

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

In re

Chapter 11

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

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

Debtors.

**NOTICE OF BID DEADLINE, AUCTION, AND SALE HEARING IN CONNECTION  
WITH THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS**<sup>2</sup>

NOTICE IS HEREBY GIVEN, as follows:

1. On February 9, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). As set forth in the Restructuring Support Agreement, which is attached as Exhibit M to the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (“First Day Declaration”) [D.I. 4], and which was revised as provided in the *Notice of Filing of Revised Exhibit M to the Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings*, filed on February 27, 2024 [D.I. 171], the Debtors have determined that the most effective way to maximize the value of their estates for the benefit of their constituents is to propose a chapter 11 plan (as may be amended, the “Plan”) that provides for a “toggle” between a Stand-Alone Restructuring Scenario and a Sale Scenario (each as defined in the First Day Declaration), only to the extent the Sale Scenario results in a superior offer.

2. In furtherance thereof, on February 29, 2024, the Debtors filed a motion [D.I. 205] (the “Bid Procedures Motion”), seeking the Bankruptcy Court’s approval of, among other things, (i) procedures (the “Bid Procedures”) in connection with the sale (the “Sale”) of all or substantially all of the Debtors’ assets (the “Assets”), (ii) procedures (the “Contract Procedures”) to determine cure amounts and deadlines for filing objections to the proposed assumption and/or assumption and assignment by the Debtors of certain contracts and leases in connection with the Sale and the

---

<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.

<sup>2</sup> This notice is subject to the full terms and conditions of the Bid Procedures Motion, the Bid Procedures and the Bid Procedures Order (each as defined below). The Bid Procedures Order shall control in the event of any conflict. The Debtors encourage parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

Plan, (iii) the date, time, and place for a sale hearing (the “Sale Hearing”) and deadlines for filing objections to the Sale, and (iv) related relief.

3. On March 25, 2024, the Bankruptcy Court entered an order [D.I. 288] (the “Bid Procedures Order”) approving the Bid Procedures Motion, the Bid Procedures and the Contract Procedures.<sup>3</sup>

4. All interested parties are invited to make offers to purchase the Assets in accordance with the terms of the Bid Procedures and the Bid Procedures Order. Potential Bidders are encouraged to review the Bid Procedures attached to the Bid Procedures Order carefully and, for further information, are invited to contact the Debtors’ investment banker, SSG Advisors, LLC (“SSG”), Attn: Teresa C. Kohl (tkohl@ssgca.com) and J. Scott Victor (jsvictor@ssgca.com). **The Bid Deadline is May 6, 2024 at 4:00 p.m. (ET).**

5. Consistent with the Bid Procedures Order, in the event the Debtors receive one or more Qualified Bids on or before the Bid Deadline, the Debtors shall conduct an Auction for the purpose of determining the highest or otherwise best bid for the Assets. **The Auction shall be organized by the Debtors’ professionals and conducted at the offices of Foley Hoag LLP, 1301 Avenue of the Americas, 25<sup>th</sup> Floor, New York, NY 10019, or by remote audio and video link, beginning at May 13, 2024 beginning at 10:00 a.m. (ET)** or such other location and time as may be announced prior to the Auction to all Qualified Bidders, the U.S. Trustee, the Senior Secured Lenders, and the official committee of unsecured creditors, if any, formed in the Chapter 11 Cases (the “Committee”).

6. The Auction will be recorded and transcribed by an authorized court reporter. Professionals and/or other representatives of the Debtors, the Committee, the Senior Secured Lenders, Qualified Bidders, and creditors or equity holders of the Debtors may attend and observe the Auction.

7. The time and place of the Auction may change with notice. The Debtors shall file notice of any such change with the Bankruptcy Court **not later 4:00 p.m. (ET) one (1) day prior to the Auction** and shall serve such notice by email on all Qualified Bidders and/or their authorized representatives, counsel for the Committee, counsel for the Senior Secured Lenders, and all creditors who notified Debtors’ counsel of their intention to attend the Auction in accordance with the procedure set forth in paragraph 8 below.

8. **Any party-in-interest wishing to attend the Auction, whether virtually or in person, by no later than one (1) day prior to the start of the Auction, must contact Foley Hoag LLP, (x) 1301 Avenue of the Americas, 25<sup>th</sup> Floor, New York, NY 10019, Attn: Alison D. Bauer, Esq. (abauer@foleyhoag.com) and Jiun-Wen Bob Teoh, Esq. (jteoh@foleyhoag.com), and (y) 155 Seaport Boulevard, Boston, MA 02210, Attn: Kenneth S. Leonetti, Esq. (ksl@foleyhoag.com) and provide his/her/its e-mail address and/or fax number, so as to receive notice of any change in the date, time or location of the Auction.**

---

<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Bid Procedures Order and/or the Bid Procedures Motion.

9. In the event an Auction occurs, no later than **May 14, 2024 at 12:00 p.m. (ET)**, the Debtors will file with the Bankruptcy Court a notice identifying the Successful Bid, Successful Bidder, Back-Up Bid, and Back-Up Bidder, and the amount of the Successful Bid and Back-Up Bid (the “Successful Bidder Notice”).

10. At that same time, the Debtors shall serve the Successful Bidder Notice by fax, email, or, if neither is available, overnight mail, on (i) all Contract Parties whose Contracts are to be assumed and/or assumed and assigned and (ii) all creditors who have timely submitted a written request for the notice and provided their fax numbers, email address or street address to Debtors’ counsel. By no later than the Bid Deadline, those creditors who wish to receive a copy of the Successful Bidder Notice must submit a written request, including such creditor’s fax number, email address, and/or street address, to Debtors’ counsel: Foley Hoag LLP, (x) 1301 Avenue of the Americas, 25<sup>th</sup> Floor, New York, NY 10019, Attn: Alison D. Bauer, Esq. (abauer@foleyhoag.com) and Jiun-Wen Bob Teoh, Esq. (jteoh@foleyhoag.com), and (y) 155 Seaport Boulevard, Boston, MA 02210, Attn: Kenneth S. Leonetti, Esq. (ksl@foleyhoag.com).

11. The Bankruptcy Court shall conduct the Sale Hearing on **May 21, 2024 at 10:00 a.m. (ET)**. At the Sale Hearing, the Debtors intend to seek the Bankruptcy Court’s approval of the Sale of the Assets to the Successful Bidder. The Sale Hearing will be held before the Honorable Laurie Selber Silverstein at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801.

12. The Debtors, in the exercise of their business judgment, with the consent of the Senior Secured Lenders, may adjourn the Sale Hearing without notice or with limited and shortened notice to parties, including by (i) an announcement of such adjournment at the Sale Hearing or at the Auction and (ii) the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the Sale Hearing.

13. Except with respect to any Assumed Liabilities and Permitted Liens, the Debtors will seek to have the Sale be free and clear of all liens, claims, encumbrances, defenses (including, without limitation, rights of setoff) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all “claims” as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable to the maximum extent permitted by section 363 of the Bankruptcy Code.

14. At the Sale Hearing, the Bankruptcy Court may enter such orders as it deems appropriate under applicable law and as required by the circumstances and equities of these Chapter 11 Cases, and the Debtors, subject to the terms of the Successful Bidder's asset purchase agreement, may seek entry of an order which provides, except with respect to any Assumed Liabilities, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants and other creditors, holding liens, claims, encumbrances or interests of any kind or nature whatsoever against or in all or any portion of the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated or subordinate), arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' business prior to the Closing Date or the transfer of the Assets to the Successful Bidder, that all such persons are forever prohibited and permanently enjoined from (a) commencing or continuing in any manner any action or other proceeding, the employment of process, or any act (whether in law or equity, in any judicial, administrative, arbitral, or other proceeding) to collect or recover any interest; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order with respect to an interest, (c) creating, perfecting, or enforcing any interest, or (d) asserting any right of subrogation of any kind with respect to an interest, in each case as against the Successful Bidder or its designee, any of their respective affiliates or subsidiaries, or any of their respective representatives, or any of their respective property or assets, including the Assets.

15. Objections, if any, to approval of the Sale and entry of the Sale Order, including, without limitation, with respect to (a) the sale of the Assets free and clear of all Encumbrances pursuant to section 363(f) of the Bankruptcy Code, with valid and perfected Encumbrances to attach to the proceeds of the Sale (if any) (b) the conduct of the Auction (if any); (c) the form of Sale Order approving such Successful Bidder's asset purchase agreement; and/or (d) the proposed asset purchase agreement between the Debtors and such Successful Bidder (each, a "Sale Objection") shall (a) be in writing, (b) set forth the name and address of the objecting party and the nature and amount of any claims or interests of the objecting party or asserted against the Debtors' estates or properties by the objecting party, (c) state with particularity the basis and nature of the Sale Objection, and provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection, (d) conform to the Bankruptcy Rules and the Local Rules, (e) be filed with the Bankruptcy Court, and (f) be served upon: (i) counsel for the Debtors, (1) Foley Hoag LLP, (x) 1301 Avenue of the Americas, 25<sup>th</sup> Floor, New York, NY 10019 Attn: Alison D. Bauer, Esq. (e-mail: abauer@foleyhoag.com) and Jiun-Wen Bob Teoh, Esq. (e-mail: jteoh@foleyhoag.com), and (y) 155 Seaport Boulevard, Boston, MA 02210, Attn: Kenneth S. Leonetti, Esq. (e-mail: ksl@foleyhoag.com); and (2) Gibbons P.C., (x) 300 Delaware Avenue, Suite 1015, Wilmington, Delaware 19801, Attn: Katharina Earle, Esq. (kearle@gibbonslaw.com) and (y) One Gateway Center, Newark, New Jersey 07102, Attn: Robert K. Malone, Esq. (e-mail: rmalone@gibbonslaw.com); (ii) counsel to the Committee; (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane Leamy); and (iv) counsel to the Senior Secured Lenders, Greenberg Traurig, LLP, One Vanderbilt Avenue, New York, New York 10017, Attn: Oscar N. Pinkas (e-mail: pinkaso@gtlaw.com) and Brian E. Greer (e-mail: greerb@gtlaw.com) (collectively, the "Sale Objection Parties"), so as to be received such parties on or before **May 16, 2024 at 4:00 p.m. (ET)**. For the avoidance of doubt, service of a Sale Objection, that has been properly filed with the Court through CM/ECF, on the Sale Objection Parties via email alone is sufficient.

16. You may obtain copies of the Bid Procedures Motion, the Bid Procedures, the Bid Procedures Order, the form of Sale Order, and/or other Sale-related documents by sending a request to the Debtors' counsel, attention to Alison D. Bauer, Esq. (abauer@foleyhoag.com), Jiun-Wen Bob Teoh, Esq. (jteoh@foleyhoag.com), and Kenneth S. Leonetti, Esq. (ksl@foleyhoag.com). These documents are also published on the website maintained by the Debtors' claims and noticing agent in these Chapter 11 Cases at <https://dm.epiq11.com/Burgess>, located under the tab labeled "Sale Documents".

Dated: March 26, 2024

/s/ Katharina Earle

Katharina Earle (No. 6348)

**GIBBONS P.C.**

300 Delaware Avenue, Suite 1015

Wilmington, Delaware 19801

Telephone: (302) 518-6300

E-mail: kearle@gibbonslaw.com

-and-

Robert K. Malone (admitted *pro hac vice*)

Kyle P. McEvilly (admitted *pro hac vice*)

**GIBBONS P.C.**

One Gateway Center

Newark, New Jersey 07102

Telephone: (973) 596-4500

E-mail: rmalone@gibbonslaw.com

kmcevilly@gibbsonlaw.com

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

Alison D. Bauer (admitted *pro hac vice*)

William F. Gray, Jr. (admitted *pro hac vice*)

Jiun-Wen Bob Teoh (admitted *pro hac vice*)

**FOLEY HOAG LLP**

1301 Avenue of the Americas, 25th Floor

New York, New York 10019

Telephone: (212) 812-0400

Email: abauer@foleyhoag.com

wgray@foleyhoag.com

jteoh@foleyhoag.com

-and-

Kenneth S. Leonetti (admitted *pro hac vice*)

Jonathan Bard (admitted *pro hac vice*)

**FOLEY HOAG LLP**

155 Seaport Boulevard

Boston, Massachusetts 02210

Telephone: (617) 832-1000

Email: ksl@foleyhoag.com

ybard@foleyhoag.com

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