in this Article IX may be waived by the Debtors, with the prior written consent of the Senior Lenders, without notice to, action, or approval of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan.

#### **C. Substantial Consummation**

Substantial Consummation of the Plan shall be deemed to occur on the Plan Effective Date.

#### **D. Effect of Failure of Conditions**

If the Consummation of the Plan does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by the applicable Debtor or any other Person, or any Claims or Interests by any holders thereof; (2) prejudice in any manner the rights of each applicable Debtor, any holder of Claims or Interests, or any other Person; or (3) constitute an admission, acknowledgment, offer or undertaking by the applicable Debtors, any holder of Claims or Interests, or any other Person in any respect; provided, further, that, if the Restructuring Support Agreement is terminated, all provisions of the Restructuring Support Agreement that survive termination thereof shall remain in effect in accordance with the terms thereof.

### **X. MODIFICATION, REVOCATION OR WITHDRAWAL OF THE PLAN**

#### **A. Sale Transaction(s)**

The Plan contemplates the possibility of the Sale Transaction(s). If the Sale Transaction(s) occur(s), the Debtors, with the consent of the Senior Lenders, may or may not File a modified Plan (including any necessary conforming and immaterial changes thereto), in form and substance acceptable to the Senior Lenders and, absent repayment in full in Cash of the DIP Facility, the DIP Lenders, evidencing the Sale Transaction(s). Subject to the consent of the Senior Lenders and, absent repayment in full in Cash of the DIP Facility, the DIP Lenders, the Debtors shall not be



required to make additional disclosures or re-solicit votes for such modified Plan pursuant to section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

#### **B. Modification and Amendments**

Subject to the terms of the Restructuring Support Agreement and subject to the consent rights set forth in the Restructuring Support Agreement (which are incorporated herein pursuant to Article I.H of the Plan), except as otherwise specifically provided in the Plan, the Debtors reserve the right to (1) modify the Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan and (2) subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 (as well as those restrictions on modifications set forth in the Plan), to alter, amend or modify the Plan with respect to any Debtor, one or more times, before or after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify the Plan, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

#### **C. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation of votes thereon are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation.

#### **D. Revocation or Withdrawal of Plan**

Subject to the terms of the Restructuring Support Agreement and subject to the consent rights set forth in the Restructuring Support Agreement (which are incorporated herein pursuant to Article I.H of the Plan), the Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to File other plan(s) of reorganization. If the Debtors revoke or withdraw the Plan or if Confirmation or Consummation of the Plan does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan, the assumption or rejection of any Executory Contracts or Unexpired Leases under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any claims by the applicable Debtor or any other Person, or any Claims or Interests by any holders thereof; (b) prejudice in any manner the rights of each applicable Debtor, any holder of Claims or Interests, or any other Person; or (c) constitute an admission, acknowledgment, offer or undertaking by the applicable Debtors, any holder of Claims or Interests, or any other Person in any respect; provided, further, that, if the Restructuring Support Agreement is terminated, all provisions of the Restructuring Support Agreement that survive termination thereof shall remain in effect in accordance with the terms thereof.

#### **E. Severance of Burgess from Plan**

At the option of the Pro Forma Owners, the Plan for Burgess shall be severed from the Plan for Berlin, and the Plan for Burgess shall be deemed withdrawn, if (i) the aggregate amount of

Claims asserted against Burgess exceeds an aggregate amount of \$250,000 or (ii) any order from a court of competent determining and/or enforcing any purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any ownership interest in, or the right to acquire an ownership interest in, Burgess or its assets (other than the holder of Class 7B on account of its Interest in Burgess). Upon such withdrawal of the Plan, (A) the Senior Lenders or the DIP Lenders, each in their sole discretion, may purchase and acquire the assets of Burgess, including the assumption and assignment to them (or their designees) of any Executory Contracts or Unexpired Leases and any and all claims Burgess may have against Public Service Company of New Hampshire (d/b/a Eversource Energy), pursuant to the Bidding Procedures Order, (B) the Senior Lenders' obligations to consummate the Restructuring shall be conditioned on Berlin obtaining the necessary certifications, including certifications of the Berlin Facility as a qualifying small power production facility and Berlin itself as an exempt wholesale generator, and market-based rate authorization and related tariff to sell wholesale electric energy and related services, on or prior to the Plan Effective Date, (C) Berlin shall File an amended Plan, in form and substance acceptable to the Senior Lenders, reflecting the severing of Burgess from the Plan and (D) the Confirmation Order shall provide that any treatment under the Plan of Claims against and Interests in, Burgess shall not be included in the Confirmation of Berlin's Plan. This provision may only be amended or modified with the express written consent of the Senior Lenders.

## **XI. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Plan Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction after the Plan Effective Date over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of, any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims;
2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals;
3. Resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease, the determination of any Claim arising therefrom, including the Cure Amounts, or any other matter related to Executory Contracts and Unexpired Leases; (b) the amending, modifying, or supplementing, after the Plan Effective Date, of the Assumed Executory Contracts and Unexpired Leases List; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;
4. Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
5. Adjudicate, decide, or resolve any motions, adversary proceedings, contested or any other matters, and grant or deny any applications pending on the Plan Effective Date;

6. Adjudicate, decide, or resolve any and all matters related to sections 1141, 1145, and 1146 of the Bankruptcy Code;
7. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and of all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, including the Restructuring Support Agreement and the documents comprising the Plan Supplement;
8. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with Consummation, including interpretation or enforcement of the Plan, any Person's obligations incurred in connection with the Plan, or, as applicable, the New Notes, the amended O&M Agreement, the amended Project Management Agreement, or the Purchase Agreement(s);
9. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with Consummation or enforcement of the Plan;
10. Resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions, exculpations, and other provisions contained in Article VIII of the Plan, and enter such orders as may be necessary or appropriate to enforce or implement such releases, injunctions, exculpations, and other provisions;
11. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
12. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan;
13. Adjudicate any and all disputes arising from or relating to distributions under the Plan;
14. Consider any modifications of the Plan to cure any defect or omission or to reconcile any inconsistency in the Confirmation Order;
15. Determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;
16. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, or the Restructuring, including disputes arising under agreements, documents, or instruments executed in connection with the Plan or the Restructuring, whether they arise before, on or after the Plan Effective Date;
17. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

18. Enforce and interpret all orders entered by the Bankruptcy Court in the Chapter 11 Cases;
19. Hear any other matter not inconsistent with the Bankruptcy Code; and
20. Enter an order or final decree closing any of the Chapter 11 Cases.

## **XII. MISCELLANEOUS PROVISIONS**

### **A. Immediate Binding Effect**

Subject to Article IX and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Plan Effective Date, the terms of the Plan and the documents contained in the Plan Supplement, shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, or the Wind-Down Debtor(s), as applicable, and any and all holders of Claims against and Interests in the Debtors (irrespective of whether their Claims or Interests are Allowed or whether they have accepted the Plan), all Persons that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Person acquiring property under the Plan and any and all non-Debtor counterparties to the Executory Contracts and Unexpired Leases.

### **B. Additional Documents**

On or before the Plan Effective Date, and subject to the terms of the Restructuring Support Agreement, including the consent rights set forth therein, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Reorganized Debtors or the Wind-Down Debtor(s), as applicable, all holders of Allowed Claims receiving distributions under the Plan, and all other parties in interest may, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

### **C. Payment of Statutory Fees**

All fees due and payable by the Debtors' Estates pursuant to section 1930 of Title 28 of the U.S. Code, together with the statutory rate of interest set forth in section 3717 of Title 31 of the U.S. Code to the extent applicable ("Quarterly Fees") prior to the Plan Effective Date shall be paid by the Debtors on the Plan Effective Date. After the Plan Effective Date, the Debtors and the Reorganized Debtors shall be jointly and severally liable to pay any and all Quarterly Fees when due and payable. The Debtors shall File all monthly operating reports due prior to the Plan Effective Date when they become due, using UST Form 11-MOR. After the Plan Effective Date, each of the Reorganized Debtors shall File with the Bankruptcy Court separate UST Form 11-PCR reports when they become due. Each and every one of the Debtors and the Reorganized Debtors shall remain obligated to pay Quarterly Fees to the U.S. Trustee until the earliest of that particular Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to File any Administrative Claim in the case, and shall not be treated as providing any release under the Plan.

**D. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order confirming the Plan and the Confirmation Order shall have no force or effect if the Plan Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor or any holder of a Claim or Interest unless and until the Plan Effective Date has occurred.

**E. Successors and Assigns**

The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of any such Person.

**F. Notices**

To be effective, all notices, requests and demands shall be in writing (including by e-mail or facsimile transmission), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed to the following:

1. If to the Debtors, to:

Berlin Station, LLC  
c/o CS Operations, Inc.  
631 US Hwy 1, #300  
North Palm Beach, Florida 33408

with copies to:

Foley Hoag LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02210  
Attention: Kenneth S. Leonetti  
E-mail: [ksl@foleyhoag.com](mailto:ksl@foleyhoag.com)

- and -

Foley Hoag LLP  
1301 Avenue of the Americas, 25th Floor  
New York, New York 10019  
Attention: Alison D. Bauer  
William F. Gray, Jr.  
Jiun-Wen Bob Teoh  
E-mail: [abauer@foleyhoag.com](mailto:abauer@foleyhoag.com)

[wgray@foleyhoag.com](mailto:wgray@foleyhoag.com)  
[jteoh@foleyhoag.com](mailto:jteoh@foleyhoag.com)

- and -

Gibbons P.C.  
300 Delaware Avenue, Suite 1015  
Wilmington, Delaware 19801  
Attention: Chantelle D. McClamb  
E-mail: [cmclamb@gibbonslaw.com](mailto:cmclamb@gibbonslaw.com)

- and -

Gibbons P.C.  
One Gateway Center  
Newark, New Jersey 07102  
Attention: Robert K. Malone  
Kyle P. McEvelly  
E-mail: [rmalone@gibbonslaw.com](mailto:rmalone@gibbonslaw.com)  
[kmcevilly@gibbonslaw.com](mailto:kmcevilly@gibbonslaw.com)

2. If to the Senior Lenders or the DIP Lenders, to:

Greenberg Traurig, LLP  
One International Place, Suite 2000  
Boston, MA 02110  
Attention: Julia Frost-Davies  
Email: [Julia.FrostDavies@gtlaw.com](mailto:Julia.FrostDavies@gtlaw.com)

- and -

Greenberg Traurig, LLP  
One Vanderbilt Avenue  
New York, New York 10017  
Attention: Oscar N. Pinkas  
Email: [pinkaso@gtlaw.com](mailto:pinkaso@gtlaw.com)

- and -

Greenberg Traurig, LLP  
222 Delaware Avenue Suite 1600  
Wilmington, DE 19801  
Attention: Anthony Clark  
Email: [Anthony.Clark@gtlaw.com](mailto:Anthony.Clark@gtlaw.com)

If a Person wishes to continue to receive notices or documents after the Plan Effective Date, such Person must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002.

After the Plan Effective Date, the Reorganized Debtors, or the Wind-Down Debtor(s), as applicable, are authorized to limit the list of Persons receiving documents pursuant to Bankruptcy Rule 2002 to those Persons who have Filed such renewed requests in the applicable Chapter 11 Cases.

#### **G. Entire Agreement**

Except as otherwise indicated, the Plan, the Restructuring Support Agreement, the Plan Supplement, the Definitive Documents (in their final forms) and the Confirmation Order supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on the subjects covered thereby, all of which have become merged and integrated into the Plan and the Confirmation Order.

#### **H. Exhibits**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan, as applicable, as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Debtors' notice, claims, and balloting agent at <https://dm.epiq11.com/Burgess> or the Bankruptcy Court's website at <http://www.deb.uscourts.gov/>. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

#### **I. Non-Severability of Plan Provisions**

Except as provided for in Article X.E of the Plan, the provisions of the Plan, including its release, injunction, exculpation and compromise provisions, are mutually dependent and non-severable, other than as described below. The Confirmation Order shall constitute a judicial determination, and shall provide, that each term and provision of the applicable Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors, consistent with the terms set forth herein; and (3) non-severable and mutually dependent.

#### **J. Closing of Chapter 11 Cases**

The Reorganized Debtors or the Plan Administrator, as applicable, shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order necessary to close the Chapter 11 Cases.

#### **K. Conflicts**

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement, the Plan Supplement, or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern

and control. In the event of an inconsistency between the Confirmation Order and the Plan, the Confirmation Order shall control.

**L. Rates**

The Plan does not provide for the change of any rate that is within the jurisdiction of any governmental regulatory commission after the occurrence of the Plan Effective Date.

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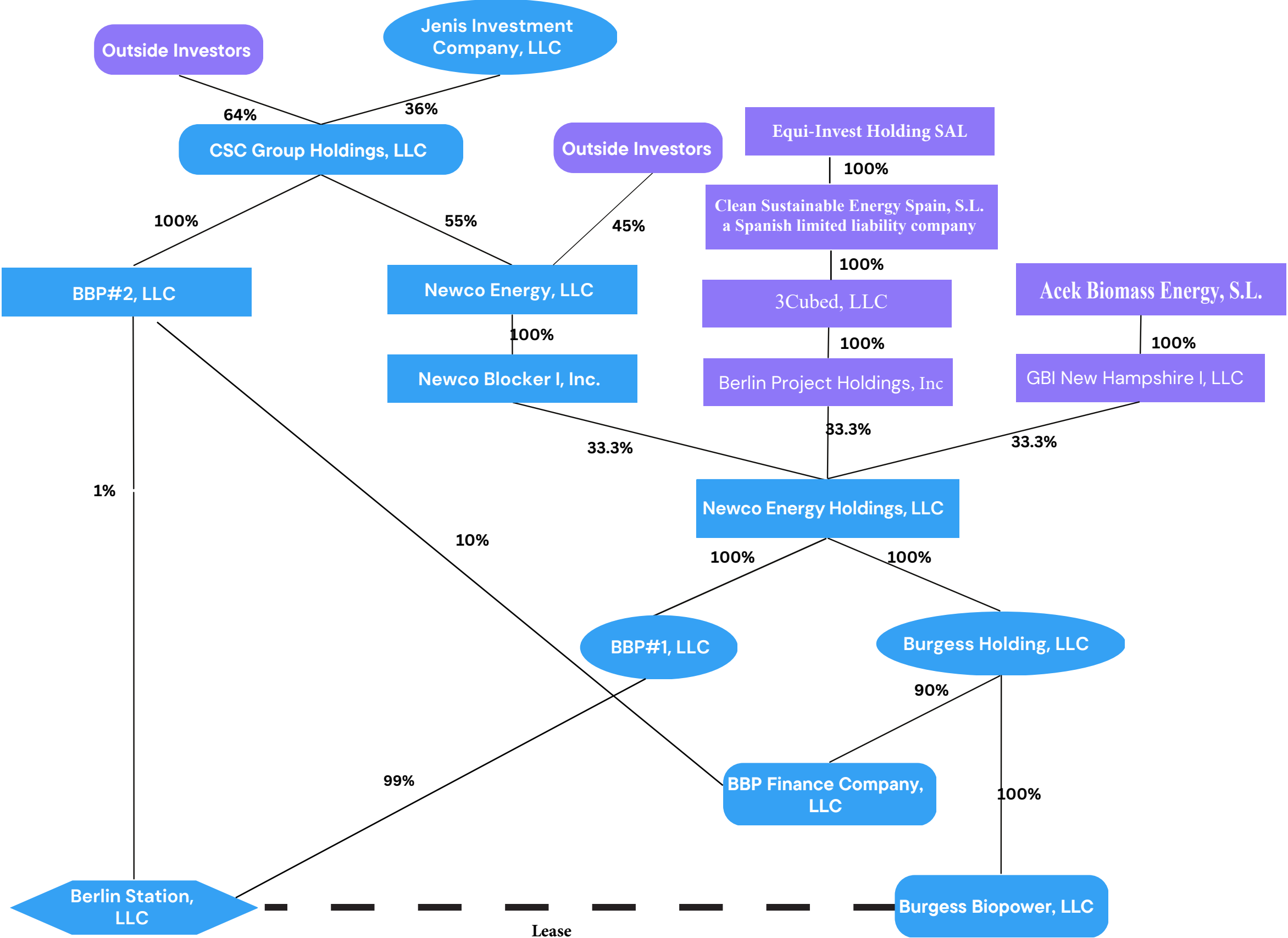
Dated this March 11, 2024

/s/ Dean Vomero

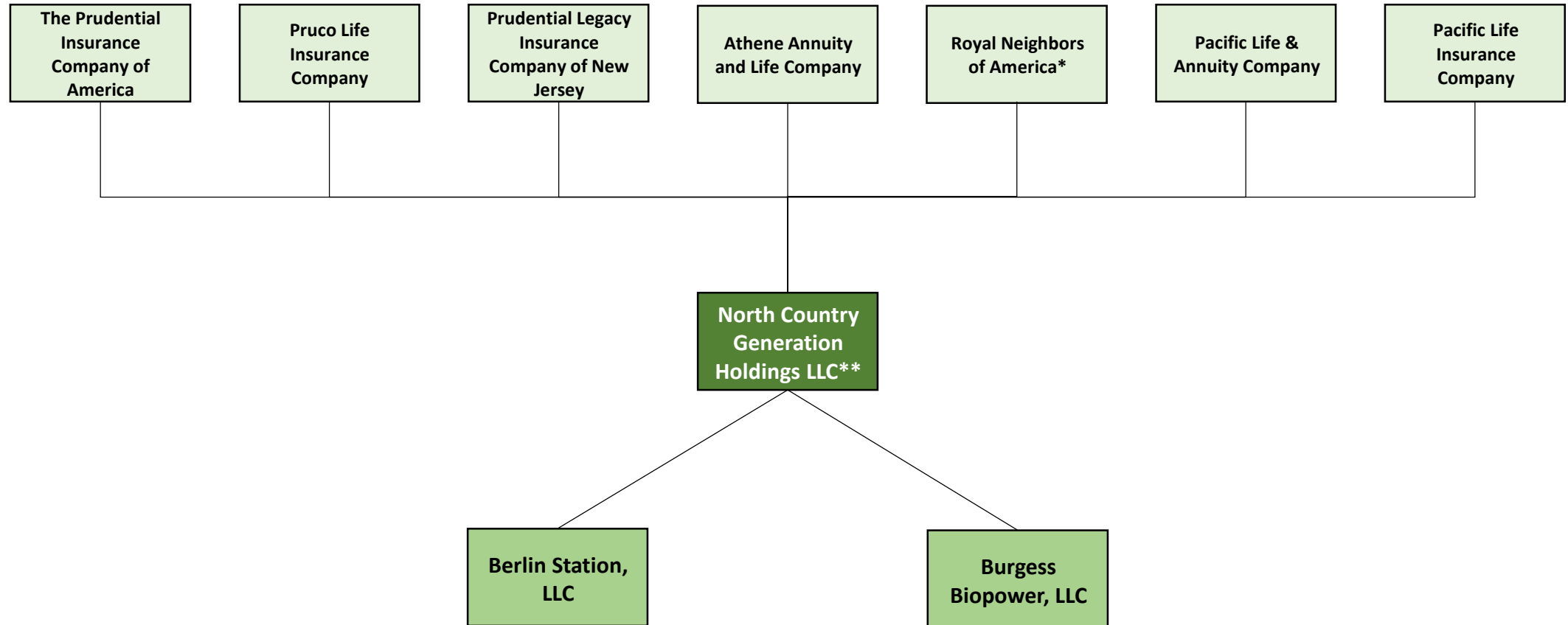
Dean Vomero

Chief Restructuring Officer

Pre-Transaction Organizational Chart



# Post-Transaction Organizational Chart



\*Royal Neighbors of America (“RNA”), will acquire a less-than two percent interest in and will have no ability to exercise control of Burgess, Berlin Station, or their associated jurisdictional facilities as a result of the Proposed Transaction. RNA is not affiliated with any of the Buyer Owners.

\*\*Buyer, either directly or indirectly through a to-be-formed wholly-owned subsidiary, will acquire all or a portion of the ownership interests or assets of Burgess and Berlin Station and their associated jurisdictional facilities that will occur in connection with the Restructuring Plan. See Application at Section IV.

**THE STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**NEW HAMPSHIRE SITE EVALUATION COMMITTEE**  
**DOCKET NO. 2024-**

**PRE-FILED DIRECT TESTIMONY OF RJ ARSENAULT**

**In Support of Joint Petition of Berlin Station, LLC and North Country Generation Holdings, LLC for Approval of the Transfer of Ownership to North Country Generation Holdings, LLC**

**Qualifications of RJ Arsenault**

**Q. Please state your name and business address.**

A. My name is RJ Arsenault. My business address is 200 State Street, 9<sup>th</sup> Floor, Boston, MA 02109.

**Q. Who is your current employer and what position do you hold?**

A. I am a Senior Managing Director in the Power, Renewables and Energy Transition industry group within the Turnaround and Restructuring practice at FTI Consulting.

**Q. Please describe your responsibilities in that position.**

A. I focus on advising power and utility companies, creditors and equity sponsors during both in- and out-of-court restructurings, including chapter 11 proceedings in several jurisdictions. My responsibilities include evaluating the liquidity needs of the company, developing and assessing business plans, determining enterprise value including appropriate capital structure, and negotiating terms with stakeholders with a focus on maximizing estate value.

**Q. Please describe your educational background and work experience.**

A. I received a Bachelor of Arts degree from Fairfield University and a Master of Business Administration degree from Boston University. I have also received a certification from the Chartered Financial Analyst Institute.

I have spent over 20 years in the power and utilities industry, holding senior positions with global power companies and advising investors across the sector, including conventional and renewable power generation, electric transmission and distributed generation technologies. Prior to working at FTI Consulting, I held several senior positions with TC Energy, including management of its Northeast power portfolio and senior roles within its M&A group, executing transactions across North America.

Throughout my career, I have advised major financial institutions, corporations and private capital firms across the capital stack including those holding equity and secured and unsecured debt positions.

I have played a critical role advising companies, bondholders and unsecured creditors during chapter 11 restructurings. During these engagements, I have led teams responsible for reviewing and preparing debtor business plans, developing cash flow forecasts and associated asset valuations, and maximizing the value of the debtor estate within the power markets in which they operate.

A copy of my resume is included as Attachment 1.

**Q. Have you ever testified before this Committee?**

A. I have not previously testified before this Committee.

**Purpose of testimony**

**Q. What is the purpose of your testimony?**

A. I offer this testimony on the financial capability of North Country Generation Holdings, LLC (“North Country”), which is designated as the Buyer/Transferee in the Joint Petition of Burgess BioPower, LLC (“Burgess BioPower”), Berlin Station, LLC (“Berlin Station”) and North Country Generation Holdings, LLC for Approval of the Change in Ownership or the Transfer of a Certificate of Site and Facility to North Country. The subject of this Joint Petition is the 75 megawatt (MW) biomass-fueled power plant located in Berlin, New Hampshire (the “Facility”) owned by Berlin Station and currently operated by lessee Burgess BioPower.

My testimony and the other materials included with the Joint Petition demonstrate that North Country, together with its owners (including Prudential Insurance, directly and through

subsidiaries, collectively, “Prudential”; Apollo Global Management, Inc, directly and through subsidiaries, collectively, “AGM”; and, Pacific Life Insurance Company, directly and through subsidiaries, collectively, “PLIC”), has the requisite financial capability to own the Facility and ensure that it is operated in accordance with all the conditions of the Facility’s Certificate of Site and Facility (“Certificate”).

**Q. Would you briefly describe your role in and knowledge of the proposed transaction?**

**A.** FTI has been retained as financial advisor to Prudential, AGM and PLIC (“North Country Owners”) in connection with their collective interest as proposed owners of Burgess BioPower and Berlin Station. For the past five months I have led the team responsible for preparing North Country Owners to own the Facility, developing the long-term business plan and financial projections, and evaluating the financial needs and capacity of North Country. I am intimately familiar with the operations of the Facility, the ISO-NE market in which it operates, and the key project contracts that govern the financial and operational performance of the Facility.

**Q. What are the Joint Petitioners seeking in this proceeding?**

**A.** I understand that the Joint Petitioners are seeking approval of the transfer of ownership to North Country from Berlin Station, the facility owner, and Burgess BioPower, the lessee of the Facility and holder of the Certificate of Site and Facility issued by the NH Site Evaluation Committee in 2010 to Berlin Station’s predecessor. I also understand that an important element of the Committee’s decision concerning the Joint Petition is the determination that North Country has adequate financial capabilities to ensure that the Facility will continue to operate in compliance with all the terms and conditions of the existing Certificate.

**Q. Please address North Country’s financial capability to operate the Facility consistent with the terms and conditions of the Certificate.**

A. As shown by the North Country Pro-Forma Balance Sheet, provided as Attachment 9 to the Joint Petition, North Country has adequate liquidity to operate its business, with [REDACTED] million of cash or cash equivalents on its balance sheet expected on July 1, 2024. North Country has no long-term obligations on its balance sheet. The Facility is expected to operate profitably going forward with options to sell its produced energy either to a counterparty under a power purchase agreement or directly to the wholesale merchant energy market. In addition to energy sold, North Country will also receive revenue through the capacity market and through renewable energy credits that are produced for every megawatt hour of power the Facility produces. Importantly, North Country was created as a special purpose vehicle to facilitate the ownership of the Facility by Prudential, AGM and PLIC. Collectively these three financial institutions will own more than 98% of the equity interests in Burgess BioPower and Berlin Station. Royal Neighbors of America (“RNA”), an insurance provider in Illinois that is not primarily engaged in energy-related business activities, will acquire a less-than-two percent interest in and will have no ability to exercise control of Burgess or the Facility because of the proposed transaction. In light of its *de minimus* ownership share, RNA’s financial information has not been relied upon in the presentation of financial capabilities. All three major equity holders are multi-billion-dollar companies each with a reputable track record of energy investing across a wide variety of capital tranches. Since 2004, Prudential has invested nearly \$18 billion in the power and utilities sector, in both debt and equity positions. They specialize in power, generation and transmission assets, currently holding \$9.6 billion in assets. Over the past five years, funds managed by AGM have invested billions of dollars, across both debt and equity, into the energy transition including



conventional and renewable generation, biomass generation and other technologies. PLIC has committed \$1.8 billion in capital towards renewable energy investments including solar, wind, renewable natural gas, geothermal, biomass and hydro assets.

Individually and collectively the North Country Owners have significant experience and expertise in the successful ownership of assets similar to the Facilities, with more than ample financial resources.

**Q. In your opinion, does North Country have the requisite financial capability to own and operate the Facility?**

**A.** Yes. As I have described, North Country has more than sufficient financial capabilities to ensure the continuing operation of the Facility in compliance with all the terms and conditions of its Certificate.

**Q. Does this conclude your testimony?**

**A.** Yes.

North Country Generation Holdings, LLC

Pre-Filed Testimony of RJ Arsenault

I affirm that the information contained in this testimony is true and accurate.


By:   
Name: RJ Arsenault


Title: Senior Managing Director at FTI Consulting

STATE OF Massachusetts  
COUNTY OF NORFOLK

On April 6, 2024, personally appeared before me the above-named RJ Arsenault, and swore that the foregoing statements are true and to the best of his knowledge and belief.

(Seal)

 **MALLORY L. CANNING**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
April 5, 2030

  
Notary Public/Justice of the Peace  
My Commission Expires: 04/05/2030

# RJ Arsenault

Senior Managing Director

[rj.arsenault@fticonsulting.com](mailto:rj.arsenault@fticonsulting.com)



**Boston, MA**

Tel: +1 (508) 259-9113

## CERTIFICATIONS

Chartered Financial Analyst  
(CFA)

## EDUCATION

B.S. in Biology and  
Mathematics, Fairfield  
University

M.B.A., Boston University

RJ Arsenault is a Senior Managing Director in the Power, Renewables and Energy Transition within the Turnaround & Restructuring practice. Mr. Arsenault has spent over 20 years in the energy sector, holding senior positions with global power companies and advising investors across the sector, including convention and renewable power generation, electric transmission and midstream pipeline infrastructure.

Mr. Arsenault focuses on advising companies, creditors and equity sponsors on a variety of economic, financial and strategic issues across the energy value chain. Mr. Arsenault advises investors throughout the entire investment process, including target identification, transaction support, business creation and divestiture strategy. Mr. Arsenault has led numerous engagements including in- and out-of-court financial restructuring, buy- and sell-side M&A mandates, and interim management positions.

Mr. Arsenault has played a critical role advising companies, bondholders and unsecured creditors during Chapter 11 restructurings. During these engagements, he has led teams responsible for reviewing and preparing Debtor business plans, developing cash flow forecasts and associated asset valuations, and maximizing the value of the Debtor estate within the power markets in which they operate.

Mr. Arsenault has worked closely with major financial institutions, corporations and private capital firms including: Prudential, Bank of America, JP Morgan, Goldman Sachs, MUFG, ArcLight Capital, Ares Management, Copenhagen Infrastructure Partners, Blackstone, Lotus Infrastructure, Duke Energy, Tenaska, Brookfield Renewable, EDF, and Enel.

Prior to FTI Consulting, Mr. Arsenault held several senior positions with TC Energy, including asset management of its Northeast power portfolio and senior roles within its M&A group, executing transactions across North American.

# RJ Arsenault

Senior Managing Director

[rj.arsenault@fticonsulting.com](mailto:rj.arsenault@fticonsulting.com)

## Representative Engagements:

- Retained as financial advisor to Duke Energy Corp. to lead the restructuring of two renewable assets, one solar and one wind farm, located in ERCOT. Provided detailed liquidity analysis establishing accurate cash runway in advance of identifying restructuring solution. Led all stakeholder negotiations including hedge provider, tax equity investors and lenders.
- Retained by Signal Energy, solar EPC contractor, to overhaul its cash management and treasury function. Led the team responsible for performing complete diagnostic of the cash management system, rebuilding the company's 13-week and long-term cash flow forecasting tools, and full transition back to the management team.
- Retained as financial advisor to the Secured Lender of Agilon Energy Holdings through its Chapter 11 sale process in early 2022. Worked with the Project Sponsor to develop a liquidity management program, fund a \$16m DIP facility and successfully sell the assets in a 363-sale process.
- Retained as financial advisor to the Unsecured Creditors' Committee of Pacific, Gas & Electric during its Chapter 11 filing. Led the review of all key documents associated with a portfolio of power purchase agreements and preparation of market-to-market analysis calculating the amount of savings that could be realized under a variety of assumption/rejection scenarios.
- Retained as financial advisor to the Project Sponsor of Panda Stonewall as the sponsor evaluated strategic options approaching a November 2021 maturity of its term loan. Prepared a review of strategic options, liquidity analysis and management plan and led the engagement with current and prospective lenders.
- Retained as financial advisor to ExGen Texas Power, a portfolio of five natural gas plants located in ERCOT. Leading the team supporting the Chief Restructuring Officer, led the development of a liquidity management plan, managed the assets in the market through the restructuring process, and negotiated favorable deal with the bondholders to take ownership of the assets to the benefit of the estate.

Attachment 4a

THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE SITE EVALUATION COMMITTEE  
DOCKET NO. 2024-

PRE-FILED DIRECT TESTIMONY OF RJ ARSENAULT

**Subject to Motion for**  
**Confidential Treatment**

In Support of Joint Petition of Berlin Station, LLC and North Country Generation  
Holdings, LLC for Approval of the Transfer of Ownership to North Country Generation  
Holdings, LLC

**THE STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**NEW HAMPSHIRE SITE EVALUATION COMMITTEE**  
**DOCKET NO. 2024-**

**PRE-FILED DIRECT TESTIMONY OF PAUL H. PROCYK**

**In Support of Joint Petition of Berlin Station, LLC and North Country Generation  
Holdings, LLC for Approval of the Transfer of Ownership to  
North Country Generation Holdings, LLC**

1 **Qualifications of Paul Procyk**

2 **Q. Please state your name and business address.**

3 A. My name is Paul Procyk. My business address is 655 Broad Street, 17th Floor, Newark, NJ  
4 07102.

5 **Q. Who is your current employer and what position do you hold?**

6 A. I am a Managing Director at PGIM, Inc., the global asset management business of Prudential  
7 Financial, Inc.

8 **Q. Please describe your responsibilities, including those that relate to Prudential's  
9 investment in Berlin Station.**

10 A. I am a Managing Director in charge of the Corporate and Projects Workout Group, which is  
11 part of Prudential Private Capital, a division of PGIM, Inc. ("PPC"). My responsibilities include  
12 direct management of and supervisory oversight of various underperforming and restructured  
13 investments in the PPC managed portfolio. In that capacity, I am involved in the day-to-day  
14 management of PPC's investment in Berlin Station. The Berlin Station investment has been  
15 managed by various PPC personnel since the initial investment in September 2011, and was  
16 transferred to my group for monitoring and management in December 2018. I personally took  
17 over management of this particular investment in 2022.

18 **Q. Please describe your educational background and work experience.**

19 A. I received my bachelors' degree from Slippery Rock University. I hold a Chartered Financial  
20 Analyst designation, and have decades of experience managing financial investments. A copy of  
21 my biography is included as Attachment 1.

1 **Q. Have you ever testified before this Committee?**

2 A. No.

3 **Purpose of Testimony**

4 **Q. What is the purpose of your testimony?**

5 A. I offer this testimony to demonstrate the financial, technical, and managerial capability of  
6 North Country Generation Holdings, LLC (“North Country”), which is designated as the  
7 Buyer/Transferee in the Joint Petition of Berlin Station, LLC (“Berlin Station”) and North  
8 Country Generation Holdings, LLC for Approval of the Change in Ownership or the Transfer of  
9 a Certificate of Site and Facility to North Country Generation Holdings, LLC. The subject of  
10 this Joint Petition is the 75 megawatt (MW) biomass fueled power plant located in Berlin, New  
11 Hampshire (the “Facility”) owned by Berlin Station and currently operated by lessee Burgess  
12 BioPower, LLC (“Burgess BioPower”).

13 My testimony and the other materials included with the Joint Petition demonstrate that North  
14 Country, in concert with its owners, operational contractors, and management contractors, has  
15 the requisite financial, technical, and managerial capability to operate the Facility in accordance  
16 with all conditions of the Facility’s Certificate of Site and Facility (“Certificate”). Of note, after  
17 the proposed transaction closes, the Facility will continue to be operated and managed by the  
18 present operators, CS Operations, Inc. (“CS Operations”) and CS Berlin Ops, Inc. (“CS Berlin  
19 Ops”) or entities with similar expertise and capabilities.

20



1 **Q. Please describe the capabilities of North Country as to the ownership and operation of**  
2 **energy businesses or facilities similar to Burgess BioPower, Berlin Station or the Facility.**

3 A. North Country has been recently created to facilitate the transfer of ownership of Burgess  
4 BioPower and Berlin Station in connection with those entities' chapter 11 plan. North Country is  
5 approximately (a) 64.6% owned collectively by The Prudential Insurance Company of America,  
6 Pruco Life Insurance Company, Prudential Legacy Insurance Company of New Jersey; (b)  
7 18.6% owned by Athene Annuity and Life Company ("AGM"); (c) 1.2% owned by Royal  
8 Neighbors of America ("RNA"); and (d) 15.5% owned by Pacific Life Insurance Company and  
9 Pacific Life & Annuity Company (together, and collectively with Prudential, AGM and RNA,  
10 "North Country Owners"). North Country Owners are current and long-standing financial  
11 creditors of Burgess BioPower and its affiliate Berlin Station. Due to their long-standing  
12 financial relationship with Burgess BioPower and Berlin Station, North Country Owners have  
13 similarly long-standing interests in, and familiarly with, the certificate-compliant operation of the  
14 Facility. As discussed in the Pre-Filed Testimony of RJ Arsenault, North Country Owners have  
15 been for some time negotiating and planning for the potential ownership transfer which is the  
16 subject of the Joint Petition. These preparations have included the creation of, and financial  
17 planning for, North Country. Mr. Arsenault's testimony and the North Country Pro-Forma  
18 Balance Sheet provided as Attachment 9 to the Joint Petition demonstrate that North Country  
19 itself will have the financial capabilities to own the Facility and to support its continued  
20 operation in compliance with the terms and conditions of the Certificate.

21

1 **Q. Please describe the financial capabilities and energy infrastructure experience and**  
2 **expertise of Prudential as the majority owner of North Country.**

3 A. Prudential Financial, Inc. (NYSE: PRU), (“Prudential Financial”), directly and through  
4 numerous subsidiaries, including The Prudential Insurance Company of America, Pruco Life  
5 Insurance Company, Prudential Legacy Insurance Company of New Jersey and PGIM, Inc.  
6 (Prudential Financial and such subsidiaries, collectively, “Prudential”), provides insurance and a  
7 variety of financial products and services in the United States and internationally. Prudential is a  
8 global financial services leader and premier active global investment manager with  
9 approximately \$1.4 trillion in assets under management as of December 31, 2023.

10 Prudential has had longstanding involvement in the power sector, investing \$18.2 billion in  
11 power sector borrowers since its power division was re-established in 2004. As of December 31,  
12 2023, Prudential’s power portfolio comprises investments of approximately \$9.6 billion (market  
13 value), including 97 project issuers, 34 utilities, and 25 electric cooperatives.

14 Prudential has a portfolio of structured credit and equity investments in North American  
15 upstream oil and gas and energy infrastructure companies, as well as investments in renewable  
16 electricity generation, storage, and transmission. Prudential has extensive experience financing  
17 power generating facilities and related infrastructure. For example, Prudential has worked with  
18 TC Energy, an energy company based in Alberta, Canada, for nearly two decades to finance  
19 seven separate pipeline systems equaling roughly fourteen thousand miles of infrastructure in  
20 Canada and the United States. The relationship was strengthened when Prudential entered into a  
21 \$250 million senior debt facility with Gas Transmission Northwest (“GTN”), a Houston, Texas-  
22 based company and subsidiary of TC Energy that owns and operates a 1,353-mile long interstate  
23 natural gas pipeline system that transports gas from Canada, through the American Pacific

1 Northwest to California. The facility in part finances the GTN Xpress project, a Federal Energy  
2 Regulatory Commission (“FERC”)-regulated and approved project which aims to upgrade  
3 natural gas compression facilities in Idaho, Washington, and Oregon. Prudential has also had a  
4 long working relationship with AES Corporation, a utility and power generation company, and  
5 has provided financing that facilitated the growth of AES Corporation’s renewable energy and  
6 power portfolio. As part of that relationship, in July 2020, Prudential closed on a transaction  
7 providing AES Ohio, an indirect and wholly owned subsidiary of AES Corporation, with a \$140  
8 million, 20-year senior secured first mortgage bond as part of a refinancing of maturing tax-  
9 exempt first mortgage bonds that diversified AES Ohio’s scheduled maturities in the public  
10 market.

11 Prudential’s energy experience extends beyond North America as well. As one recent example,  
12 in December 2023, Prudential closed on a 3-year, \$200 million facility with CVA SpA, a leading  
13 renewable energy company located in northwestern Italy. CVA SpA owns and operates a 1.1  
14 gigawatt generation fleet, generating power through hydro plants, and solar and wind farms.  
15 CVA SpA also serves as a power distributor and retailer throughout Italy. The facility provided  
16 by Prudential serves to refinance existing indebtedness and provide funding for general corporate  
17 purposes.

18 **Q. Are you familiar with the Facility and the Certificate of Site and Facility issued in 2010?**

19 **A.** Yes. In considering whether to underwrite the Senior Secured Notes at origination, Prudential,  
20 with the assistance of counsel, performed extensive due diligence on the Facility. Prudential or  
21 its representatives reviewed environmental, financial, operational and regulatory diligence  
22 information, assessed the viability of the business plan and the experience of the proposed  
23 managers and operators, and familiarized itself with the operational, financial and regulatory

1 requirements of the facility and the business. Those representatives of Prudential responsible for  
2 considering underwriting the initial investment (as well as other representatives of the other  
3 North Country Owners) visited the facility. With the assistance of legal counsel, Prudential also  
4 reviewed the existing Certificate and the other local, state and federal regulatory permits and  
5 approvals for the Facility. Prudential understands the conditions incorporated in the Certificate  
6 and, together with the North Facility owners and contract operators, is committed to ensuring  
7 that Berlin Station meets them.

8 **Q. Please describe North Country's technical and managerial capabilities to own the**  
9 **Facility and ensure its continued operation in compliance with the terms and conditions of**  
10 **the Certificate.**

11 **A.** Burgess BioPower and Berlin Station presently do not directly operate or manage the Facility  
12 on a day-to-day basis. Rather, the Facility is operated and managed by seller affiliates CS Berlin  
13 Ops and CS Operations pursuant to several agreements. Those agreements will either (i) be  
14 amended to include economic terms acceptable to North Country and feasible for both Berlin  
15 Station and the counterparties and assumed (or assumed and assigned), or (ii) remain in place for  
16 a transition period while professionals with similar expertise and credentials are transitioned into  
17 the roles. But in either event, the operator and project manager, which Prudential has significant  
18 experience in designating, will supply the personnel and services needed to operate and maintain  
19 the Facility, produce and sell energy and other products the Facility generates, manage the  
20 Facility and the Facility Site, collect revenue, provide back office and overhead support, and  
21 otherwise manage and run the business.

22 As described in the Joint Petition and the joint pre-filed testimony of John Hallé, Edward  
23 ("Ned") Dwyer, and Sarah Boone, CS Berlin Ops employs approximately 28 on-site employees

1 for the operation and maintenance of the Facilities. The station is manned twenty-four (24)  
2 hours per day, seven (7) days per week. CS Berlin Ops ensures compliance with state and  
3 federal regulations, including: maintaining a health and safety program compliant with the  
4 Occupational Safety and Health Administration; conducting internal assessments of programs  
5 and compliance for deficiencies and opportunities for safety improvements; preparing emergency  
6 response plans and maintaining an emergency preparedness program; training Site Personnel;  
7 preparing and submitting generation and fuel consumption reports; maintaining computer  
8 infrastructure, computer data and access security program; and providing support to Berlin  
9 Station as reasonably requested.

10 To the extent that the agreement with CS Berlin Ops is not amended and either assumed or  
11 assumed and assigned as part of the transactions contemplated by the Reorganization Plan, a  
12 replacement operator will perform the same functions to the same degree and in accordance with  
13 industry standards.

14 **Conclusion**

15 **Q. In your opinion, will North Country have the requisite financial, technical, and**  
16 **managerial capability to assure the operation of the Berlin Station Facility in continuing**  
17 **compliance with the terms and conditions of its certificate of site and facility?**

18 **A.** Yes. As I have described and as the other materials submitted in support of the Joint Petition  
19 demonstrate, North Country has the financial capabilities and North Country Owners have the  
20 industry-specific technical and managerial expertise to assure the continuing operation of the  
21 Facility in compliance with all the terms and conditions of its Certificate. The substantial  
22 capabilities of North Country and North Country Owners are complimented and augmented by

1 the continuity and expertise provided by the CS Berlin Ops and CS Operations contracts, or by a  
2 operator or asset manager chosen by North Country that has similar professional credentials and  
3 expertise.

4 **Q. Does this conclude your testimony?**

5 **A.** Yes.

ATTACHMENT 5

I affirm that the information contained in this testimony is true and accurate.

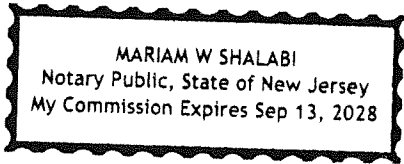
By: [Signature]

Name: Paul H. Procyk  
Title: Managing Director at PGIM, Inc.

STATE OF NJ  
COUNTY OF Monmouth

On April 5<sup>th</sup>, 2024, personally appeared before me the above-named Paul H. Procyk, and swore that the foregoing statements are true and to the best of his knowledge and belief.

(Seal)



Mariam W Shalabi  
Notary Public/Justice of the Peace  
My Commission Expires: 9/13/2028

# Paul Procyk, CFA



---

Managing Director  
973.367.3279  
paul.procyk@prudential.com

Paul Procyk is the Managing Director of Corporate and Project Workouts for Prudential Private Capital, located in Newark. He oversees a team responsible for restructuring and managing corporate credits and projects. Prior to joining Prudential Private Capital in 1997, Paul worked in the Guaranteed Products division of Prudential Investments and Prudential's Investment Accounting Group.

Paul received a BS from Slippery Rock University. He holds the Chartered Financial Analyst® designation.



**THE STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**NEW HAMPSHIRE**  
**SITE EVALUATION COMMITTEE**

**SEC DOCKET NO. 2024-\_\_**

**Joint Petition of Berlin Station, LLC and North Country Generation Holdings LLC**  
**for Administrative Approval of a Change in Ownership or the Transfer of a**  
**Certificate of Site and Facility Issued to Berlin Station, LLC to**  
**North Country Generation Holdings LLC**

**PRE-FILED DIRECT TESTIMONY OF DAVID WALKER**

1 **Q: Please state your name, title, and business address.**

2 A: My name is David Walker. I am the Plant Manager at the Berlin Station biomass generating  
3 facility (the "Facility") in Berlin, New Hampshire. I am an employee of CS Berlin Ops, Inc.  
4 ("CS Berlin Ops"), whose mailing address is 631 US Hwy 1, #300, North Palm Beach, FL  
5 33408.

6 **Q: Briefly summarize your educational background and work experience.**

7 A: I hold a Bachelor of Science degree from Maine Maritime Academy and have served in the  
8 U.S. Naval Reserve. I bring more than 27 years of experience in biomass, fossil fuels and waste-  
9 to-energy operations to my role as Plant Manager of Burgess BioPower. Over the course of my  
10 career, I have built stable, productive, and profitable operations within the energy sector by  
11 motivating, planning, and monitoring the achievement of corporate and operational goals. Prior  
12 to joining Burgess more than 11 years ago, I served as the Operations Manager for Wheelabrator  
13 Technologies and was a United States Merchant Marine. *See also* Exhibit 1 (Walker Bio).

14 **Q: Have you previously testified before this Committee?**

15 A: No.

16 **Q: What is the purpose of your testimony?**

17 A: I am submitting this Testimony in support of the Joint Petition by Berlin Station, LLC and  
18 North Country Holdings LLC regarding the Certificate of Site and Facility issued to the Facility.  
19 In particular, I am submitting this Testimony in support of the assertion in the Joint Petition that  
20 North Country has the requisite technical expertise to continue operating the Facility in  
21 compliance with the Certificate.

1 **Q: Please describe your responsibilities as the Facility's Plant Manager.**

2 A: As Plant Manager, I am responsible for all operations and management functions at the  
3 Facility. Those functions include the following:

- 4 • Communicating with ISO-New England on key matters including scheduling the delivery  
5 of electric energy to the bulk power grid consistent with the Facility's capacity supply  
6 obligations;
- 7 • Developing and assisting with bidding strategy for the day-ahead and real-time energy  
8 markets;
- 9 • North American Electric Reliability Corporation ("NERC") compliance;
- 10 • Business modeling and budgeting;
- 11 • Overseeing fuel contracts and delivery;
- 12 • Coordinating with and overseeing Facility staff (engineers, technicians, and  
13 maintenance);
- 14 • Assessing operating conditions, both internal and external to the Facility, to optimize the  
15 Facility's output;
- 16 • Monitoring all environmental outputs related to the Facility's operations for compliance  
17 with relevant state and federal requirements;
- 18 • Overseeing compliance with safety measures specific to the operation of power plants;  
19 and
- 20 • Serving as liaison between operational staff and the ownership group.

1 **Q: From a technical perspective, can you describe the state of the Facility and its current**  
2 **operations?**

3 A: Yes. The Facility is exceptionally well run. My team and I work hard to ensure that the  
4 Facility operates reliably and efficiently and in compliance with all relevant requirements,  
5 including the Certificate's terms and conditions. Our successful track record has been confirmed  
6 by numerous external reviews and audits. Every year, the facility undergoes a thorough  
7 independent third-party assessment by Black & Veatch, a global engineering, procurement,  
8 consulting, and construction company with more than 100 years of experience in sustainable  
9 infrastructure. The Facility consistently receives excellent reviews. In anticipation of the  
10 possible sale of the Facility as part of the Chapter 11 proceeding before the U.S. Bankruptcy  
11 Court for the District of Delaware, Black & Veatch prepared a Technical and Environmental  
12 Assessment Report, dated February 13, 2024. Relevant to my testimony, the Report concluded  
13 as follows:

- 14 • "The technologies used in the Project are from established original equipment  
15 manufacturers ("OEMs") and represent decades of successful operation and evolution of  
16 design."
- 17 • "Based on review of available documentation and interviews with the plant management,  
18 Black & Veatch holds the opinion that the Project is in good condition compared to other  
19 plants of the same vintage which utilize similar equipment."
- 20 • "The Project appears to have been receiving routine maintenance and inspections  
21 consistent with good industry practice."

- 1       • “The Project’s current staffing plan appears reasonable and consistent with other facilities  
2       of similar configuration and technology.”
- 3       • “Agreements are in place for the continued operations and maintenance including  
4       electricity sales, O&M, fuel transportation, and electrical interconnection appear to  
5       provide the necessary services for the ongoing operation and maintenance of the Project.”
- 6       • “Black & Veatch did not identify significant environmental compliance issues that would  
7       appear to preclude the continued operation of the facility.”

8       In addition, New Hampshire Department of Environmental Services (“NHDES”), on March 19,  
9       2024, issued an On-Site Full Compliance Evaluation Report for the Facility. The purpose of the  
10      Report was to assess the Facility’s compliance with its Title V Operating Permit and New  
11      Hampshire regulations governing addressing air emissions. The Report shows that the Facility is  
12      compliant with all aspects of its Title V Operating Permit and other applicable air emissions  
13      requirements under state and federal law. NHDES’s March 19, 2024 Report is attached to my  
14      testimony as Exhibit 2.

15      **Q: From an operational perspective, can you comment on the reliability and efficiency of**  
16      **the Facility?**

17      Yes. In addition to the findings noted above, Black & Veatch has found that the Facility  
18      consistently operates at energy output levels that are well above industry standards for Facility of  
19      its size. In the February 2024 Report, Black & Veatch commented on the Facility’s historical  
20      performance between 2019 and 2023 and found that, on average, the Facility achieved a capacity  
21      factor of nearly 90 percent compared to the industry average capacity factor of just 58.5 percent.

1 The Facility's historically high capacity factor further demonstrates that the Plant is well run  
2 from a technical perspective.

3 **Q: Will there be a change in technical capabilities of Facility management if the Joint**  
4 **Petition is approved and North Country assumes a controlling interest in Facility**  
5 **operations?**

6 A: My understanding is that there are various options that could occur as a result of the  
7 underlying bankruptcy proceedings and their effect on certain Operations and Maintenance and  
8 Project Management Agreements that could potentially result in changes. Regardless of the  
9 ownership structure of the plant, my expectation at this time is there will not be significant  
10 changes in the Facility technical staff. The plant is fortunate to have an experienced and well-  
11 qualified team that has strong ties to the community.

12 **Q: Do you anticipate any changes to how the Facility is run if the Joint Petition is**  
13 **approved?**

14 A: I do not. Under the guidance of the owner group, I will remain committed to operating the  
15 Facility in the most efficient and reliable way possible while maintaining the Facility's  
16 exceptional record of compliance with the terms and conditions of the Certificate and applicable  
17 laws, regulations, and other requirements.

18 **Conclusion**

19 **Q: In your opinion, will North Country have the requisite technical capability to assure the**  
20 **operation of the Facility in continuing compliance with the terms and conditions of the**  
21 **Certificate of Site and Facility?**

1 A: Yes. In my opinion, based on the testimony provided above and the information provided in  
2 the Joint Petition, North Country satisfies the Committee's criteria for technical capability  
3 pursuant to RSA 162-H:8, IV and N.H. Admin Site 301.13(b), and therefore has the requisite  
4 technical capability to operate the Facility in continuing compliance with the terms and  
5 conditions of the Certificate of Site and Facility.


6 **Q: Do you support the approval of the Joint Petition?**

7 A: I do.

8 **Q: Does this conclude your pre-filed testimony?**

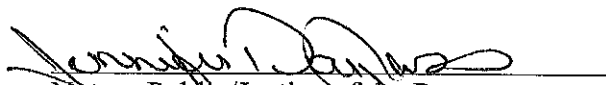
9 A: Yes.

I affirm that the information contained in this testimony is true and accurate.

By:   
Name: David Walker  
Title: Plant Manager, Berlin Station

STATE OF NEW HAMPSHIRE  
COUNTY OF Carroll

On April 9, 2024, personally appeared before me the above-named David Walker, and swore that this testimony is true and accurate to the best of his knowledge and belief. This notarial act was an online notarization.

  
Notary Public/Justice of the Peace  
My Commission Expires: \_\_\_\_\_ **JENNIFER J DOUGLASS**  
NOTARY PUBLIC  
State of New Hampshire  
My Commission Expires  
November 8, 2028





**DAVID WALKER**  
**Plant Manager**

**Burgess BioPower**

David brings more than 27 years of experience in biomass, fossil fuels and waste-to-energy operations to his role as Plant Manager of Burgess BioPower. Over his career, David has built stable, productive and profitable operations within the energy sector by motivating, planning and monitoring the achievement of corporate and operational goals.

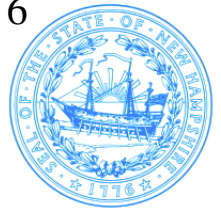
At Burgess BioPower, David leads all aspects of Operations & Maintenance, including planning and meeting operating and financial goals, O&M direction and procedures, employee engagement (training, advancement and empowerment), business modeling and budgeting, NERC compliance, implementation of safety and compliance procedures, and serving as a liaison to the ownership group. Previously, David served as the Operations Manager for Wheelabrator Technologies and was a United States Merchant Marine. He holds a Bachelor of Science degree from Maine Maritime Academy and served in the U.S. Naval Reserve.



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

**Robert R. Scott, Commissioner**

ATTACHMENT 6 EXHIBIT 2



March 19, 2024

David Walker, Plant Manager  
Burgess BioPower c/o Berlin Station, LLC  
One Cate St, Suite 100  
Portsmouth, NH 03801

RE: On-Site Full Compliance Evaluation Report

Dear Mr. Walker:

The New Hampshire Department of Environmental Services, Air Resources Division (NHDES) has completed a full compliance evaluation of Burgess BioPower located in Berlin, New Hampshire. The purpose of the evaluation was to determine compliance with Title V Operating Permit TV-0065 and N.H. Admin. Rules, Env-A 100 *et seq.* The compliance evaluation included an on-site inspection completed on March 7, 2024. This is a copy of the on-site full compliance evaluation report for your review and records.

Please note that this full compliance evaluation pertains only to N.H. Code Admin. Rules, Env-A 100 *et seq.* as these relate to your air permit. Any compliance determination made with respect to the air rules does not in any way imply compliance with any other applicable environmental rules or laws.

NHDES did not identify deficiencies during this compliance evaluation.

If you have any questions, please do not hesitate to contact me at (603) 271-0650 or by email at [david.w.smith@des.nh.gov](mailto:david.w.smith@des.nh.gov).

Sincerely,

David Smith Digitally signed by David Smith  
Date: 2024.03.19 10:41:52  
-04'00'

David Smith  
Compliance Assessment Section Supervisor  
Air Resources Division

cc: City Manager, City of Berlin, [info@berlin.nh.gov](mailto:info@berlin.nh.gov)  
cc: Dammon Frecker, Principal, [dfrecker@ingeniatorgroup.com](mailto:dfrecker@ingeniatorgroup.com)

[www.des.nh.gov](http://www.des.nh.gov)

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095  
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

**ABBREVIATIONS**

ARD	Air Resources Division
AAL	Ambient Air Limit
acf	actual cubic foot
ASTM	American Society of Testing and Materials
BACT	best Available Control technology
Btu	British thermal units
CAA	Clean Air Act
CAS	Chemical Abstracts Service
CEMS	Continuous Emissions Monitoring System
cfm	cubic feet per minute
CFR	Code of Federal Regulations
CO	Carbon monoxide
DER	Discrete Emissions Reduction
Env-A	New Hampshire Code of Administrative Rules - Air Resources Division
ERC	Emission Reduction Credit
ft	foot or feet
ft <sup>3</sup>	cubic feet
gal	gallon
HAP	Hazardous Air Pollutant
HCl	Hydrogen chloride
Hg	Mercury
hp	horsepower
hr	hour
LAER	Lowest Achievable Control Technology
lb	pound
MM	million
MW	megawatt
NAAQS	National Ambient Air Quality Standard
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NHDES	New Hampshire Department of Environmental Services (the department)
NOx	Oxides of Nitrogen
NSPS	New Source Performance Standard
PM <sub>10</sub>	Particulate Matter < 10 microns
ppm	parts per million
ppmv	parts per million volume
PSD	Prevention of Significant Deterioration
RACT	Reasonably Available Control Technology
RICE	Reciprocating Internal Combustion Engine
RSA	Revised Statutes Annotated
RTAP	Regulated Toxic Air Pollutant
scf	standard cubic foot
SIP	State Implementation Plan
SO <sub>2</sub>	Sulfur Dioxide
tpy	tons per consecutive 12-month period
ULSD	Ultra-low sulfur diesel
USEPA	United States Environmental Protection Agency
VOCs	Volatile Organic Compounds

**I. Facility Description**

NHDES conducted an on-site full compliance evaluation of Burgess BioPower (Burgess) on March 7, 2024, and the results are presented herein. The compliance evaluation covers the period January 13, 2022, to March 7, 2024.

Burgess is a biomass-fired electricity generating facility with a nominal gross output of 75 megawatts. The facility includes a biomass-fired bubbling fluidized bed (BFB) boiler, a wet cooling tower, an emergency generator and a fire pump engine. Burgess is a major source under the federal Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. PSD/NNSR/Temporary Permit TP-0065 was issued on July 26, 2010, for the construction of this facility. Temporary Permit TP-0235, issued on April 5, 2019, established startup and shutdown limitations for the boiler. Burgess also holds an acid rain permit AR-0005.

The biomass boiler is equipped with a dry sorbent injection system for acid gas control (if necessary), a pulse-jet fabric filter (PJFF) to control the emissions of particulate matter (PM), and a tail-end selective catalytic reduction (SCR) system to control the emissions of nitrogen oxides (NOx). The SCR system utilizes 19% aqueous ammonia (NH3), which is injected into the flue gases to remove NOx emissions. The boiler stack is equipped with a continuous emissions monitoring system (CEMS) to monitor NOx, carbon monoxide (CO), diluent gas oxygen (O2) and a second NOx analyzer for determining ammonia slip by differential NOx measurements. The boiler stack is also equipped with a flue gas flow monitoring system, and a continuous opacity monitoring system (COMS). A second process emissions monitoring system (not required by the permit) located in the duct work between the PJFF outlet and SCR inlet, is utilized to measure O2, sulfur dioxide (SO2) and uncontrolled NOx. These process measurements are utilized along with the stack CEMS measurements in order to monitor and control the operation of the air pollution control equipment.

Burgess is a major source for NOx and CO emissions and is therefore required to obtain a Title V Operating Permit.

Facility Name and Address	Burgess BioPower One Community St Berlin, New Hampshire 03570
County	Coos
Telephone	(603) 752-8401
AFS#	3300790137
Source Type	Title V
Inspection Date/Time	March 7, 2024 / 10:30 am
Inspection Type	On-Site Full Compliance Evaluation
Weather	40°F., calm winds, overcast, scattered rain

Inspection Period	January 13, 2022. to March 7, 2024
Inspected by	David Smith, NHDES Compliance Assessment Section Supervisor Alphonse Morin, NHDES Compliance Assessment Engineer
Source Contact(s)	David Walker, Plant Manager Ryan Carrier, EH&S Manager
Last Inspection	January 12, 2022
<p>Last Inspection Results:</p> <ul style="list-style-type: none"> <li>Burgess did not maintain the fire pump and emergency generator in accordance with manufacturer’s instructions.</li> <li>Burgess failed to conduct several quarterly leak checks of its flow monitoring system during the previous inspection period, and once discovered failed to include this in its semi-annual permit deviation monitoring report.</li> </ul> <p><i>The results of the last inspection were referred to the Enforcement Section and as of the time of this inspection are still under review.</i></p>	

Below is a summary of the permits issued along with the expiration dates.

Permitting / Application Timeline			
TV Permit	TV-0065	Issued	December 24, 2020
		Expires	November 30, 2025

The on-site inspection included an opening meeting to discuss the purpose of the inspection as well as the rules pertaining to claims of confidentiality and facility safety concerns. Burgess agreed to the inspection and authorized access to the facility. Material provided and operations conducted by Burgess at the time of the inspection were not claimed as confidential.

**II. Emission Unit Identification and Facility Wide Emissions**

Table 1 below, taken from TV-0065, lists the permitted emission units as verified during the evaluation.

Table 1 - Significant Activities			
Emission Unit ID	Device Identification	Installation Date	Maximum Design Capacity and Permitted Fuel Type(s)
EU01	Bubbling fluidized bed boiler Manufacturer: Babcock & Wilcox Boiler is equipped with an oxygen trim system, over-fire air and flue gas recirculation.	October 2011 (construction commenced) October 2013 (Initial boiler startup)	<u>Primary Combustion Chamber</u> 1,013 MMBtu/hr - Clean wood chips equivalent to 113 tons/hr, assuming a moisture content of 45% and a heating value of 4,500 Btu/lb for biomass <u>Four Startup Burners</u> Each 60 MMBtu/hr - No. 2 Fuel oil/ULSD equivalent to 430 gal/hr for each burner

Table 1 - Significant Activities			
Emission Unit ID	Device Identification	Installation Date	Maximum Design Capacity and Permitted Fuel Type(s)
EU02	4-Cell Wet Cooling Tower SPX Cooling Technologies Model No. F499-4.0-4	October 2013	Nominal circulation rate = 50,000 gal/min
EU03	315 hp Fire Pump Engine Manufacturer: John Deere Model year: 2012 Model No. JU6H-UFAD98 Serial No. PF606881231 16	October 24, 2013	2.1 MMBtu/hr Ultra-low sulfur diesel (ULSD) - equivalent to 15 gal/hr, assuming a heating value of 137,000 Btu/gal
EU04	755 hp Emergency Generator Manufacturer: John Deere Model year: 2016 Model No: 6135HFG75 Serial No. RG6135G007267	June 2016	4.86 MMBtu/hr ULSD - equivalent to 35.5 gal/hr

NHDES observed the boiler, emergency fire pump engine, the cooling tower and the emergency generator identified in Table 1. EU01 and EU02 were in operation during the inspection. EU03 and EU04 were not in operation during the inspection.

The hour meter readings listed in the table below are from the non-resettable hour meters on the engines which show total hours on both devices from initial start-up. Burgess presented documentation demonstrating that the fire pump and emergency generator each operated less than 100 hours per year.

Unit	Hour Meter Reading - 2022 evaluation (hours)	Hour Meter Reading - 2024 evaluation (hours)
Fire Pump Engine (EU03)	200	255
Emergency Generator (EU04)	216	345

**Insignificant Activities**

The table below lists the insignificant activities identified by Burgess in the Title V application. This list was confirmed by NHDES during the inspection.

Insignificant Activities	
Number	Emission Unit
1	Wood storage piles
2	12,000 gal ULSD tank for boiler startup fuel
3	1,000 gal diesel tank for yard equipment
4	360 gal ULSD fuel tank for fire pump engine

Insignificant Activities	
Number	Emission Unit
5	Ash conveying system and silo
6	Dry sorbent injection media silo

Burgess operates the three heating units listed below. Each unit is below the permitting threshold.

Arizon Companies, Johnson Air-Rotation Systems Model #: AR75XX-10-MP-HE2500-F Serial #: B-19-16-21766-1 Rating: 2.1 MMBtu/hr using propane Manufactured: February 2016 Installed: April 2016	ARU-1
Arizon Companies, Johnson Air-Rotation Systems Model #: AR75XX-10-MP-HE2500-F Serial #: B-19-16-21766-2 Rating: 2.1 MMBtu/hr using propane Manufactured: February 2016 Installed: April 2016	ARU-2
Arizon Companies, Johnson Air-Rotation Systems Model #: AR75XX-10-MP-HE2500-F Serial #: B-19-16-21766-3 Rating: 2.1 MMBtu/hr using propane Manufactured: February 2016 Installed: April 2016	ARU-3

The table below lists the reported annual facility emissions for the evaluation period.

Facility Reported Annual Emissions (tpy)							
	PM	SO <sub>2</sub>	NO <sub>x</sub>	CO	VOC	Non-VOC HAPs/RTAPs	Total
Permitted Limits	---	---	244.5	307.3	---	<10 Individual <25 Combined	---
2022	9.5	18.0	209.7	162.0	7.4	1.9	408.4
2021	11.4	18.1	206.8	163.0	7.2	1.6	408.3

### III. Stack Criteria

Table 2 below, taken from Permit TV-0065, lists the permitted stack requirements for the facility. During the inspection, NHDES observed that the stacks were vertical and unobstructed with no modifications noted by the facility.

<b>Table 2 - Stack Criteria</b>			
Stack #	Emission Unit	Minimum Height (feet above ground surface)	Maximum Exit Diameter (feet)
ST01	EU01	320	11.25
ST02	EU02	48 (each cell)	31.6 (each cell)

**IV. Control Equipment**

Table 3 below, taken from Permit TV-0065, lists the required control equipment for the facility as verified during the evaluation. With the exception of the PCE03 sorbent injection system, the air pollution control equipment listed in Table 3 shall be operated at all times that the associated devices are operating in order to meet permit conditions. Sorbent injection shall be used as necessary to meet the SO<sub>2</sub> and sulfuric acid mist (H<sub>2</sub>SO<sub>4</sub>) emission limitations.

<b>Table 3 - Pollution Control Equipment Identification</b>			
Pollution Control Equipment ID	Description	Purpose	Emission Unit Controlled
PCE1	Pulse-jet fabric filter	Control of particulate matter emissions	EU01
PCE2	Selective Catalytic Reduction System with ammonia injection (cold side)	Control of NO <sub>x</sub> emissions	EU01
PCE3	Sorbent Injection (as needed)	Control of SO <sub>2</sub> emissions	EU01

**Finding: Currently, Burgess does not use the sorbent injection system.**

**V. Compliance with Operating and Emission Limitations**

Table 4 below, taken from Permit TV-0065, lists the State-only operational and emission limitations for the facility, and any deficiencies noted during the evaluation.

<b>Table 4 - State-only Enforceable Operational and Emission Limitations</b>				
Item #	Applicable Requirements	Applicable Emission Unit	Regulatory Citation	Compliant
1.	<u>24-hour and Annual Ambient Air Limit</u> The emissions of any Regulated Toxic Air Pollutant (RTAP) shall not cause an exceedance of its associated 24-hour or annual Ambient Air Limit (AAL) as set forth in Env-A 1450.01, <i>Table Containing the List Naming All Regulated Toxic</i>	Facility wide	Env-A 1400	Yes



Table 4 - State-only Enforceable Operational and Emission Limitations				
Item #	Applicable Requirements	Applicable Emission Unit	Regulatory Citation	Compliant
	<i>Air Pollutants.</i>			
<p><b>Finding: Burgess demonstrated compliance with the AALs using air dispersion modeling in May of 2010, and remains in compliance. There are no RTAP emissions from the cooling tower.</b>  <b>The latest revision to Env-A 1400 was adopted on February 3, 2022. The updates can be found at <a href="#">CHAPTER Env-A 1400 REGULATED TOXIC AIR POLLUTANTS (nh.gov)</a>.</b></p>				
2.	<p><u>Emission Standard for Ammonia Slip</u>                      Ammonia slip emissions shall be limited to 10 ppm (dry volume) at 6% oxygen based on a calendar day average.</p>	EU01/PCE2	TP-0054	Yes
<p><b>Findings: Stack testing conducted June 14 – 15, 2023 demonstrated compliance with the above emission limit.</b></p>				

Table 5 below, taken from Permit TV-0065, lists the federal operating and emission limitations for the facility, and any deficiencies noted during the evaluation.

Table 5 - Federally Enforceable Operational and Emission Limitations				
Item #	Requirement	Applicable Unit	Regulatory Basis	Compliant
1.	<p><u>Emission Standard for NOx</u>                      NOx emissions from the boiler shall be limited as follows:                      a.) 0.060 lb/MMBtu of heat input based on a 30-day rolling average, excluding periods of startup and shutdown;                      b.) 0.10 lb/MMBtu of heat input based on a 30-day rolling average, including periods of startup and shutdown; and                      c.) 244.5 tons per consecutive 12-month period (tpy). This emission limit applies at all times including the periods of startup and shutdown.</p>	EU01	TP-0054, TP-0235, Env-A 618 Lowest Achievable Emission Rate (LAER) & Env-A 619 Best Available Control Technology (BACT)	Yes
2.	<p><u>Emission Standard for CO</u>                      CO emissions from the boiler shall be limited as follows:                      a.) 0.075 lb/MMBtu of heat input based on a calendar day average, excluding periods of startup and shutdown;                      b.) 0.15 lb/MMBtu of heat input based on a 30-day rolling average, including periods of startup and shutdown; and                      c.) 307.3 tpy; This emission limit applies at all times including the periods of startup and shutdown.</p>	EU01	TP-0054, TP-0235 & Env-A 619 BACT	Yes

**Table 5 - Federally Enforceable Operational and Emission Limitations**

Item #	Requirement	Applicable Unit	Regulatory Basis	Compliant	
3.	<u>Startup and Shutdown Definitions</u>		EU01	TP-0235, Env-A 618 & Env-A 619	<b>Noted</b>
	a.) Startup means the first-ever firing of fuel in a boiler for the purpose of supplying useful thermal energy for producing electricity, or the firing of fuel in a boiler after a shutdown event for any purpose. Startup ends two hours after ammonia injection commences.				<b>Yes</b>
	b.) During the startup periods, the operation of the SCR system, including ammonia injection, shall begin as soon as practicable after the inlet gas temperature to the SCR exceeds 375°F.				<b>Noted</b>
	c.) For the purposes of compliance with Subpart JJJJJ, boiler startup means: either the first-ever firing of fuel in a boiler for the purpose of supplying useful thermal energy (such as steam or hot water) for heating and/or producing electricity, or for any other purpose, or the firing of fuel in a boiler after a shutdown event for any purpose. Startup ends when any of the useful thermal energy (such as steam or hot water) from the boiler is supplied for heating and/or producing electricity, or for any other purpose.				<b>Noted</b>
	d.) Shutdown means the period in which cessation of operation of the boiler is initiated for any purpose. Shutdown begins when the boiler no longer supplies useful thermal energy (such as steam or hot water) for heating, cooling, or process purposes or generates electricity, or when no fuel is being fed to the boiler, whichever is earlier. Shutdown ends when the boiler no longer supplies useful thermal energy for heating, cooling, or process purposes or generates electricity, and no fuel is being combusted in the boiler.		40 CFR 63 Subpart JJJJJJ	<b>Noted</b>	
4.	<u>Emission Standard for Particulate Matter</u>		EU01	Env-A 619 & TP-0054	<b>Yes</b>
	a.) Filterable particulate matter emissions shall be limited to 0.010 lb/MMBtu of heat input				<b>Yes</b>
	b.) Filterable particulate matter emissions shall be limited to 0.030 lb/MMBtu of heat input.			40 CFR 63.11201 Subpart JJJJJJ & 40 CFR 60.43b(h) Subpart Db	<b>Yes</b>
<b>Finding: Burgess conducted stack testing on June 16, 2022. The results demonstrate compliance with the filterable particulate matter emission limit.</b>					
5.	<u>Emission Standard for SO<sub>2</sub></u> SO <sub>2</sub> emissions shall be limited to 0.012 lb/MMBtu of heat input.		EU01	Env-A 619 & TP-0054	<b>Yes</b>
6.	<u>Emission Standard for sulfuric acid mist (H<sub>2</sub>SO<sub>4</sub>)</u> H <sub>2</sub> SO <sub>4</sub> emissions shall be limited to 0.002 lb/MMBtu of heat input.		EU01	Env-A 619 & TP-0054	<b>Yes</b>
<b>Finding: Burgess conducted stack testing on September 14, 2016. The results demonstrate compliance with the H<sub>2</sub>SO<sub>4</sub> emission limit.</b>					
7.	<u>Emission Standard for Hydrogen Chloride (HCl)</u>		EU01	TP-0054 40 CFR 63	<b>Yes</b>

**Table 5 - Federally Enforceable Operational and Emission Limitations**

Item #	Requirement	Applicable Unit	Regulatory Basis	Compliant
	HCl emissions shall be limited to 0.000834 lb/MMBtu of heat input.		Subpart B (Case-by-Case MACT)	
<b>Finding: Burgess conducted stack testing on June 27-28, 2017. The results demonstrated compliance with the HCl emission limit.</b>				
8.	<u>Emission Standard for Mercury</u> Mercury emissions shall be limited to 0.000003 lb/MMBtu of heat input.	EU01	TP-0054 40 CFR 63 Subpart B (Case-by-Case MACT)	<b>Yes</b>
<b>Finding: Burgess conducted stack testing on June 27-28, 2017. The results demonstrated compliance with the mercury emission limit.</b>				
9.	<u>Facility-Wide Hazardous Air Pollutants (HAPs) Emission Limitation</u> Facility-wide emissions of HAPs (as defined in Section 112 of the 1990 Clean Air Act Amendments) shall be limited to less than 10 tpy for any individual HAP and 25 tpy for all HAPs combined.	Facility Wide	TP-0235	<b>Yes</b>
10.	<u>Fuel Oil Annual Capacity Factor</u> The boiler shall operate at an annual capacity factor for fuel oil of 5% or less.	EU01	TP-0054 & Env-A 4602.45 <i>More stringent than</i> 40 CFR 60.44b(l)(1)	<b>Yes</b>
11.	<u>Fuel Oil Startup Limitation</u> Fuel oil shall only be burned in the boiler during startup.	EU01	TP-0054 & Env-A 619	<b>Yes</b>
12.	<u>Facility-wide Annual Emission Limit for NO<sub>x</sub></u> Facility-wide emissions of NO <sub>x</sub> shall be limited to 245 tpy.	Facility-wide	TP-0054, Env-A 618 & Env-A 619	<b>Yes</b>
13.	<u>Standard for Opacity</u> The opacity from the boiler shall not exceed 10 percent (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity. Compliance with the opacity limit shall be determined through a continuous opacity monitoring system.	EU01	TP-0054 & Env-A 619 <i>More stringent than</i> 40 CFR 60.43b(f) (NSPS Subpart Db) & Env-A 2002.02	<b>Yes</b>
14.	<u>Activities Exempt from Visible Emission Standards</u> No more than one of the following two exemptions shall be taken at a time:	EU01	TP-0054 & Env-A 619	<b>Yes</b>

**Table 5 - Federally Enforceable Operational and Emission Limitations**

Item #	Requirement	Applicable Unit	Regulatory Basis	Compliant
	a.) During periods of startup, shutdown and malfunction, average opacity shall not exceed 20% except for one period of 6 continuous minutes in any 60-minute period; or b.) During periods of soot blowing, grate cleaning, and cleaning of fires, average opacity shall be allowed to be in excess of 20%, but not more than 27% for one period of 6 continuous minutes in any 60-minute period.			
15.	<u>Emission Standard for Particulate Drift</u> Particulate matter emissions from the cooling tower shall be limited to 0.0005% by weight of the cooling water flow rate.	EU02	TP-0054 & Env-A 619	Yes
<b>Finding: On July 17-19, 2014, Burgess conducted testing for particulate matter on EU02 which demonstrated compliance with the particulate drift limit.</b>				
16.	<u>Visible Emission Standard for Fuel Burning Devices Installed After May 13, 1970</u> The average opacity from fuel burning devices installed after May 13, 1970 shall not exceed 20 percent for any continuous 6-minute period.	EU03 & EU04	Env-A 2002.02 (formerly Env-A 1202 effective 12-27-90)	Unknown
<b>Finding: EU03 and EU04 were not in operation during the on-site inspection; therefore, compliance with the visible emission standard could not be determined.</b>				
17.	<u>Particulate Emission Standards for Fuel Burning Devices Installed on or After January 1, 1985</u> The particulate matter emissions from fuel burning devices installed on or after January 1, 1985 shall not exceed 0.30 lb/MMBtu.	EU03 & EU04	Env-A 2003.03 formerly (Env-A 1202 effective 12-27-90)	Yes
<b>Finding: Compliance with particulate emission standards is verified through stack testing. Stack testing for particulate matter has not been required for these devices, to date. However, at the time NHDES issued the permit, NHDES had sufficient information to indicate that under normal operating conditions, these devices are capable of meeting the particulate matter standard.</b>				
18.	<u>Operating Limitations for Emergency Engines</u> Each emergency engine shall be limited to 500 hours of operation during any consecutive 12 month period.	EU03 & EU04	Env-A 1301.02(j)	Yes
19.	<u>Operating Limitations for Emergency Engines</u> a.) Each emergency engine shall only operate: 1. As a mechanical or electrical power source only during an emergency which is defined in Env-A 1302.17 as an unforeseeable condition that is beyond the control of the owner or operator that: i. Results in an interruption of electrical power from the electricity supplier to the premises; ii. Requires an interruption of electrical power from the electricity supplier to the premises in order to enable the owner or operator to repair damage from fire, flood, or any other catastrophic event, natural or man-made; or iii. Requires operation of an emergency generator to minimize	EU03 & EU04	Env-A 103.11, Env-A 1302.17 & 40 CFR 60.4211(f) (Subpart IIII)	Yes

**Table 5 - Federally Enforceable Operational and Emission Limitations**

Item #	Requirement	Applicable Unit	Regulatory Basis	Compliant
	<p>damage from fire, flood, or any other catastrophic event, natural or man-made;</p> <p>2. During scheduled maintenance checks and readiness testing, as recommended by federal, state or local government, the manufacturer, the vendor or the insurance company associated with the engine, for a maximum of 100 hours per calendar year.</p> <p>b.) The term emergency generator does not include an engine for which the owner or operator of such engine is party to any other agreement to sell electrical power from such engine to an electricity supplier or otherwise receives any reduction in the cost of electrical power for agreeing to produce power during periods of reduced voltage or reduced power availability.</p>			
20.	<p><u>Emergency Engine Operating Requirements</u> The Owner or Operator of the emergency engine shall:</p> <p>a.) Operate and maintain the engine according to the manufacturer’s emission-related written instructions or change only the emission-related settings in a way that is permitted by the manufacturer; and</p> <p>b.) Operate and maintain the engine to meet the emission standards over the entire life of the engine.</p>	EU03 & EU04	40 CFR 60.4206 & 60.4211 (Subpart IIII)	Yes
21.	<p><u>Standards of Performance for Stationary Compression Ignition Internal Combustion Engines - Fuel Sulfur Requirement</u> The sulfur content of diesel fuel burned in the emergency engines shall not exceed 15 ppm (0.0015 percent sulfur by weight).</p>	EU03 & EU04	40 CFR 60.4207 (Subpart IIII)	Yes
22.	<p><u>NESHAP - General Requirements</u></p> <p>a.) At all times the Owner or Operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.</p> <p>b.) The general duty to minimize emissions does not require the Owner or Operator to make any further efforts to reduce emissions if levels required by this standard have been achieved.</p> <p>c.) Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.</p> <p>d.) The Owner or Operator must minimize the boiler’s startup and shutdown periods following the manufacturer’s recommended procedures, if available. If manufacturer’s recommended procedures are not available, the Owner or Operator must follow recommended procedures for a unit of similar design for which manufacturer’s recommended procedures are available.</p>	EU01	40 CFR §63.11205 & 63.11223(g) Subpart JJJJJ	Yes
23.	<p><u>NESHAP - Tune-up Requirements</u> Conduct a tune-up of the boiler as specified in Table 6, Item 16.</p>	EU01	40 CFR 63.11201(b) & 63.11223 Subpart JJJJJ	Yes

**Table 5 - Federally Enforceable Operational and Emission Limitations**

Item #	Requirement	Applicable Unit	Regulatory Basis	Compliant
24.	<p><u>NESHAP - Operating Limits</u></p> <p>a.) Demonstrate continuous compliance with the PM emission limit in Table 5, Item 4.b by:</p> <ol style="list-style-type: none"> <li>1. Collecting the opacity monitoring system data according to §63.11224(e) and §63.11221;</li> <li>2. Reducing the opacity monitoring data to 6-minute averages;</li> <li>3. Maintaining opacity to less than or equal to 10 percent (daily block average).</li> </ol> <p>b.) Maintain the 30-day rolling average boiler operating load such that it does not exceed 110 percent of the average operating load recorded during the most recent performance stack test. Following each performance stack test and until the next performance test, comply with the operating limit for operating load condition as specified here.</p> <p>c.) These operating limits apply at all times, except during periods of startup and shutdown.</p>	EU01	40 CFR 63.11201(c), 63.11212(c), 63.11222 & Tables 3 & 7 to Subpart JJJJJ	Yes
25.	<p><u>NSPS General Provisions</u></p> <p>a.) At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source;</p> <p>b.) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, nothing in this part shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.</p>	EU01	40 CFR 60.11(d) & (g) Subpart A	Yes
26.	<p><u>Permit Deviations</u></p> <p>In the event of a permit deviation, the Owner or Operator shall investigate and take corrective action immediately upon discovery of the permit deviation to restore the affected device, process, or air pollution control equipment to within allowable permit conditions.</p>	Facility wide	Env-A 911.03	Noted
<p><b>Findings: Burgess did not submit any permit deviations during this inspection period; however, they are aware of this requirement.</b></p>				
27.	<p><u>Control of Fugitive Dust</u></p> <p>The Owner or Operator shall take precautions specified in Env-A 1002.03(b) to prevent, abate, and control the emission of fugitive dust.</p>	Facility wide	Env-A 1002	Yes
<p><b>Finding: NHDES did not observe any fugitive dust onsite during the inspection.</b></p>				
28.	<p><u>Accidental Release Program Requirements</u></p> <p>The quantities of regulated chemicals stored at the facility are less than the</p>	Facility wide	CAAA 112(r)(1)	Yes

Table 5 - Federally Enforceable Operational and Emission Limitations				
Item #	Requirement	Applicable Unit	Regulatory Basis	Compliant
	applicable threshold quantities established in 40 CFR 68.130. The facility is subject to the Purpose and General Duty clause of the 1990 Clean Air Act, Section 112(r)(1). General Duty includes the following responsibilities: a.) Identify potential hazards which result from such releases using appropriate hazard assessment techniques; b.) Design and maintain a safe facility; c.) Take steps necessary to prevent releases; and d.) Minimize the consequences of accidental releases that do occur			
29.	<u>Sulfur Limit of Liquid Fuel</u> The sulfur content of distillate fuel oil/diesel burned in the boiler shall not exceed 0.0015% by weight.	EU01	TP-0054, Env-A 619 & Env-A 1603.03	Yes

**VI. Compliance with Monitoring and Testing Requirements**

Table 6 below, taken from Permit TV-0065, lists the monitoring and testing requirements for the facility, and any deficiencies noted during the evaluation.

Table 6 - Monitoring/Testing Requirements						
Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
1.	NOx and diluent gas	a.) Operate and maintain a NOx-diluent CEMS (consisting of a NOx pollutant concentration monitor and a O <sub>2</sub> diluent gas monitor) with an automated data acquisition and handling system for measuring and recording: 1. NOx concentration (in ppm); 2. O <sub>2</sub> concentration (in % O <sub>2</sub> ); and 3. NOx emission rate (in lb/MMBtu). b.) Account for total NOx emissions, both NO and NO <sub>2</sub> , either by monitoring for both NO and NO <sub>2</sub> or by monitoring for NO only and adjusting the emissions data to account for NO <sub>2</sub> . c.) Calculate hourly, quarterly and annual NOx emission rates (in lb/MMBtu) by combining the NOx concentration (in ppm), diluent concentration (in percent O <sub>2</sub> ), and percent moisture (if applicable) according to the procedures in 40 CFR 75 Appendix F.	Continuous	EU01	Env-A 808.02, 40 CFR §§75.10(a)(2) & 75.12(c)	Yes

**Table 6 - Monitoring/Testing Requirements**

Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
2.	Heat Input Rate	Determine the heat input rate (in MMBtu/hr) for every hour or part of an hour any fuel is combusted following the procedures in 40 CFR 75 Appendix F.	Hourly	EU01	40 CFR 75.10(c)	Yes
3.	Stack volumetric flow rate	To measure and record stack volumetric gas flow, operate and maintain a flow monitoring system that meets the following requirements: a.) All differential pressure flow monitors shall have an automatic blow-back purge system installed and in wet conditions, shall have the capability for drainage of the sensing lines; and b.) The stack flow monitoring system shall have the capability for manual calibration of the transducer while the system is on-line and for a zero check.	Continuous	EU01	40 CFR 75 & Env-A 808.03	Yes
4.	CO	Operate and maintain a CEMS for measuring carbon monoxide. The CO CEMS shall meet the requirements of 40 CFR 60, Appendix B, Performance Specification 4.	Continuous	EU01	Env-A 808 & TP-0054	Yes
5.	SO <sub>2</sub>	Operate and maintain a SO <sub>2</sub> continuous emission monitoring system with an automated data acquisition and handling system for measuring and recording SO <sub>2</sub> concentration (in ppm), volumetric gas flow (in scfh) and SO <sub>2</sub> mass emissions (in lb/hr) discharged to the atmosphere.	Continuous	EU01	Env-A 808, 40 CFR §§75.10(a)(1) & 75.11	Yes
6.	Opacity	Operate and maintain a continuous opacity monitoring system with an automated data acquisition and handling system for measuring and recording the opacity of emissions (in percent opacity) discharged to the atmosphere.	Continuous	EU01	40 CFR §§75.10(a)(4) & 75.14	Yes
7.	COMS Operating Requirements	a.) The COMS shall be capable of completing a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period. b.) All opacity data shall be reduced to 6-minute averages calculated in accordance with the provisions of 40 CFR 51 Appendix M. c.) The COMS shall include a means to display instantaneous values of percent opacity.	As specified	EU01	40 CFR 75.10(d), 40 CFR 63.11224(e) & Env-A 808.03	Yes
8.	Minimum Specifications	All gaseous CEMS shall meet the following	Hourly	EU01	Env-A 808.01 &	Yes



**Table 6 - Monitoring/Testing Requirements**

Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
	for CEMS	minimum specifications, as applicable: a.) A gaseous CEMS shall average and record the data for each calendar hour. b.) A “valid hour” of data means a minimum of 42 minutes of gaseous or opacity CEM system readings taken in any calendar hour, during which time the CEM is not in an out of control period as defined in Env-A 808.01(g), and the facility on which the CEM is installed is in operation. c.) All gaseous CEMS shall: <ol style="list-style-type: none"> <li>1. Include a means to display instantaneous values of gaseous emission concentrations; and</li> <li>2. Complete a minimum of one cycle of operation, which shall include measuring, analyzing, and data recording for each successive one-minute period for systems measuring gaseous emissions, unless a longer time period is approved in accordance with Env-A 809.</li> </ol>			Env-A 808.03	
9.	General CEMS & COMS Audit Requirements	The Owner or Operator shall: a.) Conduct CEMS/COMS audits in accordance with Env-A 808.07 through Env-A 808.10 & 40 CFR 75 (as applicable). b.) Notify the department at least: <ol style="list-style-type: none"> <li>1. 30 days prior to the performance of a relative accuracy test audit (RATA); and</li> <li>2. 2 weeks prior to any other planned audit or test procedure.</li> </ol>	Quarterly	EU01	Env-A 808.07 through 808.10	<b>Yes</b>
10.	Out of Control Periods for COMS	The out of control periods for COMS are defined as follows: a.) The time period beginning with the completion of the daily calibration drift check where the CD, as calculated pursuant to 40 CFR 60.13(d)(1), exceeds 2% opacity for 5 consecutive days, and ending with the CD check after corrective action has occurred that results in the performance specification drift limits being met; b.) The time period beginning with the completion of a daily CD check preceding the daily CD check that results in the CD being greater than 5% opacity and ending with the	N/A	EU01	Env-A 808.01(g)(2)	<b>Noted</b>

**Table 6 - Monitoring/Testing Requirements**

Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
		<p>CD check after corrective action has occurred that results in the performance specification drift limits being met;</p> <p>c.) The time period beginning with the completion of a quarterly opacity audit where the CEM system fails any of the audits required by Env-A 808.10 and ending with successful completion of the same audit after corrective action has occurred; or</p> <p>d.) The time period beginning with the completion of the zero alignment check required by 40 CFR 60, Appendix F, Procedure 3, section 10.3 where the zero alignment error exceeds 2 percent opacity and ending after corrective action is taken that results in a successful zero alignment check.</p>				
<b>Finding: During the evaluation period, Burgess did not report any out-of-control periods.</b>						
11.	CEMS Data Availability Requirements	<p>a.) The Owner or Operator of a source with a CEM shall operate the CEM at all times during operation of the source, except for periods of CEM breakdown, repairs, calibration checks, preventive maintenance, and zero/span adjustments.</p> <p>b.) The percent CEM data availability shall be maintained at a minimum of 90% on a calendar quarter basis for all opacity monitors, gaseous concentration monitors, and stack volumetric flow monitors, or any substitute monitoring methods approved as part of the CEM monitoring plan required by Env-A 808.04.</p> <p>c.) The percent CEM data availability shall be calculated as specified in Env-A 808.11(c) or (d).</p>	N/A	EU01	Env-A 808.11	Yes
12.	Substitute Emission Data	<p><u>Requirement for Substitute Emission Data</u> Any facility that uses the emissions data collected by a gaseous CEM system to calculate and report its annual emissions in accordance with Env-A 900 shall comply with the following:</p> <p>a.) For any facility operating hour during which the gaseous CEM system has not collected a valid hour of CEM system data, the Owner or Operator shall submit to the department substitute emission data for those hours which has been generated using one of the</p>	N/A	EU01	Env-A 808.12	Yes

**Table 6 - Monitoring/Testing Requirements**

Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
		<p>following methods:</p> <ol style="list-style-type: none"> <li>1. The missing data substitution procedures specified in 40 CFR 75, Subpart D;</li> <li>2. If the missing data occurred during a period of steady-state operation, and not during a period of start-up, shutdown, or malfunction:                             <ol style="list-style-type: none"> <li>i. An average of the valid hours of CEM system emissions data collected prior to and after the period of missing data, where the number of hours before and the number of hours after are both at least equal or more than the number of missing hours of data; and</li> <li>ii. The substituted data is representative of the missing data, being at the same heat input rate, electric generating rate, or steam load;</li> </ol> </li> <li>3. If the missing data occurred during a start-up, shutdown, or malfunction of the device, substitute data collected by the CEM during a similar period of start-up, shutdown or malfunction, respectively; or</li> <li>4. An alternative method of data substitution that meets the following criteria:                             <ol style="list-style-type: none"> <li>i. The alternative method was included in the monitoring plan submitted pursuant to Env-A 808.04;</li> <li>ii. The alternative method provides for representative emissions for the conditions of operation of the device during the period of missing data equivalent to the substitution methods described above; and</li> <li>iii. The alternative method was approved by DES as part of its approval of the monitoring plan pursuant to Env-A 808.04.</li> </ol> </li> </ol> <p>b.) For CEM systems and emissions subject to</p>				

**Table 6 - Monitoring/Testing Requirements**

Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
		<p>the missing data substitution procedures of 40 CFR 75 Subpart D, sources shall follow those requirements for substituting emissions data in order to calculate emission totals or emission averages as required by 40 CFR 75.</p> <p>c.) For CEM systems and emissions not subject to the missing data substitution procedures of 40 CFR 75 Subpart D, sources shall include substitute emissions data in the calculation of total daily, monthly, quarterly, and annual emissions generated by the permitted device to quantify total actual emissions.</p> <p>d.) Substitute emission data shall not be used in the calculation of emissions totals or averages in order to determine or demonstrate compliance with emissions standards.</p> <p>e.) Substitute data shall not be included in the calculation of data availability.</p>				
13.	NOx & CO	<p><u>NOx and CO Rolling Averages</u></p> <p>a.) To demonstrate compliance with the emission limits in Table 5, Items 1.a, 1.b and 2.b, a 30-day rolling average shall be calculated from all of the valid hourly averages collected for the 30-day operating period using the following equation:</p> $E_a = \frac{1}{n} \sum_{i=1}^n E_i \quad \text{Eq. (1)}$ <p><math>E_a</math> = 30-day rolling average, lb/MMBtu  <math>E_i</math> = Hourly average pollutant rate for hour "i," lb/MMBtu.  n = the number of valid hourly values collected over 30 boiler operating days.</p> <p>b.) While calculating the 30-day rolling average NOx lb/MMBtu emission rate in Table 5, Item 1.a, startup hours shall be excluded from Eq. (1).</p> <p>c.) A new 30-day rolling average shall be calculated for each boiler operating day.</p>	Daily	EU01	Env-A 808 & TP-0235	<b>Yes</b>
14.	CO & NH <sub>3</sub>	<p><u>Valid Averaging Period</u></p> <p>The number of hours of valid CEM data required for the determination of compliance with a calendar day average emission standard (e.g., CO lb/MMBtu emission limit in Table 5, Item 2.a or NH<sub>3</sub> slip concentration limit in Table 4, Item 2 shall be 18 hours.</p>	Daily	EU01	Env-A 808.14	<b>Yes</b>

**Table 6 - Monitoring/Testing Requirements**

Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
15.	Ammonia slip	<p>The Owner or Operator shall operate and maintain an ammonia slip CEMS for measuring and recording ammonia slip as follows:</p> <p>a.) The ammonia monitoring system shall be challenged with an ammonia calibration gas on a calendar quarter basis in accordance with Env-A 808.07 and Env-A 808.08;</p> <p>b.) The gas shall be certified as at least 5% accurate and be within the range of 5 - 15 ppm;</p> <p>c.) The ammonia calibration gas shall be sent through the ammonia sampling system three separate times, alternating with a secondary gas (air, zero gas, stack gas, etc.). If the average difference between the value of the calibration gas and the response of the monitoring system to the gas exceeds 5% of the gas value (equivalent to less than 95% or greater than 105% NH<sub>3</sub>-to-NO converter efficiency), then use a factor to correct the response of the ammonia monitoring system to equal the value of the calibration gas (equivalent to 100% converter efficiency);</p> <p>d.) Prior to applying the correction factor, the NH<sub>3</sub>-to-NO conversion efficiency shall be greater than or equal to 80%. An efficiency less than 80% means the measuring system is out of control as defined in Env-A 808.01(g)(1)c;</p> <p>e.) The annual relative accuracy test audit of the system shall be done using as the Reference Method either EPA Conditional Test Method CTM-027, the differential NO<sub>x</sub> method, or a department-approved alternative (if the differential NO<sub>x</sub> method is used, the NH<sub>3</sub>-to-NO converter efficiency of the as the Reference Method sampling system shall be ≥ 90%);</p> <p>f.) Relative accuracy of the ammonia measurement system shall be within 20% of the reference method or +/-4 ppm; and</p> <p>g.) The results of the converter efficiency check shall be submitted to the department quarterly and shall include the NH<sub>3</sub> calibration gas certification sheet.</p>	Continuous	EU01/PCE2	TP-0235 & Env-A 808	Yes
16.	Tune-up	<p><u>Boiler Tune-up Requirement</u></p> <p>The Owner or Operator shall conduct a performance tune-up of the boiler as follows:</p>	Every 5 years	EU01	40 CFR 63.11223 Subpart JJJJJ	Yes

**Table 6 - Monitoring/Testing Requirements**

Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
		a.) As applicable, inspect the burner, and clean or replace any components of the burner as necessary; b.) Inspect the flame pattern, as applicable, and adjust the burner as necessary to optimize the flame pattern. The adjustment should be consistent with the manufacturer’s specifications, if available; c.) Inspect the system controlling the air-to-fuel ratio, as applicable, and ensure that it is correctly calibrated and functioning properly d.) Optimize total emissions of carbon monoxide. This optimization shall be consistent with the manufacturer’s specifications, if available, and with any nitrogen oxide requirement to which the unit is subject; and e.) Measure the concentrations in the effluent stream of CO in parts per million, by volume, and oxygen in volume percent, before and after the adjustments are made. Measurements may be either on a dry or wet basis, as long as it is the same basis before and after the adjustments are made. Measurements may be taken using a portable CO analyzer.				
<b>Finding: Burgess last performed a boiler tune-up that met the above requirements in October of 2019.</b>						
17.	PM	<u>Stack Testing Requirements for PM</u> The Owner or Operator shall conduct stack testing to demonstrate compliance with the particulate matter emission limit in Table 5, Item.	Every 5 years (within 61 months) after the previous performance test	EU01	40 CFR 63.11220(b)(2) Subpart JJJJJ	<b>Yes</b>
<b>Finding: Burgess last conducted stack testing to demonstrate compliance with PM emission limits in October of 2019.</b>						
18.	PM	The performance stack tests shall be conducted in accordance with the requirements in Env-A 800, 40 CFR §63.7(c), (d), (f) and (h) and 40 CFR 63 Subpart JJJJJ, Table 4. During the performance test, collect boiler operating load data as follows: a.) Collect operating load data (fuel feed rate or steam generation data) every 15 minutes during the entire period of the performance test;	Each stack test	EU01	Env-A 800, 40 CFR §§ 63.11210, 63.11211 & 63.11212 Subpart JJJJJ	<b>Yes</b>

**Table 6 - Monitoring/Testing Requirements**

Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
		b.) Determine the average operating load by computing the hourly averages using all of the 15-minute readings taken during each performance test; and c.) Determine the average of the three test run averages during the performance test, and multiply this by 1.1 (110%) as your operating limit.				
19.	Stack Testing Scheduling & Protocol	Compliance testing shall be planned and carried out in accordance with the following schedule: a.) The Owner or Operator must submit a Notification of Intent to conduct a performance test at least 60 days before the performance stack test is scheduled to begin. b.) A pre-test protocol shall be submitted to the department at least 30 days prior to the commencement of testing in accordance with Env-A 802.04; c.) The Owner or Operator and any contractor retained by the owner or operator to conduct the test shall meet with a department representative in person or by telephone at least 15 days prior to the test date to finalize the details of the testing; d.) A pre-test meeting may be held less than 15 days prior to the test date so long as implementation of any testing or operation changes resulting from the meeting can be carried out prior to the scheduled test date and the scheduled test integrity is not jeopardized; and e.) The final test report shall be submitted to the department within 60 days after the completion of testing	Each stack test	EU01	40 CFR 63.11225(a)(3) & Env-A 802	Yes
20.	Stack Testing - Operating Conditions	Compliance stack testing shall be conducted under one of the following operating conditions: a.) Between 90 and 100 percent, inclusive, of maximum production rate or rated capacity; b.) A production rate at which maximum emissions occur; or c.) At such operating conditions agreed upon during a pre-test meeting conducted pursuant to Env-A 802.05.	Each stack test	EU01	Env-A 802.10	Yes

**Table 6 - Monitoring/Testing Requirements**

Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
21.	Opacity	<p><u>Demonstrating Continuous Compliance with the Subpart JJJJJ PM Emission Limit</u></p> <p>a.) The Owner or Operator shall calculate and record 6-minute averages from the opacity monitoring data and determine and record the daily block average of recorded readings, except as provided in §63.11221(c).</p> <p>b.) For purposes of collecting opacity data, the Owner or Operator must operate the COMS as specified in §63.11221(b). For purposes of calculating data averages, the Owner or Operator must use all the data collected during all periods in assessing compliance, except that certain data must be excluded as specified in §63.11221(c). Periods when COMS data are unavailable may constitute monitoring deviations as specified in §63.11221(d).</p>	Continuous	EU01	40 CFR 63.11224 Subpart JJJJJ	Yes
22.	Boiler Operating Load	<p><u>Demonstrating Continuous Compliance with the Subpart JJJJJ PM Emission Limit</u></p> <p>a.) Collect operating load data (fuel feed rate or steam generation data) every 15 minutes;</p> <p>b.) Reduce the data to 30-day rolling averages using Eq. 3 specified in §63.11224(d);</p> <p>c.) For purposes of collecting data, operate the CPMS as specified in §63.11221(b);</p> <p>d.) For purposes of calculating data averages, all the data collected during all periods in assessing compliance must be used, except that certain data must be excluded as specified in §63.11221(c). Periods when CPMS data are unavailable may constitute monitoring deviations as specified in § 63.11221(d).</p>	Continuous	EU01	40 CFR 63.11224 Subpart JJJJJ	Yes
23.	CMS Data Collection	<p>a.) The Owner or Operator must monitor and collect data as specified here and the site-specific monitoring plan required by §63.11205(c).</p> <p>b.) The Owner or Operator must operate the monitoring system and collect data at all required intervals at all times the affected source is operating and compliance is required, except for periods of monitoring system malfunctions or out-of-control periods (see 40 CFR §63.8(c)(7)), repairs associated with monitoring system</p>	As specified	EU01	40 CFR 63.11205 & 63.11221 Subpart JJJJJ	Yes



**Table 6 - Monitoring/Testing Requirements**

Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
		<p>malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks, required zero and span adjustments, and scheduled continuous monitoring system (CMS) maintenance as defined in the site-specific monitoring plan (specified in Table 8, Item 10). A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. The Owner or Operator is required to complete monitoring system repairs in response to monitoring system malfunctions or out-of-control periods and to return the monitoring system to operation as expeditiously as practicable.</p> <p>c.) Data collected during periods of startup and shutdown, monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, or required monitoring system quality assurance or quality control activities may not be used in calculations used to report emissions or operating levels.</p> <p>d.) Except for periods of monitoring system malfunctions or monitoring system out-of-control periods, repairs associated with monitoring system malfunctions or monitoring system out-of-control periods, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks, required zero and span adjustments, and scheduled CMS maintenance as defined in the site-specific monitoring plan), failure to collect required data is a deviation of the monitoring requirements.</p>				
24.	Pressure drop	Pressure across the fabric filter shall be monitored continuously. Normal operating range is 2-10 inches of water.	Continuous	EU01/PCE1	40 CFR 70.6(a)(3)	<b>Yes</b>
25.	Gas Temperature	Flue gas temperature at the inlet to the fabric filter shall be monitored continuously. Normal	Continuous	EU01/PCE1	40 CFR 70.6(a)(3)	<b>Yes</b>

Table 6 - Monitoring/Testing Requirements						
Item #	Parameter	Method of Compliance	Frequency	Applicable Unit	Regulatory Basis	Compliant
		temperature is less than or equal to 450°F.				
26.	Hours of Operation	Each emergency engine shall be equipped with a non-resettable hour meter (either mechanically geared or electronic sensor device).	Continuous	EU03 & EU04	40 CFR 60.4209 Subpart III	Yes
27.	Sulfur Content of Liquid Fuels	Conduct testing in accordance with appropriate ASTM test methods or retain documentation in accordance with Table 8, Item 6 in order to demonstrate compliance with the sulfur content limitation provisions specified in this permit for liquid fuels.	For each delivery of fuel oil/diesel to the facility	Facility Wide	Env-A 806.02 & Env-A 806.05	Yes
<b>Finding: Burgess retains fuel delivery tickets.</b>						
28.	To Be Determined	When conditions warrant, the department may require the Owner or Operator to conduct stack testing in accordance with USEPA or other department approved methods.	Upon request by the department	Facility Wide	RSA 125-C:6, XI	Noted
<b>Finding: NHDES has not requested any stack testing other than what is already required by the permit.</b>						

**VII. Compliance with Compliance Assurance Monitoring**

Table 7 below, taken from Permit TV-0065, lists the compliance assurance monitoring requirements for the facility, and any deficiencies noted during the evaluation.

Table 7 - Compliance Assurance Monitoring for PCE1		
Requirement	Description	Compliant
1. Indicator	Triboelectric signal	Noted
Approach	Triboelectric monitors are installed (one on each outlet duct of the six PJFF compartments). An alarm will sound when the signal reaches preset limits, indicating possible failed bags or other component of the monitoring system.	Yes
2. Indicator Range	Triboelectric signal trends are displayed continually in the control room. Any abnormalities in the trends are investigated and addressed as needed. An excursion is defined as a triboelectric signal greater than 60% of the scale for 15 seconds. Excursions trigger an inspection, corrective action, and a reporting requirement.	Yes
3. Performance Criteria	A probe is located in the outlet duct of each of the 6 compartments. The signal produced by each triboelectric monitor is generally proportional to the particulate mass flow from that PJFF compartment. An increase in the triboelectric signal indicates an increase in particulate emissions from the baghouse.	Yes
A.) Data Representativeness		
B.) Verification of	N/A	N/A

Table 7 - Compliance Assurance Monitoring for PCE1		
Operational Status		
C.) QA/QC Practices and Criteria	The triboelectric probes are periodically (at least monthly) inspected and cleaned. The monitor has been factory adjusted and no other QA/QC practices are needed.	<b>Yes</b>
D.) Monitoring Frequency	The triboelectric signal is monitored continuously.	<b>Yes</b>
i. Data Collection Procedures	Real-time signals are displayed on a monitor in the control room (typically 10 minutes of data at 1 second capture interval), and data is automatically logged and archived in the system.	<b>Yes</b>
ii. Averaging Period	None	<b>N/A</b>

In addition to Table 7, Permit TV-0065 requires the following:

**Proper maintenance (40 CFR 64.7(b))**

At all times, the Owner or Operator shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

***Finding: NHDES determined Burgess is in compliance with this requirement during this compliance evaluation period.***

**Continued operation (40 CFR 64.7(c))**

Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the Owner or Operator shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that the pollutant-specific emissions unit is operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of these CAM requirements, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. The Owner or Operator shall use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

***Finding: NHDES determined Burgess is in compliance with this requirement during this compliance evaluation period.***

**Response to excursions or exceedances (40 CFR 64.7(d))**

i. Upon detecting an excursion or exceedance, the Owner or Operator shall restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or

malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused startup or shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator range, designated condition, or below the applicable emission limitation or standard, as applicable.

ii. Determination of whether the Owner or Operator has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process.

iii. If the Owner or Operator identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not provide an indication of an excursion or exceedance while providing valid data, or the results of compliance or performance testing document a need to modify the existing indicator ranges or designated conditions, the Owner or Operator shall promptly notify the department and, if necessary, submit a significant modification to the Title V operating permit to address the necessary monitoring changes. Such a modification may include, but is not limited to, reestablishing indicator ranges or designated conditions, modifying the frequency of conducting monitoring and collecting data, or the monitoring of additional parameters.

***Finding: NHDES determined Burgess is in compliance with this requirement during this compliance evaluation period.***

**Quality Improvement Plan (QIP) Requirements (40 CFR 64.8)**

i. If the indicator range specified in Table 7 for PCE1 accumulate excursions over 5% of the rolling 12-month operating time for the boiler (EU01), the Owner or Operator shall develop and implement a Quality Improvement Plan.

ii. The QIP shall include procedures for evaluating the control performance problems. Based on the evaluation, modify the plan to include procedures for conducting one or more of the following actions, as appropriate:

- a. Improve preventive maintenance practices.
- b. Operational changes.
- c. Appropriate improvements to control methods.
- d. Other steps to improve control performance.
- e. More frequent or improved monitoring.

iii. If a QIP is required, the Owner or Operator shall develop and implement a QIP as expeditiously as practicable and shall notify the department if the period for completing the improvements contained in the QIP exceeds 180 days from the date on which the need to implement the QIP was determined.

**Finding: Burgess was not required to develop a QIP during this evaluation period.**

**VIII. Compliance with Recordkeeping Requirements**

Table 8 below, taken from Permit TV-0065, lists the recordkeeping requirements for the facility, and any deficiencies noted during the evaluation.

<b>Table 8 - Recordkeeping Requirements</b>					
Item #	Recordkeeping Requirement	Records Retention/ Frequency	Applicable Unit	Regulatory Basis	Compliant
1.	<p><u>Record Retention and Availability</u> Keep the records required by this permit on file. These records shall be available for review by the department upon request.</p>	Retain for a minimum of 5 years unless longer as specified	Facility wide	Env-A 902, Env-A 3211 & 40 CFR 70.6(a)(3)(ii)(B)	Yes
2.	<p><u>Certificate of Representation</u> a.) Complete and retain a certificate of representation for a designated representative or an alternate designated representative including the elements pursuant to 40 CFR 72.24, <i>Certificate of Representation</i>. b.) The certificate of representation required in a. shall be retained beyond the 5-year minimum period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.</p>	Maintain at the facility at all times	EU01	40 CFR 72.9(f) & 40 CFR 72.24	Yes
3.	<p><u>General Recordkeeping Requirements for Combustion Devices</u> For each fuel burning device at the facility, the owner or operator shall keep records of fuel utilization in accordance with the following: a.) Type (e.g. biomass) and amount of fuel burned in each device, b.) Type, amount of fuel burned and hours of operation for each emergency engine.</p>	Daily & Monthly	EU01	Env-A 903.03 & 40 CFR 60.49b(d)	Yes
	<p>b.) Type, amount of fuel burned and hours of operation for each emergency engine.</p>	Monthly	EU03 & EU04	Env-A 903.03	Yes
4.	<p><u>Fuel Annual Capacity Factors</u> Maintain records of the annual capacity factor individually for fuel oil and biomass. The annual capacity factor is determined on a 12-month rolling average basis with a new annual capacity factor calculated at the end of each calendar month.</p>	Monthly & 12-month rolling	EU01	40 CFR 60.49b(d)	Yes
5.	<p><u>Opacity NSPS Subpart Db Recordkeeping Requirement</u> Maintain records of opacity.</p>	Continuously	EU01	40 CFR 60.49b(f)	Yes
6.	<p><u>Liquid Fuel Oil Recordkeeping Requirements</u> a.) In lieu of sulfur testing pursuant to Table 6,</p>	Whenever there is a change in	EU03 & EU04	Env-A 806.05 & Env-A 903.03	Yes

**Table 8 - Recordkeeping Requirements**

Item #	Recordkeeping Requirement	Records Retention/ Frequency	Applicable Unit	Regulatory Basis	Compliant
	Item 27, the Owner or Operator may maintain a written statement from the fuel supplier that the sulfur content of the fuel as delivered does not exceed state or federal standards for that fuel.	fuel supplier but at least annually			
	b.) The owner or operator of an affected facility who elects to demonstrate that the affected facility combusts only very low sulfur oil as specified in 40 CFR 60.42b(k), shall obtain and maintain at the facility fuel receipts (such as a current, valid purchase contract, tariff sheet, or transportation contract) from the fuel supplier that certify that the oil meets the fuel sulfur limit specified in Table 5, Item 29.	For each delivery of fuel oil	EU01	40 CFR 60.49b(r)	<b>Yes</b>
7.	<p><u>General NOx Recordkeeping Requirements</u></p> <p>Record and maintain the following information:</p> <p>a.) Identification of each fuel burning device.</p> <p>b.) Operating schedule during the high ozone season (June 1 through August 31) for each fuel burning device identified in a. above, including:</p> <ol style="list-style-type: none"> <li>1. Typical hours of operation per calendar day;</li> <li>2. Typical days of operation per calendar month;</li> <li>3. Design heat input rate input rate in MMBtu/hr.</li> </ol> <p>c.) The following NOx emissions data for each combustion device identified above:</p> <ol style="list-style-type: none"> <li>1. Actual NOx emissions per month;</li> <li>2. Typical high ozone day NOx emissions, in pounds per day; and</li> <li>3. The emission factors and the origin of the emission factors used to calculate the NOx emissions.</li> </ol>	Maintain Data for Annual Report	EU01, EU03 & EU04	Env-A 905.02	<b>Yes</b>
8.	<p><u>Recordkeeping for Sources or Devices with Add-on NOx Air Pollution Control Equipment</u></p> <p>Maintain records of the following information:</p> <p>a.) The air pollution control device identification number, type, model number, and manufacturer;</p> <p>b.) Installation date;</p> <p>c.) Unit controlled;</p> <p>d.) Type and location of the capture system, capture efficiency percent, and method of determination;</p> <p>e.) Information as to whether or not the air pollution control device is always in operation when the fuel burning device or incinerator it is serving is in operation; and</p> <p>f.) The destruction or removal efficiency of the add-on air pollution control equipment, including the following</p>	Maintain at the facility at all times	EU01/PCE2	Env-A 905.03	<b>Yes</b>

**Table 8 - Recordkeeping Requirements**

Item #	Recordkeeping Requirement	Records Retention/ Frequency	Applicable Unit	Regulatory Basis	Compliant
	<p>information:</p> <ol style="list-style-type: none"> <li>1. Destruction or removal efficiency, in percent;</li> <li>2. Date tested;</li> <li>3. The emission test results, if tested, including:               <ol style="list-style-type: none"> <li>i. The inlet NOx concentration in ppm;</li> <li>ii. The outlet NOx concentration in ppm; and</li> <li>iii. The method of determination of the concentrations in a. and b. above; and</li> </ol> </li> <li>4. The method of determining destruction or removal efficiency, if not tested.</li> </ol>				
9.	<p><u>VOC Emission Statements Recordkeeping Requirements</u></p> <p>If the actual annual VOC emissions from all permitted devices located at the Facility are greater than or equal to 10 tpy, then record the following information:</p> <ol style="list-style-type: none"> <li>a.) Identification of each VOC-emitting process or device;</li> <li>b.) The operating schedule during the high ozone season (June 1 through August 31) for each VOC-emitting process or device identified in a. above, including:               <ol style="list-style-type: none"> <li>1. Typical hours of operation per day; and</li> <li>2. Typical days of operation per calendar month.</li> </ol> </li> <li>c.) The following VOC emission data from all VOC-emitting processes or devices above, including:               <ol style="list-style-type: none"> <li>1. Actual VOC emissions for:                   <ol style="list-style-type: none"> <li>i. The calendar year, in tons; and</li> <li>ii. A typical high ozone season day during that calendar year, in pounds per day; and</li> </ol> </li> <li>2. The emission factors and the origin of the emission factors used to calculate the VOC emissions.</li> </ol> </li> </ol>	Maintain Data for Annual Report	EU01, EU03 & EU04	Env-A 904	<b>Noted</b>
<p><b>Finding: NHDES reviewed annual emission statements submitted by Burgess, which demonstrate that VOC emissions were less than 10 tpy this evaluation period.</b></p>					
10.	<p><u>CEM Monitoring Plan</u></p> <ol style="list-style-type: none"> <li>a.) Maintain the CEM monitoring plan which contains:               <ol style="list-style-type: none"> <li>1. Sufficient information to demonstrate that all unit SO<sub>2</sub> emissions, NOx emissions, CO emissions, CO<sub>2</sub> emissions and opacity are monitored and reported.</li> <li>2. The information specified in 40 CFR 75.53 and Env-A 808.04.</li> </ol> </li> <li>b.) Revise or update the monitoring plan whenever the Owner or Operator makes a replacement, modification or change that could affect the CEMS or COMS or other approved monitoring method.</li> </ol>	Maintain on a continuous basis and update as necessary	EU01	40 CFR 63.11205, 40 CFR 75.53 & Env-A 808.04	<b>Yes</b>

**Table 8 - Recordkeeping Requirements**

Item #	Recordkeeping Requirement	Records Retention/ Frequency	Applicable Unit	Regulatory Basis	Compliant
11.	<p><u>Quality Assurance/Quality Control (QA/QC) Plan for Opacity or Gaseous CEMS</u></p> <p>a.) Maintain the QA/QC plan that contains written procedures for implementation of a QA/QC program that meets the criteria specified in 40 CFR 60, Appendix F, Procedure 1, section 3 for each gaseous CEM system and 40 CFR 60, Appendix F, Procedure 3 for the opacity CEM system. The QA/QC plan shall contain the following information:</p> <ol style="list-style-type: none"> <li>1. A schedule of, and description of, all maintenance activities that are required by the CEM manufacturer or that might have an effect on the operation of the system, including a summary of the results of any performance specification testing that was performed in accordance with Env-A 808.05(e) or (f);</li> <li>2. A description of how the audits and testing required by this part will be performed; and</li> <li>3. Examples of the reports that will be used to document the audits and tests required by Env-A 808;</li> </ol> <p>b.) Review the QA/QC plan and all data generated by its implementation at least once a year;</p> <p>c.) Revise or update the QA/QC plan, as necessary, based on the results of the annual review;</p> <p>d.) Make the revised QA/QC plan available for on-site review by the department at any time.</p>	Maintain on site	EU01	Env-A 808.06	Yes
<p><b>Finding: Burgess reviewed the QA/QC plan as required during this evaluation period and determined no changes were needed.</b></p>					
12.	<p><u>General Acid Rain Recordkeeping Provisions</u></p> <p>Maintain records of:</p> <ol style="list-style-type: none"> <li>a.) Opacity, operating parameters (operating time, heat input, volumetric flow rate &amp; load), diluent monitor data, SO<sub>2</sub>, NO<sub>x</sub> &amp; CO<sub>2</sub> emissions and percent monitor availability; and</li> <li>b.) The causes of any missing data periods and the actions taken to correct such causes.</li> </ol>	Maintain on a continuous basis	EU01	40 CFR 75.57	Yes
13.	<p><u>Certification, Quality Assurance and Quality Control Records</u></p> <ol style="list-style-type: none"> <li>a.) Maintain records of the information required pursuant to 40 CFR 75.59 and 75.73(b) which includes the certification, quality assurance, and quality control records.</li> <li>b.) These shall include records of all daily &amp; 7-day calibration error tests, daily interference checks, cycle time tests, linearity checks and relative accuracy test audits, as applicable.</li> </ol>	Maintain on a continuous basis	EU01	40 CFR 75.59 & 75.73	Yes
14.	<p><u>Monitoring Records</u></p> <p>Maintain records of data required to be monitored pursuant to</p>	Maintain on a continuous	EU01	40 CFR 70.6(a)(3)(ii) &	Yes



**Table 8 - Recordkeeping Requirements**

Item #	Recordkeeping Requirement	Records Retention/ Frequency	Applicable Unit	Regulatory Basis	Compliant
	Tables 6 & 7 including: a.) Records of monitoring data, monitor performance data, corrective action actions taken, any written QIP required pursuant to Condition VIII.F. of this permit and any activities undertaken to implement the QIP. b.) Maintenance and inspections conducted on the fabric filter and the SCR.	basis		40 CFR 64.9	
15.	<u>Startup/Shutdown Records</u> Maintain records of the occurrence and duration of: a.) Startup, shutdown, or malfunction in the operation of the affected facility; b.) Any malfunction of the air pollution control equipment; and c.) Any periods during which a continuous monitoring system or monitoring device is inoperative.	Each occurrence	EU01	40 CFR 60.7(b)	Yes
16.	<u>Boiler Startup and Shutdown Plan (SSP)</u> SSP must be maintained onsite and available upon request during inspection.	Maintain on site	EU01	Env-A 906.01	Yes
17.	<u>NESHAP – Recordkeeping Requirements</u> The Owner or Operator shall maintain the following records: a.) Each notification and report that was submitted, including all documentation supporting Initial Notifications, or Notification of Compliance Status submitted; b.) As applicable, records that document conformance with the work practices, emission reduction measures, and management practices required by §63.11214 and §63.11223 as specified below: 1. Records must identify the boiler, the date of tune-up, the procedures followed for tune-up, and the manufacturer’s specifications to which the boiler was tuned. 2. Records of monthly fuel use for the boiler, including the type of fuel and amount used. 3. Records of the occurrence and duration of each malfunction of the boiler, or of the associated air pollution control and monitoring equipment. 4. Records of actions taken during periods of malfunction to minimize emissions in accordance with the general duty to minimize emissions in §63.11205(a), including corrective actions to restore the malfunctioning boiler, air pollution control, or monitoring equipment to its normal or usual manner of operation.	Maintain on a continuous basis	EU01	40 CFR 63.11225(c) Subpart JJJJJ	Yes

Table 8 - Recordkeeping Requirements					
Item #	Recordkeeping Requirement	Records Retention/ Frequency	Applicable Unit	Regulatory Basis	Compliant
	5. Records of opacity data.				
18.	<u>Additional Recordkeeping Requirements: Facility-wide emission limitations</u> Maintain a 12-month running total of HAP emissions for the purpose of demonstrating that the total emissions of these pollutants are below the thresholds specified in Table 5, Item 9.	Monthly	Facility Wide	Env-A 906 & TP-0235	Yes
19.	<u>Regulated Toxic Air Pollutants</u> Compliance was demonstrated at the time of permit issuance as described in the department's Application Review Summary for application #14-0441. The source must update the compliance demonstration using one of the methods provided in Env-A 1405 if: a.) There is a revision to the list of RTAPs lowering the AAL or de minimis value for any RTAP emitted from the Facility; b.) The amount of any RTAP emitted is greater than the amount that was previously evaluated; c.) An RTAP that was not evaluated in the Application Review Summary will be emitted; or d.) Stack conditions (e.g. air flow rate) change.	Update prior to process changes and within 90 days of each revision of Env-A 1400	Facility Wide	Env-A 902.01 State-only Requirement	Yes
20.	<u>Permit Deviation Recordkeeping</u> Recordkeeping of deviations from Permit requirements shall be conducted in accordance with Condition XXVII of this Permit.	Maintain up-to-date data	Facility Wide	Env-A 911	Yes

**IX. Compliance with Reporting Requirements**

Table 9 below, taken from Permit TV-0065, lists the reporting requirements for the facility, and any deficiencies noted during the evaluation.

Table 9 - Applicable Reporting Requirements					
Item #	Reporting Requirements	Frequency of Reporting	Applicable Emission Unit	Regulatory Citation	Compliant
1.	<u>General Reporting Requirements</u> a.) Each report shall be separately and clearly labeled with: 1. The name, mailing address and physical address of the source covered by the report; 1. The operating period covered by the report;	For each report submitted to the department	Facility wide	Env-A 907.01	Yes

**Table 9 - Applicable Reporting Requirements**

Item #	Reporting Requirements	Frequency of Reporting	Applicable Emission Unit	Regulatory Citation	Compliant
	2. The permit number and condition or item number that requires the report submittal; 3. The type of report, using the name of the report as specified in the reporting condition in the permit, that is being submitted; and 4. The date the report was prepared; b.) An owner or operator who submits a report that is a revision to a previously-submitted report shall clearly identify the revised report with the information specified in Table 9, Item 1.a. above, and indicate which portions of the report have been revised; c.) The owner or operator may submit more than one report with a single cover, provided the owner or operator clearly identifies each report being submitted using the information required in Table 9, Items 1.a. and 1.b. above, if applicable, for each report; and d.) The owner or operator shall submit reports as paper documents or by electronic means.				
2.	<u>Certificate of Accuracy Statement</u> Any report submitted to the DES and/or USEPA shall include the certification of accuracy statement outlined in Section XXI.B. of this Permit and shall be signed by the responsible official.	With each report	Facility wide	40 CFR 70.6(c)(1)	Yes
3.	<u>Semi-annual Permit Deviation and Monitoring Report</u> The Owner or Operator shall submit a semi-annual permit deviation and monitoring report, which contains: a.) Summaries of all monitoring and testing requirements contained in this permit; and b.) A summary of all permit deviations (recorded and reported as per Section XXVII) and excursions (as specified in Section VIII.F.6 and Table 9, Item 17) that have occurred during the reporting period.	Semi-annually received by DES no later than July 31 <sup>st</sup> and January 31 <sup>st</sup> of each calendar year.	Facility wide	Env-A 907.03(b) & 40 CFR 70.6(a)(3)(iii)(A)	Yes
4.	<u>Annual Emissions Report</u> Submit an annual emissions report which shall include the following information: a.) Actual calendar year emissions from each device of NO <sub>x</sub> , CO, SO <sub>2</sub> , VOCs, HAPs (speciated by individual HAP or CAS number), CO <sub>2</sub> e, filterable PM/PM <sub>10</sub> /PM <sub>2.5</sub> , condensable PM, and ammonia. b.) The methods used in calculating such emissions in accordance with Env-A 705.03, <i>Determination of Actual Emissions for Use in Calculating Emission-Based Fees</i> . c.) The information recorded in accordance with Table 8,	Annually (received by DES no later than April 15 <sup>th</sup> of the following year)	EU01-EU04	Env-A 907.02	Yes

**Table 9 - Applicable Reporting Requirements**

Item #	Reporting Requirements	Frequency of Reporting	Applicable Emission Unit	Regulatory Citation	Compliant
	Item 3.				
5.	<p><u>Payment of Emission-Based Fee</u></p> <p>Payment of the emission based fees shall be conducted in accordance with Section XXIII of this Permit.</p>	Annually (received by DES no later than May 15 <sup>th</sup> of the following year)	EU01-EU04	Env-A 705.04(b)	Yes
6.	<p><u>Annual Compliance Certification</u></p> <p>Annual compliance certification shall be submitted in accordance with Section XXI of this Permit.</p>	Annually (received by DES no later than April 15 <sup>th</sup> of the following year)	Facility wide	40 CFR 70.6(c)(1)	Yes
7.	<p><u>NOx Reporting Requirements</u></p> <p>Include the following information in the annual emissions report required in Table 9, Item 3:</p> <p>a.) A breakdown of NOx emissions by month; and</p> <p>b.) All data recorded pursuant to Table 8, Item 7.</p>	Annually (received by DES no later than April 15 <sup>th</sup> of the following year)	EU01, EU03 & EU04	Env-A 909.03	Yes
8.	<p><u>Data Availability Restoration Plan</u></p> <p>If the Owner or Operator of the source discovers that it has failed to meet the percent data availability requirement in the previous calendar quarter or in the calendar quarter in which it is currently operating:</p> <p>a.) Notify DES by telephone, fax, or e-mail (<a href="mailto:pdeviations@des.nh.gov">pdeviations@des.nh.gov</a>) within 10 days of discovery of the permit deviation.</p> <p>b.) Submit a plan to the department, within 30 days of discovery, specifying in detail the steps it plans to take in order to meet the availability requirements for future calendar quarters.</p> <p>c.) Implement the plan to meet the data availability requirements no later than 30 days after the end of the quarter of failure.</p>	As specified	EU01	Env-A 911.04(c) (State-only) & Env-A 808.11(e)	Noted
<p><b>Finding: As of the date of this report, Burgess met the percent data availability requirement for all quarters during this compliance evaluation period.</b></p>					
9.	In the event that the Owner or Operator replaces a damaged or malfunctioning CEM system component in order to maintain the	As specified	EU01	Env-A 808.04	Noted

**Table 9 - Applicable Reporting Requirements**

Item #	Reporting Requirements	Frequency of Reporting	Applicable Emission Unit	Regulatory Citation	Compliant
	collection of valid CEM data, and the replacement requires the CEM system to be recertified in accordance with Env-A 808.05(e), (f), or (g), then the owner or operator shall notify the department within one working day of the replacement and shall submit a revision to the CEM monitoring plan within 30 days of the replacement if the replaced component results in a change in the information contained in the previously-approved monitoring plan.				
<b>Finding: Burgess did not modify a CEM system component which would require the CEM system to be recertified during this evaluation period.</b>					
10.	<p><u>NESHAP – Performance Test Reports</u></p> <p>a.) Within 60 days after the date of completing each performance test specified in Table 6, Item 17, the Owner or Operator must submit the results of the performance tests to the department and EPA.</p> <p>b.) Stack test data must be reported to EPA through CDX (<a href="https://cdx.epa.gov/">https://cdx.epa.gov/</a>) as specified in §63.11225(e).</p>	As specified	EU01	Env-A 802 & 40 CFR 63.11225(e) Subpart JJJJJ	<b>Noted</b>
<b>Finding: Burgess was not required to perform the testing specified in Table 6, Item 17 during this evaluation period.</b>					
11.	<p><u>CEMS &amp; COMS QA/QC Plan Updates</u></p> <p>a.) No later than April 15<sup>th</sup> of each year, either:</p> <ol style="list-style-type: none"> <li>1. Submit to DES the revised QA/QC plan and the reasons for each change, and certify in writing that the Owner or Operator is implementing the revised QA/QC plan; or</li> <li>2. Certify in writing that no changes have been made to the plan and that the Owner or Operator will continue to implement the existing QA/QC plan.</li> </ol> <p>b.) If DES requests a revision to the QA/QC plan pursuant to Env-A 808.06(d), the Owner or Operator shall submit a revised plan within 45 days of the date of the request.</p>	Annually by April 15 <sup>th</sup>	EU01	Env-A 808.06	<b>Yes</b>
12.	<p><u>NESHAP – Annual Compliance Certification Report</u></p> <p>a.) The Owner or Operator must prepare, by March 1 of each year, and submit to the department <u>as specified in b.)</u>, an annual compliance certification report for the previous calendar year containing the information specified below:</p> <ol style="list-style-type: none"> <li>1. Company name and address.</li> <li>2. Statement by a responsible official, with the official’s name, title, phone number, email address, and signature, certifying the truth, accuracy and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart. The notification must include the following certification(s) of compliance, as applicable, and signed by a</li> </ol>	Prepared annually no later than March 1 <sup>st</sup> and submit to EPA Region 1 and the department upon request	EU01	40 CFR 63.11225(b) Subpart JJJJJ	<b>Yes</b>

**Table 9 - Applicable Reporting Requirements**

Item #	Reporting Requirements	Frequency of Reporting	Applicable Emission Unit	Regulatory Citation	Compliant
	<p>responsible official:</p> <ul style="list-style-type: none"> <li>i. "This facility complies with the requirements in § 63.11223 to conduct a 5-year tune-up of the boiler."</li> <li>ii. For units that do not qualify for a statutory exemption as provided in section 129(g)(1) of the Clean Air Act: "No secondary materials that are solid waste were combusted in any affected unit."</li> <li>iii. "This facility complies with the requirement in §§63.11214(d) and 63.11223(g) to minimize the boiler's time spent during startup and shutdown and to conduct startups and shutdowns according to the manufacturer's recommended procedures or procedures specified for a boiler of similar design if manufacturer's recommended procedures are not available."</li> </ul> <p>3. If the source experiences any deviations from the applicable requirements during the reporting period, include a description of deviations, the time periods during which the deviations occurred, and the corrective actions taken.</p> <p>4. The total fuel use by each affected boiler subject to an emission limit, for each calendar month within the reporting period, including, but not limited to, a description of the fuel, whether the fuel has received a non-waste determination by you or EPA through a petition process to be a non-waste under §241.3(c), whether the fuel(s) were processed from discarded non-hazardous secondary materials within the meaning of §241.3, and the total fuel usage amount with units of measure.</p> <p>b.) The Owner or Operator must submit the report by March 15<sup>th</sup> if there were any instances described by Item a.)3. above.</p>				
13.	<p><u>Acid Rain Program - Quarterly Reports</u></p> <p>a.) Submit to DES &amp; EPA quarterly reports which contain:</p> <ul style="list-style-type: none"> <li>1. The data and information in 40 CFR 75.64(a), (b) &amp; (c) and 75.73(f).</li> <li>2. NO<sub>x</sub> emissions in lb/hr for every hour during the control period and cumulative quarterly and seasonal NO<sub>x</sub> emission data in pounds.</li> <li>3. SO<sub>2</sub> and NO<sub>x</sub> emissions in lb/hr for every hour during the year and cumulative quarterly and annual SO<sub>2</sub> and NO<sub>x</sub> emissions data in pounds.</li> <li>4. A certification by the Designated Representative that the</li> </ul>	Quarterly (no later than 30 days following the end of each quarterly reporting period)	EU01	40 CFR 75.64 & 40 CFR 75.73(f)	Yes

**Table 9 - Applicable Reporting Requirements**

Item #	Reporting Requirements	Frequency of Reporting	Applicable Emission Unit	Regulatory Citation	Compliant
	component and system identification codes and formulas in the quarterly electronic reports represent current operating conditions 5. Explanatory text or comments, so long as the information is provided in a format that is compatible with the other data required to be reported under 40 CFR 75.64. b.) Reports shall be submitted in electronic format using EPA’s electronic reporting (EDR) convention.				
14.	<p><u>Quarterly Emission Reports</u>                      Submit to DES emission reports containing the following information:</p> <p>a.) The information required to be submitted by 40 CFR 60, 40 CFR 63, or 40 CFR 75, relative to installation, calibration, operation and maintenance of a certified gaseous or opacity CEM system;</p> <p>b.) All information included in the emission report shall be clearly indicated, labeled, and formatted such that compliance with all emissions standards to which the source is subject, can be determined and any periods of excess emissions, substitution of missing or invalid CEM data, CEM calibration, CEM maintenance, or startup, shutdown, or malfunction can be easily identified;</p> <p>c.) The daily averages of gaseous and opacity CEM measurements and calculated emission rates in the units of the emissions standards;</p> <p>d.) For those sources subject to any emission standard that is a rolling average of more than one operating day, the rolling average emission rate reported for each day during the reporting period;</p> <p>e.) Excess emission data recorded by the CEM system, including:</p> <ol style="list-style-type: none"> <li>1. The date and time of the beginning and ending of each period of excess emission;</li> <li>2. The actual emissions measured by the CEM system during the excess emission;</li> <li>3. The total amount of emissions above the emissions limit, or percent above the emissions limit, during the period of excess emissions;</li> <li>4. The specific cause of the excess emission; and</li> <li>5. The corrective action taken;</li> </ol> <p>f.) If no excess emissions have occurred, a statement to that effect;</p> <p>g.) A statement as to whether the CEM system was inoperative, repaired, or adjusted during the reporting period;</p> <p>h.) If the CEM system was inoperative, repaired, or adjusted during the reporting period, the following information:</p>	Quarterly (received by DES no later than 30 days following the end of each calendar quarter)	EU01	Env-A 808.13	<b>Yes</b>

**Table 9 - Applicable Reporting Requirements**

Item #	Reporting Requirements	Frequency of Reporting	Applicable Emission Unit	Regulatory Citation	Compliant
	<ol style="list-style-type: none"> <li>1. The date and time of the beginning and ending of each period when the CEM was inoperative;</li> <li>2. The reason why the CEM was inoperative;</li> <li>3. The corrective action taken;</li> </ol> <p>i.) For all “out of control periods” the following information:</p> <ol style="list-style-type: none"> <li>1. Beginning and ending times of the out of control period;</li> <li>2. The reason for the out of control period;</li> <li>3. The corrective action taken.</li> </ol> <p>j.) The date and time of the beginning and ending of each period when the source of emissions which the CEM system is monitoring was not operating;</p> <p>k.) The span value, as defined in Env-A 101.176, and units of measurement for each analyzer in the CEM system;</p> <p>l.) When calibration gas is used, the following information:</p> <ol style="list-style-type: none"> <li>1. The calibration gas concentration;</li> <li>2. If a gas bottle was changed during the quarter:               <ol style="list-style-type: none"> <li>i. The date of the calibration gas bottle change;</li> <li>ii. The gas bottle concentration before the change;</li> <li>iii. The gas bottle concentration after the change;</li> </ol> </li> <li>3. The expiration date for all calibration gas bottles used.</li> </ol> <p>m.) The percent data availability calculated in accordance with Env-A 808.11 for each gaseous and opacity monitor in the CEM system;</p> <p>n.) The quarterly report submittal shall be consistent with the information previously submitted in the CEM System Monitoring Plan and approved by the department.</p>				
15.	<p><u>NSPS Semi-annual Excess Emissions Reports</u> Submit semi-annual reports to DES and EPA:</p> <p>a.) For any excess emissions that occurred during the reporting period. For the purpose of 40 CFR 60.43b, excess emissions are defined as all 6-minute periods during which the average opacity exceeds the NSPS standard of 20%.</p> <p>b.) Certifying that only very low sulfur oil meeting the definition in §60.42b(k)(2) was combusted in the boiler during the reporting period.</p>	Postmarked within 30 days of the end of the 6-month reporting period	EU01	40 CFR 60.49b(h), (r), (v) & (w)	Yes
16.	<p><u>Update to Air Pollution Dispersion Modeling Impact Analysis</u> If an update to the Facility’s air pollution dispersion modeling impact analysis is required pursuant to Env-A 606.02, submit the information required pursuant to Env-A 606.04:</p> <p>a.) With the Permit application submitted for the change which triggered the analysis; or</p> <p>b.) Within 15 days of completion of the change which triggered the analysis, if a Permit application is not required.</p>	As specified	Facility wide	Env-A 910.01	Noted



**Table 9 - Applicable Reporting Requirements**

Item #	Reporting Requirements	Frequency of Reporting	Applicable Emission Unit	Regulatory Citation	Compliant
<b>Finding: Burgess was not required to update its air pollution dispersion modeling impact analysis during this evaluation period.</b>					
17.	<p><u>Monitoring Parameter Excursion</u> In the event of an excursion of the any monitored parameter specified in Table 7, lasting more than 48 hours in duration:</p> <p>a.) Notify the department of the permit deviation and excess emissions by telephone (603-271-1370), fax (603-271-7053) or e-mail (pdeviations@des.nh.gov), within 24 hours of discovery of the permit deviation, unless it is a Saturday, Sunday, or state legal holiday, in which event, the department shall be notified on the next day which is not a Saturday, Sunday, or state legal holiday;</p> <p>b.) Submit a written report of the deviation on paper or by electronic means to the department within 10 days of discovery of the permit deviation reported above. The report shall include all of the following information:</p> <ol style="list-style-type: none"> <li>1. Facility name;</li> <li>2. Facility address;</li> <li>3. Name of the responsible official;</li> <li>4. Facility telephone number;</li> <li>5. A description of the permit deviation, including the applicable permit number and permit condition(s);</li> <li>6. The probable cause of the permit deviation;</li> <li>7. The date and time of the discovery of the permit deviation;</li> <li>8. The actual date(s) and time(s) of the permit deviation;</li> <li>9. The duration of the permit deviation, including the date and time that the device, process or air pollution control equipment returned to operation in compliance with an enforceable emission limitation or operating condition;</li> <li>10. The specific device, process or air pollution control equipment that contributed to the permit deviation;</li> <li>11. Any corrective measures taken to address the permit deviation;</li> <li>12. Preventative measures taken to prevent future permit deviations;</li> <li>13. The type and amount of any excess emissions that occurred as a result of the permit deviation, if applicable; and</li> <li>14. If applicable, the calculation or estimation used to quantify the excess emissions.</li> </ol>	As specified	EU01	Env-A 911.04(d) State-only enforceable	<b>Noted</b>
<b>Finding: Burgess did not report a monitoring parameter excursion during this evaluation period.</b>					
18.	<p><u>Permit Deviation Reporting Requirements</u> Report permit deviations that cause excess emissions in accordance with Condition XXVII.</p>	As specified	EU01 - EU04	Env-A 911.04(a)	<b>Noted</b>

Table 9 - Applicable Reporting Requirements					
Item #	Reporting Requirements	Frequency of Reporting	Applicable Emission Unit	Regulatory Citation	Compliant
<b>Finding: Burgess did not report a permit deviation that caused excess emissions during this evaluation period.</b>					

**X. Permit Deviation Reporting Requirements**

During the evaluation period, Burgess did not report any permit deviations.

**XI. Other Findings**

***Annual SO<sub>2</sub> Allowance Programs***

The biomass boiler (EU01) is regulated under the federal Acid Rain Program, Phase II. In accordance with 40 CFR 73, Burgess is not allocated any SO<sub>2</sub> allowances pursuant to the Federal Acid Rain Program.

Allowances lawfully held or acquired by the Permittee under the acid rain provisions of the Clean Air Act, including the applicable sections of 40 CFR 72 and 40 CFR 73, shall be governed by the following:

- a. Emissions from the affected unit shall not exceed any SO<sub>2</sub> allowances held by the affected unit as of the compliance deadline;
- b. The number of SO<sub>2</sub> allowances held by the affected unit shall not be limited;
- c. The Permittee shall not use SO<sub>2</sub> allowances to avoid compliance with any other applicable requirement of either state or federal rules or of the provisions of the Clean Air Act; and
- d. Any SO<sub>2</sub> allowances held by the Permittee shall be accounted for according to the procedures established in the applicable provisions of 40 CFR 72 and 40 CFR 73.

***Emission Reductions Trading Requirements – State Only Enforceable***

Burgess did not request emissions reductions trading in its operating permit application. At this point, NHDES has not included any permit terms authorizing emissions trading in this permit. All emission reduction trading, must be authorized under the applicable requirements of either Env-A 3000 *Emissions Reductions Credits Trading Program*, or Env-A 3100 *Discrete Emissions Reductions Trading Program* and 42 U.S.C §§7401 et seq. (the “Act”), and must be provided for in this permit.

***Certified Renewable Energy Source***

Burgess is certified as a Class I renewable energy source. NHDES verified that Burgess maintained a NO<sub>x</sub> and TSP quarterly average every quarter of this evaluation period

below the renewable energy source emission limits of 0.075 lb/MMBtu and 0.02 lb/MMBtu, respectfully.

***Finding: NHDES determined Burgess is in compliance with trading and renewable energy programs during this evaluation period.***

**XII. Enforcement History and Status**

NHDES did not issue any enforcement actions against Burgess during this compliance period.

**XIII. Compliance Assistance, Recommendations and Corrective Actions**

NHDES recommends that Burgess explore the Energy Efficiency Incentive Program at [www.nhsaves.com](http://www.nhsaves.com). For major renovations and end of life replacement of electrical devices, up to 75% of the incremental cost to install high efficiency equipment is covered. The retrofit program offers incentives up to 50% of the installed cost to replace older equipment with new, energy efficient equipment.

In addition, Burgess can receive email notifications of rule changes by subscribing to E-News found at the following link: [Rule Changes](#)

Report Prepared By	David Smith
Title	Compliance Assessment Section Supervisor
Signed	<b>David Smith</b> Digitally signed by David Smith Date: 2024.03.19 10:42:16 -04'00'

**THE STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**NEW HAMPSHIRE**  
**SITE EVALUATION COMMITTEE**

**SEC DOCKET NO. 2024-\_\_**

**Joint Petition of Berlin Station, LLC and North Country Generation Holdings LLC**  
**for Administrative Approval of a Change in Ownership or the Transfer of a**  
**Certificate of Site and Facility Issued to Berlin Station, LLC to**  
**North Country Generation Holdings LLC**

**PRE-FILED DIRECT TESTIMONY OF LUCAS MILLER**

1 **Q: Please state your name, title, and business address.**

2 A: My name is Lucas Miller. I currently serve as Vice President of Power & Project Finance.  
3 I am an employee of CS Berlin Ops, Inc. ("CS Berlin Ops"), whose mailing address is 631 US  
4 Hwy 1, #300, North Palm Beach, FL 33408.

5 **Q: Briefly summarize your education background and work experience.**

6 A: I hold a Bachelor of Science degree in marine systems engineering from the Maine Maritime  
7 Academy and a master's degree in engineering management from Dartmouth College. I have  
8 worked in the energy industry for more than a decade, developing renewable energy and other  
9 decarbonization and climate change mitigation projects. This includes more than six years  
10 working in project finance as it relates to energy project development, with a particular focus on  
11 decarbonization. In performing these roles, I have developed broad experience working in both  
12 wholesale and retail electricity markets. *See also* Exhibit 1 (Miller Bio).

13 **Q: Have you previously testified before this Committee?**

14 A: No.

15 **Q: What is the purpose of your testimony?**

16 A: I am submitting this Testimony in support of the Joint Petition by Berlin Station, LLC, and  
17 North Country Holdings LLC regarding the Certificate of Site and Facility issued to the Facility.  
18 In particular, I am submitting this Testimony in support of the assertion in the Joint Petition that  
19 North Country has the requisite technical expertise to continue operating the Facility in compliance  
20 with the Certificate.

1 **Q: Please describe your responsibilities for the Berlin Station biomass generating facility.**

2 A: First, as an engineer by training, I work closely with the Plant Manager, David Walker, in the  
3 day-to-day operations of the Berlin Station biomass generating facility (“Facility”). I assist in  
4 assessing overall Facility operations and managing energy input and output to ensure that the  
5 Facility is operating safely and efficiently and to generate maximum value. I also assist in Facility  
6 relations with ISO-New England related to interconnection and delivery of the Facility’s energy  
7 output to the regional electric grid in a way that maximizes profits derived from the Facility’s  
8 operations. Since the Facility’s power purchase agreement (“PPA”) with Eversource was rejected  
9 in the Chapter 11 Cases pending before the U.S. Bankruptcy Court for the District of Delaware,  
10 the Facility is currently selling its energy output into the ISO-New England day-ahead and real-  
11 time energy markets on a merchant basis, which requires meticulous coordination between the  
12 Facility and ISO-New England. While the Facility can and will continue operating on a merchant  
13 basis, I am also responsible for developing leads for potential off-takers for some or all the  
14 Facility’s products—that is, energy, capacity, and the related renewable energy certificates  
15 (“RECs”). Given the significant volatility in the wholesale and retail markets, reliable renewable  
16 power and the associated RECs are in demand. I am similarly responsible for overseeing any  
17 ensuing contract negotiations. And, when RECs are sold separately from the energy and capacity  
18 related to the facility, I take the lead on selling those RECs in the open market. My knowledge of  
19 the technical operations of the plant, ISO-New England-related tariff responsibilities, and the  
20 wholesale energy markets afford me the requisite experience and expertise to continue carrying  
21 out this work.

1 **Q: Will there be a change in technical capabilities of Facility management if the Joint**  
2 **Petition is approved and North Country assumes a controlling interest in Facility**  
3 **operations?**

4 A: My understanding is that there are various options that could occur as a result of the  
5 underlying bankruptcy proceedings and their effect on certain Operations and Maintenance and  
6 Project Management Agreements that could potentially result in changes. Regardless of the  
7 ownership structure of the plant, my expectation at this time is there will not be significant  
8 changes in the Facility technical staff. The plant is fortunate to have an experienced and well-  
9 qualified team that has strong ties to the community.

10 **Q: Do you anticipate any changes to how the Facility is run if the Joint Petition is**  
11 **approved?**

12 A: I do not. I expect that the North Country will remain committed to operating the Facility in  
13 the manner in which it has been run in the more than ten preceding years.

14 **Conclusion**

15 **Q: In your opinion, will North Country have the requisite technical capability to assure**  
16 **the operation of the Facility in continuing compliance with the terms and conditions of the**  
17 **Certificate of Site and Facility?**

18 A: Yes. In my opinion, based on the testimony provided above and the information provided in  
19 the Joint Petition, North Country satisfies the Committee's criteria for technical capability  
20 pursuant to RSA 162-H:8, IV and N.H. Admin Site 301.13(b), and therefore has the requisite

1 technical capability to operate the Facility in continuing compliance with the terms and  
2 conditions of the Certificate of Site and Facility.

3 **Q: Do you support the approval of the Joint Petition?**

4 A: I do.

5 **Q: Does this conclude your pre-filed testimony?**

6 A: Yes.



I affirm that the information contained in this testimony is true and accurate.

By: [Signature]  
Name: Lucas Miller  
Title: Vice President of Power & Project Finance  
CS Berlin Ops, Inc.

Maine  
STATE OF ~~NEW HAMPSHIRE~~  
COUNTY OF Cumberland

On April 9, 2024, personally appeared before me the above-named Lucas Miller, and swore that this testimony is true and accurate to the best of his knowledge and belief. This notarial act was an online notarization.

[Signature]  
Notary Public/Justice of the Peace  
My Commission Expires: March 26, 2027

SARAH C. BOONE  
Notary Public, State of Maine  
My Commission Expires March 26, 2027



**LUKE MILLER**  
**VP of Power & Project Finance**

**CS Operations**

Luke has worked within the energy industry for over ten years and has been helping develop renewable energy and other climate focused projects for over six years in project finance. He has broad experience working within both wholesale and retail electricity markets with a passion for enabling carbon-free energy expansion. With a Master of Engineering Management from Dartmouth College and a Bachelor of Science in Marine Systems Engineering from Maine Maritime Academy, Luke combines technical expertise with a strategic vision for sustainable energy initiatives.

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**SEC DOCKET NO. 2024-\_\_**

**Joint Petition of Berlin Station, LLC and North Country Generation Holdings LLC  
for Administrative Approval to Transfer Ownership Interests  
and/or the Certificate of Site and Facility Issued to Berlin Station, LLC  
to North Country Generation Holdings LLC**

**JOINT PRE-FILED TESTIMONY OF JOHN HALLÉ, EDWARD (“NED”) DWYER,  
AND SARAH BOONE REGARDING MANAGERIAL CAPABILITY**

## ATTACHMENT 8

Berlin Station, LLC and  
North Country Generation Holdings LLC

Joint Pre-Filed Testimony of John Hallé,  
Edward (“Ned”) Dwyer, and Sarah Boone  
Joint Petition to Change Ownership or  
Transfer Certificate

Page 1 of 6

1 **Q: Please state your name, title, and business address.**

2 A: My name is John Hallé. I am the Executive Chairman of CS Berlin Ops, Inc. (“CS Berlin  
3 Ops”), whose mailing address is 631 US Hwy 1, #300, North Palm Beach, FL 33408.

4 **Q: Briefly summarize your background and work experience.**

5 A: After over 25 years of successful management experience with several entrepreneurial, high-  
6 growth financial companies, I founded CS Operations, Inc., the parent company to CS Berlin  
7 Ops. I specialize in investment opportunities and business development, particularly involving  
8 energy, infrastructure, and complex financing. I am a leader in private equity and instructional  
9 markets fund raising efforts, and have structured and executed approximately \$5 billion of  
10 taxable and tax-exempt debt through private offerings. I am also a long-time support of  
11 community health organizations and a former Spurwink Humanitarian of the Year. I attended the  
12 University of New Hampshire. With respect to this Facility, I have been closely involved in its  
13 acquisition, construction, management, and operations since 2010. *See also* Exhibit 1 (Hallé  
14 Bio).

15 **Q: Please state your name, title, and business address.**

16 A: My name is Ned Dwyer. I am the Chief Executive Officer (“CEO”) of CS Berlin Ops, whose  
17 mailing address is 631 US Hwy 1, #300, North Palm Beach, FL 33408.

18 **Q: Briefly summarize your educational background and work experience.**

19 A: I hold a Bachelor of Science degree from Syracuse University and the State University of New  
20 York College of Environmental Science and Forestry, and I bring more than 40 years of relevant  
21 work experience to my role as CEO of CS Berlin Ops. That experience includes a specialization

Berlin Station, LLC and  
North Country Generation Holdings LLC

Joint Pre-Filed Testimony of John Hallé,  
Edward (“Ned”) Dwyer, and Sarah Boone  
Joint Petition to Change Ownership or  
Transfer Certificate

Page 2 of 6

1 in facility turnarounds and consolidations and new site acquisition, development, construction, and  
2 start-up. Before assuming the role of CEO of CS Berlin Ops, I served as President and CEO of  
3 Catalyst Paper Corporation, where I successfully completed a complete operational turn around,  
4 resulting in the sale of the business in the United States and Canada, which resulted in full debt  
5 recovery and a nearly CDN \$350 million return to equity, far exceeding expectations for the  
6 project. Through my career in the forest products industry, I have managed and been responsible  
7 for multiple biomass cogeneration facilities. Before Catalyst, I served in various leadership roles  
8 with high-growth organizations, including WICOR Group and International Paper. I am also a  
9 veteran of the U.S. Air Force. *See also* Exhibit 2 (Dwyer Bio).

10 **Q: Have you previously testified before this Committee?**

11 A: No.

12 **Q: Please state your name, title, and business address.**

13 A: My name is Sarah Boone. I am the Senior Vice President of Corporate Affairs of CS Berlin  
14 Ops, whose mailing address is 631 US Hwy 1, #300, North Palm Beach, FL 33408.

15 **Q: Briefly summarize your educational background and work experience.**

16 A: I hold a Bachelor of Arts degree in Psychology from Rhodes College. I bring more than 20  
17 years of experience to my role as Senior Vice President of Corporate Affairs at CS Berlin Ops.  
18 Before CS Berlin Ops, I held director-level roles at several national health organizations, including  
19 the Alzheimer’s Association, the Muscular Dystrophy Association, and the American Diabetes  
20 Association. *See also* Exhibit 3 (Boone Bio).

1 **Q: Please describe your responsibilities.**

2 A: I lead the overall strategic direction and implementation of various corporate functions,  
3 including internal and external communications, investor relations, government affairs, public  
4 relations, issues and crisis management, stakeholder engagement, media relations, including  
5 digital/social media, and marketing and branding.

6 **Q: Have you previously testified before this Committee?**

7 A: No.

8 **Q: What is the purpose of your testimony?**

9 A: We are submitting this Joint Testimony in support of the Joint Petition by Berlin Station, LLC  
10 and North Country Holdings LLC regarding the Certificate of Site and Facility issued to Berlin  
11 Station to build, own, and operate a 75 megawatt biomass-fired electric generating facility in  
12 Berlin, New Hampshire (the “Facility”). In particular, we are submitting this Joint Testimony in  
13 support of the assertion in the Joint Petition that North Country will have the requisite  
14 managerial expertise to continue operating the Facility in compliance with the Certificate.

15 **Q: What is the role of CS Berlin Ops in the management of the Facility?**

16 A: CS Berlin Ops has entered into a long-term Operations and Maintenance Agreement with  
17 Berlin Station to perform O&M activities at the Facility, including ensuring that the Facility  
18 operates reliably and efficiently to generate and deliver renewable electricity to the New England  
19 bulk power grid. CS Berlin Ops employs a highly skilled technical team led by David Walker,  
20 the Facility’s plant manager, who manages the technical operations and maintenance activities at  
21 the facility. *See* Pre-filed Testimony of David Walker. We are responsible for ensuring that the

1 technical operations team has what it needs to perform its functions and for handling corporate  
2 managerial functions as they relate to the Facility’s daily operations and longer-term strategic  
3 planning. CS Berlin Ops employs approximately 28 on-site employees for the operation and  
4 maintenance of the Facility and ensures compliance with state and federal regulations, including:  
5 maintaining health and safety program compliance with the Occupational Safety and Health  
6 Administration; conducting internal assessments of programs and compliance for deficiencies  
7 and opportunities for safety improvements; preparing emergency response plans and maintaining  
8 an emergency preparedness program; training Site Personnel; preparing and submitting  
9 generation and fuel consumption reports; maintaining computer infrastructure, computer data  
10 and access security program; and providing support to Berlin Station as reasonably requested.

11 **Q: Who will be responsible for the non-technical managerial operations of the Facility**  
12 **following the transaction?**

13 A: The team at CS Berlin Ops, including the three of us, as well as Luke Miller, Vice President  
14 of Power & Project Finance at CS Berlin Ops, whose pre-filed testimony is also attached to this  
15 Joint Petition, expects to continue in our respective roles to handle the managerial operations of  
16 the Facility consistent with the terms of the Project Management Agreement referenced in the  
17 Joint Petition. We will be assisted by a team of 15 employees who have years of experience in  
18 managing the Facility and are familiar with its operations and long-term strategic plans and  
19 goals. The Chapter 11 Reorganization Plan for Berlin Station, LLC and Burgess BioPower, LLC  
20 (the “Reorganization Plan”) does leave open the possibility that our team will instead provide

1 transition services to another qualified operator of equivalent professional and managerial  
2 expertise.

3 **Q: Please describe the qualifications and experience of North Country and its executive**  
4 **personnel and/or contractors in managing the Facility and facilities similar to the Facility.**

5 A: In the event that CS Berlin Ops and North Country agree upon terms for CS Berlin Ops’  
6 continued operation of the Facility, North Country will benefit from our team and its years of  
7 experience in corporate management of CS Berlin Ops and the Facility, including our strategic  
8 planning, financial, communications, investor relations, governmental relations, and marketing  
9 experience. We have established a strong relationship with the City of Berlin, where the Facility  
10 is located, as well as with state and federal elected officials. North Country will also benefit  
11 from our collective decades of experience performing these corporate managerial functions for  
12 other prominent companies and organizations. In the event the parties do not reach agreement on  
13 CS Berlin Ops’ continued operation of the Facility, North Country will nevertheless benefit from  
14 our expertise and relationships during the transition period to another qualified operator of  
15 equivalent professional and managerial expertise.

16 **Q: Please describe the organizational structure for the management of the Facility under**  
17 **North Country.**

18 A: The Reorganization Plan includes several options that could affect the future organizational  
19 structure of the new owner and/or operator of the Facility. Our understanding is that the Joint  
20 Petition is being filed on the assumption that North Country or a to-be-named wholly owned  
21 subsidiary of North Country will take a controlling interest in either the equity of Berlin Station,



Berlin Station, LLC and  
North Country Generation Holdings LLC

Joint Pre-Filed Testimony of John Hallé,  
Edward (“Ned”) Dwyer, and Sarah Boone  
Joint Petition to Change Ownership or  
Transfer Certificate

1 LLC and Burgess BioPower, LLC or all or substantially all of the assets of those entities,  
2 including the Facility. North Country will be owned by Berlin Station, LLC’s and Burgess  
3 BioPower, LLC’s existing lenders, as stated in the Joint Petition and shown in the organizational  
4 chart attached to the Joint Petition at Attachment 3.

5 **Conclusion**

6 **Q: In your opinion, will North Country have the requisite managerial capability to assure**  
7 **the operation of the Facility in continuing compliance with the terms and conditions of the**  
8 **Certificate of Site and Facility?**

9 A: Yes. In our opinion, based on the testimony provided above and the information provided in  
10 the Joint Petition, North Country satisfies the Committee’s criteria for managerial capability  
11 pursuant to RSA 162-H:8, IV and N.H. Admin Site 301.13(c), and therefore has the requisite  
12 managerial capability to operate the Facility in continuing compliance with the terms and  
13 conditions of the Certificate of Site and Facility.

14 **Q: Do you support the approval of the Joint Petition?**

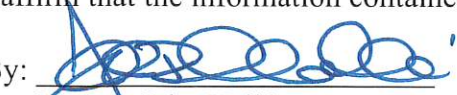
15 A: I do.

16 **Q: Does this conclude your testimony?**

17 A: Yes.


ATTACHMENT 8

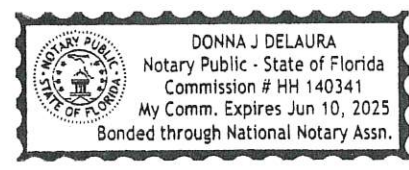
I affirm that the information contained in this testimony is true and accurate.

By:   
Name: John Hallé  
Title: Executive Chairman  
CS Berlin Ops, Inc.

STATE OF Florida  
COUNTY OF Palm Beach

On April 4, 2024, personally appeared before me the above-named John Hallé, and swore that this testimony is true and accurate to the best of his knowledge and belief. This notarial act was an online notarization.

  
Notary Public/Justice of the Peace  
My Commission Expires: June 10, 2025



ATTACHMENT 8

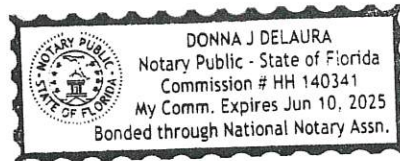
I affirm that the information contained in this testimony is true and accurate.

By: *E. Dwyer*  
Name: Edward ("Ned") Dwyer  
Title: Chief Executive Officer  
CS Berlin Ops, Inc.

STATE OF Florida  
COUNTY OF Palm Beach

On April 4, 2024, personally appeared before me the above-named Edward ("Ned") Dwyer, and swore that this testimony is true and accurate to the best of his knowledge and belief. This notarial act was an online notarization.

*Donna J. DeLaura*  
Notary Public/Justice of the Peace  
My Commission Expires: June 10, 2025



ATTACHMENT 8

I affirm that the information contained in this testimony is true and accurate.

By: Sarah C. Boone

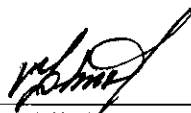
Name: Sarah Boone

Title: Senior Vice President of Corporate Affairs  
CS Berlin Ops, Inc.

STATE OF Maine

COUNTY OF Cumberland

On April 8, 2024, personally appeared before me the above-named Sarah Boone, and swore that this testimony is true and accurate to the best of his knowledge and belief. This notarial act was an online notarization.



Notary Public/Justice of the Peace

My Commission Expires: 08/28/26

**VICTORIA JOHNSON**  
NOTARY PUBLIC, STATE OF MAINE  
MY COMMISSION EXPIRES AUG. 28, 2026



**JOHN HALLÉ**  
**Executive Chairman**

**CS Operations**

After more than 25 years of success with several entrepreneurial, high-growth financial companies, Mr. John Hallé founded CS Operations. John specializes in assessing opportunities and developing new business, with particular expertise in investments involving energy, infrastructure and complex financing scenarios. Over his career, he has developed a special expertise on investments involving energy, infrastructure and complex financing transactions.

A recognized leader at raising funds through both private equity and institutional markets, Mr. Hallé has originated, structured and executed approximately \$5 billion taxable and tax-exempt debt through private offerings. He is well-known by industry peers as an astute, creative financier with the ability to structure elaborate and complex financing scenarios. A longtime supporter of community health organizations, John is a former Spurwink Humanitarian of the Year.



**EDWARD (“NED”) DWYER**  
**CEO**

**CS Operations**

As an experienced and effective executive in diverse business cultures both national and international, Ned brings more than 40 years of experience to the CS Operations team. Ned specializes in facility turnarounds and consolidations, with a strong focus on achieving and exceeding budgeted results. He is skilled in new site acquisition, development, construction and start up, and an effective team builder through all levels of the organizational structure.

Most recently, Ned served as President and CEO of Catalyst Paper Corporation, where he successfully completed a full operational turnaround, resulting in the sale of the business (US and Canadian) which produced full debt recovery and generated nearly CDN \$350m return to equity, far exceeding expectations.

Prior to his tenure with Catalyst, Ned served in leadership roles with high-growth organizations including WICOR Group and International Paper. Ned holds a Bachelor of Science degree from Syracuse and is a U.S. Air Force veteran.



**SARAH BOONE**  
**Senior Vice President**  
**of Corporate Affairs**

**CS Operations**

With more than 20 years of experience in identifying and setting strategic corporate affairs initiatives to support, grow, and protect business needs, Sarah is adept at appropriately tailoring communications to achieve specific outcomes. She specializes in translating complex material into straightforward messaging and cultivating a high degree of trust and accountability both within and outside of the organization. At CS Operations, Sarah leads the overall strategic direction and implementation of internal and external communications, investor relations, government affairs, public relations, issues and crisis management, stakeholder engagement, media relations, digital/social media, and marketing/branding.

Prior to CS Operations, Sarah held director-level roles with several national health organizations including the Alzheimer's Association, the Muscular Dystrophy Association, and the American Diabetes Association. Sarah holds a Bachelor of Arts in Psychology from Rhodes College.

**Attachment 9**

**North Country Generation Holdings LLC**

**Pro-Forma Balance Sheet at 5/31/2024**

**As of: 3/28/2024**

**Subject to Motion for**  
**Confidential Treatment**