

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Joint Administration Requested)

**DECLARATION OF NEIL GUPTA IN SUPPORT
OF THE DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I)
AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II)
AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
(IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED
PARTIES, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING
A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

Pursuant to 28 U.S.C. § 1746, I, Neil Gupta, hereby declare as follows:

1. I am Managing Director of SSG Advisors, LLC ("SSG"), an investment banking firm retained by the Debtors in possession (collectively, the "Debtors") in the above-captioned cases (these "Chapter 11 Cases").

2. I have over twelve (12) years of experience in the restructuring industry and extensive experience: (i) marketing companies or their assets for sale, including experience marketing companies in distress and debtors in bankruptcy cases; (ii) raising capital for special situation transactions; and (iii) restructuring companies' balance sheets both in court and out of court.

3. Prior to the Petition Date, the Debtors retained SSG as exclusive investment banker to the Debtors to (i) advise regarding possible restructuring of existing claims and equity

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

and/or (ii) assist with the sale, assignment, license, or other disposition of all or substantially all of the assets of the Debtors.

4. I submit this Declaration in support of the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "DIP Motion")² and approval of the financing package proposed therein pursuant to the DIP Orders. I am over the age of 18 and competent to testify and am authorized to submit this declaration (this "Declaration") on behalf of SSG.

5. Except as otherwise indicated, all facts or opinions set forth in this Declaration are based on my personal knowledge, my discussions with the Debtors' advisors, professionals, boards of directors or managers, or other members of the SSG team, my review of relevant documents and information concerning the Debtors' financial affairs and restructuring initiatives, or my experience. I am not being specifically compensated for this testimony other than through payments received by SSG as a professional whose retention the Debtors will seek pursuant to an application to be filed with this Court. If called upon to testify, I could and would testify competently to the statements set forth in this Declaration, as the information in this Declaration is accurate to the best of my knowledge.

6. The Debtors' prepetition capital structure is set forth in detail in the *Declaration of Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"). As set forth in the

² Capitalized terms not otherwise defined in this Declaration shall have the meaning ascribed to them in the DIP Motion.

First Day Declaration, the Debtors' obligations to the Prepetition Noteholders are collateralized by first priority liens on substantially all of their assets.

THE DEBTORS' EFFORTS TO OBTAIN POSTPETITION FINANCING

7. In my role as investment banker, I was actively involved in the Debtors' analysis of their options, including their financing options, and their efforts to obtain debtor-in-possession financing to fund these Chapter 11 Cases. Based on my experience and involvement in the consideration and good-faith, arms'-length negotiation of the DIP Facility, the DIP Facility should be approved. The DIP Facility is the best financing package available to the Debtors under the circumstances. Indeed, it is likely the only financing available to the Debtors. The Debtors are out of cash, and their only source of revenue has been shut off. They have no unencumbered assets to pledge to a post-petition lender, nor do they have the ability to provide adequate protection to the Prepetition Noteholders were any alternate lender to express an interest in providing financing, which has not happened. The DIP Facility provides the only path forward for the Debtors and is urgently needed.

I. THE DIP MARKETING PROCESS

8. In this case, obtaining access to debtor-in-possession financing was difficult because all or nearly all of the Debtors' assets are encumbered under the existing prepetition capital structure, which, along with the Debtors' anticipated cash shortfalls, restricts the availability of, and options for, debtor-in-possession financing. To avoid a protracted and expensive priming fight, which the Debtors could not afford (even if they were able to identify an alternate source of financing, which has not happened), the Debtors and their advisors, including SSG, believed that their only alternatives were to: (1) obtain the Prepetition Noteholders' consent to the priming of their liens by a third-party lender; (2) locate a third-party lender willing to provide debtor-in-possession financing on an unsecured basis with priority over

that of administrative expenses; (3) find lenders willing to refinance out Prepetition Noteholders and provide incremental liquidity; or (4) find junior financing and a new secured lender. Indeed, based on a review of the Prepetition Noteholders' lien position and a preliminary analysis of the Debtors' potential enterprise value, the Debtors and their advisors, including SSG, believed that there was not an equity cushion available for the Debtors to obtain debtor-in-possession financing based on priming the Prepetition Noteholders' liens over their objections, nor would the Debtors' business be able to sustain its value during a contested priming fight.

9. Notwithstanding these significant challenges, the Debtors, with the assistance of SSG, solicited proposals for third-party debtor-in-possession financing in parallel with discussions with the Prepetition Noteholders. Beginning on January 24, 2024, the Debtors and SSG reached out to several private credit investors that make investments in the amount required by the Debtors to gauge their interest in providing debtor-in-possession financing to the Debtors.

10. Due to the Debtors' financial position, their existing leveraged capital structure, and the size of the financing need, the Debtors were unable to identify any interested third-party financing parties. Potential financing parties were not willing to provide financing junior to the Prepetition Noteholders due to the amount of existing secured debt relative to the Debtors' financial position, and the Prepetition Noteholders were not willing to subordinate their lien position to a third-party lender because that would greatly impair their position and the Debtors have no ability to provide them with adequate protection. In addition, any senior financing that did not include Prepetition Noteholders' consent would have inevitably resulted in an uncertain non-consensual priming fight that would be costly and in which the Debtors were unlikely to succeed, which would serve only to draw out these Chapter 11 Cases and result in increased professional costs, threatening the Debtors' ability to emerge as a viable reorganized entity. Any

lender willing to lend on cash flow would need a signed power purchase agreement – which the Debtors do not have -- with pricing to support the Debtors’ business plan, and prospective lenders would be sizing the Debtors’ facility based off a conservative loan-to-value ratio on the liquidation value of the assets. It is unclear whether an appraisal of this nature would reach the value of an \$18 million of new financing debtor-in-possession credit facility that the Prepetition Noteholders have agreed to provide the Debtors. For the foregoing reasons, the Debtors and SSG determined that reaching out to any additional third-party financing sources would be fruitless and unlikely to result in any viable financing proposals.

II. THE DIP FACILITY

11. In parallel with the solicitation of proposals from new sources of financing, the Debtors and their advisors continued negotiating with the Prepetition Noteholders on the terms of a debtor-in-possession credit facility to be provided by them. The Debtors’ negotiations with the Prepetition Noteholders ultimately led to an agreement on the terms of a senior secured postpetition financing on a superpriority basis consisting of a senior secured superpriority debtor-in-possession priming credit facility (the “DIP Facility”) to be provided by the Prepetition Noteholders (in each case, including any successors and permitted assignees, each, a “DIP Lender” and, collectively, the “DIP Lenders”), pursuant to that Senior Secured Superpriority Debtor In Possession Credit Agreement dated as of February [], 2024, attached to the DIP Motion as **Exhibit C** (the “DIP Credit Agreement”), by and among the Borrower, the Guarantor, the DIP Lenders, and DBTCA in its capacities as the Collateral and Administrative Agent, (in such capacities, the “DIP Agent,” and together with the DIP Lenders, the “DIP Secured Parties”).

12. Pursuant to the DIP Facility, the DIP Lenders have agreed to provide \$54 million in aggregate term loan commitments consisting of: (a) a new money delayed-draw term loan facility in the aggregate principal amount of up to \$18 million dollars including (i) up to \$4.4

million available to the Borrower on an interim basis and (ii) to \$18 million (inclusive of all amounts funded by the DIP Lenders on account of the Interim DIP Term Loan), on a final basis and (b) roll-up loans to refinance on a pro rata basis across the holdings of the Prepetition Obligations of the DIP Lenders (x) upon entry of an Interim DIP Order, on a 2:1 ratio times the principal amount of the committed Interim DIP Term Loans and (y) upon entry of a final order, on a 2:1 ratio times the committed principal amount of the Final DIP Term Loans on a final basis (\$36,000,000).

13. The proposed DIP Facility contemplates, among other things, the Debtors moving quickly and efficiently through these Chapter 11 Cases. This comprehensive restructuring of the Debtors' prepetition obligations depends on, and would not be feasible without, the support provided to them by the Prepetition Noteholders throughout the restructuring process, not only through the restructuring support agreement and proposed plan of reorganization but also by way of the significant commitment in connection with the DIP Facility, which will provide critical financing to fund the Debtors' operations and administration of these cases.

III. THE DIP FACILITY HAS BEEN HEAVILY NEGOTIATED

14. The Debtors and their advisors and professionals were actively involved throughout the negotiations with the Prepetition Noteholders and their advisors in connection with the proposed debtor-in-possession financing, which were lengthy, at times contentious, and were conducted vigorously, at arms' length and in good faith. The DIP Facility represents a negotiated resolution with the Prepetition Noteholders, whereby the Debtors can obtain a substantial financing package on market terms, without overly burdensome case controls, without the risk of a priming fight, and with a clear path to expedited emergence. It is, in my experience, and lacking any other viable alternative, not only fair and reasonable but also in the best interests of the Debtors and their stakeholders.

IV. THE TERMS OF THE DIP FACILITY ARE FAIR AND REASONABLE

15. Given that the Debtors have limited cash on hand and are currently operating at a loss that increases daily given the refusal of their off-taker to make payments under the prepetition Power Purchase Agreement (“PPA”), the DIP Facility gives the Debtors a lifeline by providing fair, reasonable and the best available overall financing terms under the circumstances. The DIP Facility will provide critically needed liquidity to the Debtors to pay all trade creditors, vendors and plant personnel, fund these cases, run a parallel sale and plan process backstopped by the Prepetition Noteholders, and maximize value for the Debtors and their stakeholders.

16. Based on my experience both in this industry and in this particular situation, the proposed DIP Facility, including the roll-up component, is reasonable and justifiable, not only because it avoids a protracted and expensive priming fight but more importantly because such a fight – if the Debtors were able to identify another lender – would not likely be successful due to the Debtors’ inability to provide adequate protection to the Prepetition Noteholders. There is simply no other viable financing alternative in this matter. Given the Debtors’ liquidity concerns and the critical case Milestones (as defined below) which I believe are necessary to keep the process on track, I believe that reducing litigation and entering the Chapter 11 Cases with collaboration between and among the Prepetition Secured Parties and the Debtors is in the best interests of the estates.

17. As a condition to entry into the DIP Credit Agreement and other DIP Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Secured Parties and the Prepetition Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Facility and the Cash Collateral shall be used, in each case in a manner consistent with the terms and conditions of the DIP Orders, the DIP Credit Agreement and the other DIP Documents and in accordance with the Budget.

18. I understand that the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agent and DIP Lenders. These fees were the subject to negotiation between the Debtors, the DIP Lenders and the DIP Agent, are an integral component of the overall terms of the DIP Facility, in my view are fair and reasonable, and were required by the DIP Agent and DIP Lenders as consideration for the extension of postpetition financing. Under the circumstances, and in light of the marketing process described herein, I believe that the fees reflected in the DIP Credit Agreement are consistent with the range of fees I have seen in similar financings from existing prepetition lenders in which I have recently been involved. In light of the marketing and negotiation process described herein, I believe that the proposed terms of the DIP Facility are fair, reasonable, and appropriate under the circumstances.

19. The Prepetition Noteholders agreement to provide the DIP Facility was conditioned on the 2:1 roll-up of the Prepetition Obligations under the DIP Facility as set forth in the DIP Credit Agreement. Such arrangements are common in circumstances where the (i) first lien lender is providing postpetition financing, and (ii) the financing is in the form of a delayed draw term loan facility. However, the Prepetition Noteholders have agreed to (a) exchange their debt for equity under a confirmed plan of reorganization that pays all administrative claims in accordance with the DIP Budget in the event that a sales process is unsuccessful, and (b) provide for payment of administrative expenses in accordance with the DIP Budget from the net proceeds of a consensual sale of substantially all of the Debtors' assets. Therefore, there is no disadvantage to the Debtors' estates in connection with the proposed roll-up and instead provides benefits to all stakeholders.

20. I understand that the DIP Facility also contemplates certain milestones as detailed in the First Day Declaration (the "Milestones") that the Debtors must meet throughout their

Chapter 11 Cases. These were negotiated among the Debtors, the Prepetition Noteholders, and the Debtors' affiliated non-debtor entities that provide management and operation services to the Debtors. They are critical to keeping the case on track and were negotiated by all the parties at arms' length within the parameters of the Debtors' anticipated liquidity needs. I believe that the Milestones should permit sufficient time for the Debtors to emerge.

THE DIP FACILITY IS THE BEST FINANCING AVAILABLE

21. Each of the collateral terms, covenants, interest rates, the Closing Fee and the Milestones were subject to negotiation, are integral components of the overall terms of the DIP Facility and were required by DIP Lenders as consideration for the extension of the DIP Loans. The terms reflected in the DIP Credit Agreement are reasonable and substantially in line with other debtor-in-possession financings generally, including debtor-in-possession financings recently approved by this court and others in comparable Chapter 11 Cases. Access to the DIP Facility will provide the Debtors with capital that is essential to (a) operate throughout these Chapter 11 Cases; (b) avoid irreparable harm to the Debtors' estates; and (c) provide the Debtors with sufficient runway to pursue a reorganization.

22. I believe the proposed DIP Facility serves as an important component of the Debtors' overall restructuring efforts because it provides the Debtors with the stability and certainty that they can emerge from the Chapter 11 process in a timely and expeditious manner. Overall, based on the results of SSG's discussions with potential lenders, I believe that the DIP Facility is the only possible financing option for the Debtors at this time.

NEED FOR INTERIM RELIEF

23. The Debtors are entering these Chapter 11 Cases with the support of the DIP Lenders. Their support is contingent on, among other things, meeting the obligations in the DIP

Documents and consummating the restructuring transactions contemplated thereunder. One of the Debtors' principal obligations under the DIP Documents is to gain this Court's approval of the DIP Facility pursuant to the terms of the Interim Order within the first three (3) Business Days of the Petition Date.

24. As described more fully in the First Day Declaration, the continued and viable operation of the Debtors' business through and upon emergence from Chapter 11 will not be possible absent the Court's entry of the Interim Order. Without immediate access to the new financing or Cash Collateral, the Debtors could suffer substantial and irreparable harm. The Debtors' need for access to additional liquidity is, therefore, urgent. In addition, because the Debtors lack sufficient unencumbered funds to meet certain imminent expenses necessary for a smooth transition to chapter 11, it is essential that they obtain interim approval of the use of the proceeds of the DIP Facility or Cash Collateral. Approval of the Interim Order will ensure that the Debtors' can (a) continue their business operations without interruption, sell at-the-market, and/or enter into a new power purchase agreement with a qualified party (b) maintain ordinary course relationships with vendors and customers, (c) satisfy other working capital needs in the ordinary course, and (d) consummate the broader set of restructuring transactions.

CONCLUSION

25. In sum, based upon the foregoing and the facts and circumstances of these cases, I believe that approving the DIP Facility and use of Cash Collateral is in the best interests of the Debtors' estates.

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Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Dated: February 20, 2024
West Conshohocken, PA

/s/ Neil Gupta

Neil Gupta
SSG Advisors LLC

Proposed Investment Banker to the Debtors