

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

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

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

Re: D.I. 23, 186

FINAL ORDER (I) AUTHORIZING THE MAINTENANCE OF BANK ACCOUNTS AND CONTINUED USE OF EXISTING BUSINESS FORMS AND CHECKS, (II) AUTHORIZING THE CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (III) GRANTING LIMITED RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(B), AND (IV) GRANTING RELATED RELIEF

Upon the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Maintenance of Bank Accounts and Continued Use of Existing Business Forms and Checks, (II) Authorizing the Continued Use of Existing Cash Management System, (III) Granting Limited Relief from the Requirements of Bankruptcy Code Section 345(b), and (IV) Granting Related Relief* (the "Motion");² and upon the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings*; and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) the Court may enter a final order consistent with Article III of the United States Constitution; and upon the record herein; and after due deliberation thereon; and it appearing that sufficient notice of the Motion has been given and that no other

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

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

further notice is necessary, except as set forth in the Motion with respect to entry of this Final Order; and good cause appearing therefor; it is hereby

ORDERED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. The Debtors are authorized, but not directed, to maintain and use the Cash Management System, subject to modifications herein.
3. The Debtors are authorized to maintain and use the Bank Accounts in the name and with the account numbers existing immediately prior to the Petition Date and shall not be required to establish a specific new bank account for tax payments.
4. The Debtors shall retain authority to close or otherwise modify certain of their accounts and open new debtor in possession accounts, or otherwise make changes to the Cash Management System as they deem necessary to facilitate the Chapter 11 Cases and their operations. The Debtors are authorized to open any new bank accounts or close any existing bank accounts as they may deem necessary and appropriate in their sole discretion; *provided*, however, that the Debtors shall give notice within fifteen (15) days of opening or closing any bank account to the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), counsel to the Senior Secured Noteholders, and any statutory committees appointed in the Chapter 11 Cases; *provided*, further, however, that the Debtors shall open any such new bank account at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to immediately execute such an agreement. The banks are authorized to honor the Debtors' directions with respect to the opening and closing of any bank accounts and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions; *provided* that the

banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

5. The Debtors are authorized to deposit funds in and withdraw funds from the Bank Accounts by all usual means, subject to the same access rights and limitations existing prior to the Petition Date, including, but not limited to, checks, wire transfers, automated clearinghouse transfers, electronic funds transfers, and other debts and to treat the Bank Accounts for all purposes as debtor in possession accounts and to transfer funds between Debtors if required.

6. The Debtors are authorized, but not directed, to continue using the Company Credit Card in the ordinary course of business consistent with their prepetition practices. All authorized prepetition charges and fees are authorized to be paid.

7. The Debtors are authorized, but not directed, to continue to use their pre-printed checks, correspondence, and business forms and checks, including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, and other business forms, substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' debtor in possession status, *provided* that once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor In Possession" and the corresponding bankruptcy case number on all checks; *provided*, further, that, with respect to checks which the Debtors or their agents print themselves, the Debtors or their agents shall begin printing the "Debtor In Possession" legend on such items within ten (10) business days of the date of entry of this Final Order.

8. The banks listed on **Exhibit C** to the Motion and any banks where the Debtors establish new bank accounts pursuant to Paragraph 4 (the "New Bank Accounts") are hereby authorized and directed to continue to service and administer the Bank Accounts or New Bank

Accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course of business, and to receive, process, honor and pay any and all checks, drafts, wires or ACH transfers drawn on the Bank Accounts by the holders or makers thereof (collectively, the “Disbursements”). In no event shall any of the banks be required to honor overdrafts or to pay any check, wire or other debit against any of the Bank Accounts or New Bank Accounts that is drawn against uncollected funds.

9. The banks are authorized to debit the Bank Accounts or New Bank Accounts in the ordinary course of business, consistent with past practice, without the need for further order of this Court, for: (a) all checks drawn on the Bank Accounts that are cashed at such bank’s counters or exchanged for cashier’s checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of the Bank Accounts with such bank prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any bank as service charges for the maintenance of the Cash Management System.

10. The banks are authorized, without further order of this Court, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, merchant services, or other electronic transfers of any kind, regardless of whether such returned items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

11. Subject to the provisions of this Final Order, the banks listed on Exhibit C to the Motion and any banks where the Debtors establish New Bank Accounts are authorized to and shall

rely on the representations of the Debtors as to which Disbursements are authorized to be honored or dishonored, whether or not such Disbursements are dated, drawn, or issued prior to, on, or subsequent to the Petition Date, and whether or not the banks believe the payment is authorized by an order of the Court. The banks shall not be deemed in violation of this Final Order and shall have no liability for relying on such representations by the Debtors or honoring any Disbursements that is subject to this Final Order either (a) at the direction of the Debtors to honor such prepetition Disbursement, (b) in the good faith belief that this Court has authorized such prepetition Disbursement to be honored, or (c) as a result of a mistake made despite implementation of reasonable customary handling procedures. To the extent that the Debtors direct that any Disbursement be dishonored or the banks inadvertently dishonor any Disbursements, the Debtors may issue replacement Disbursements consistent with the orders of this Court.

12. Any existing deposit, treasury management, and merchant services agreements between or among the Debtors, the banks, and other parties shall continue to govern the postpetition cash management relationship between the Debtors and the banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect unless otherwise ordered by the Court, and the Debtors and the banks may, without further order of this Court, agree to and implement changes to the cash management procedures in the ordinary course of business, consistent with past practice, including, without limitation, the opening and closing of bank accounts, subject to the terms and conditions of this Final Order.

13. The Debtors are authorized, but not directed, to pay, and the banks are authorized to and may continue to charge, deduct and collect from the applicable Bank Accounts, in each

case, without further order of this Court, all customary and usual prepetition and postpetition fees, expenses, and charges arising from or related to the Bank Accounts or New Bank Accounts.

14. Without limiting the foregoing, prepetition agreements existing between the Debtors and the banks shall continue to govern the postpetition cash management relationship between the Debtors and the banks, and all of the provisions of such agreements, including the termination, fee provisions, rights, benefits, collateral, and offset rights, and remedies afforded under such agreements shall remain in full force and effect absent further order of the Court or, with respect to any such agreement with the banks (including, for the avoidance of doubt, any rights the banks have to use funds from the Bank Accounts or New Bank Accounts to remedy any overdraft of another Bank Account or New Bank Accounts or other cash management obligations, whether prepetition or postpetition, to the extent permitted under the applicable agreement), unless the Debtors and the banks agree otherwise, and any other legal rights and remedies afforded to the banks under applicable law shall be preserved.

15. In connection with the ongoing utilization of the Cash Management System, the Debtors shall continue to maintain detailed records in the ordinary course of business with respect to all transfers so that all transactions (including any intercompany transactions) may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

16. To the extent applicable, the Debtors' time to comply with Section 345(b) of the Bankruptcy Code is hereby extended for a period of thirty (30) days from the date of this Final Order (the "Extension Period"), provided, however, that such extension is without prejudice to the Debtors' right to request a further extension of the Extension Period or a waiver of the requirements of Section 345(b) in these Chapter 11 Cases.

17. With respect to banks at which the Debtors hold the Bank Accounts or New Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen (15) days of the date of entry of this Final Order the Debtors shall (a) contact each bank, (b) provide the bank with each of the Debtors' employer identification numbers, and (c) identify each of the Bank Accounts or New Bank Accounts held at such banks as being held by a debtor in possession in a bankruptcy case.

18. To the extent applicable, for banks at which the Debtors hold Bank Accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause such Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days of the date of this Final Order, or the Debtors will transfer funds from such banks to a bank account held at a bank that is a party to a Uniform Depository Agreement with the U.S. Trustee.

19. Nothing herein further authorizes the Debtors to make transfers or loans to non-debtor affiliates absent further order of the Court.

20. The requirements set forth in Rule 6004(a) of the Bankruptcy Rules are hereby waived.

21. The requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied because the relief set forth in this Final Order is necessary to avoid immediate and irreparable harm.

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

23. This Final Order is effective immediately upon its entry.

24. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: March 11th, 2024
Wilmington, Delaware



LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE