

**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)

**ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF FOLEY HOAG
LLP AS ATTORNEYS FOR THE DEBTORS EFFECTIVE
NUNC PRO TUNC TO THE PETITION DATE**

Upon the application (the “Application”)² of the above-captioned debtors an debtors in possession (the “Debtors”) for entry of an order (this “Order”) authorizing the Debtors to retain and employ Foley Hoag LLP (“Foley Hoag”) as their attorneys effective *nunc pro tunc* to the Petition Date, pursuant to sections 327(a) and 330 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rules 2014-1 and 2016-1, of the Local Rules for the District of Delaware (the “Local Rules”); and the Court having reviewed the Application, the *Declaration of Kenneth S. Leonetti In Support of the Debtors’ Application for Entry an Order Authorizing the Retention and Employment of Foley Hoag LLP as Attorneys for the Debtors Effective Nunc Pro Tunc to the Petition Date* (the “Leonetti Declaration”), and the *Declaration of Dean Vomero In Support of the Debtors’ Application for Entry an Order Authorizing the Retention and Employment of Foley Hoag LLP as Attorneys for the Debtors Effective Nunc Pro Tunc to the Petition Date* (the “Vomero Declaration”); and the Court having found that: (a) the Court has jurisdiction over this matter

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 Application.

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) venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (d) the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and (e) the Debtors provided adequate and appropriate notice of the Application under the circumstances and that no other or further notice is required; and the Court having reviewed the Application; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor; it is

HEREBY ORDERED THAT

1. The Application is APPROVED as set forth herein.
2. The Debtors are authorized to retain and employ Foley Hoag as their attorneys, *nunc pro tunc* to the Petition Date, pursuant to Bankruptcy Code section 327(a), for the purposes set forth in the Application, the Engagement Agreement (attached to the Application), the Vomero Declaration, and the Leonetti Declaration.
3. Foley Hoag shall apply for compensation for legal services rendered to the Debtors and reimbursement of reasonable expenses incurred in connection therewith in accordance with the sections 330 and 331 of the Bankruptcy Code, applicable provisions of the Bankruptcy Rules, Local Rules, Local Guidelines, and any other orders of this Court.
4. Foley Hoag is authorized without further order of the Court to apply amounts from the prepetition advance payment retainer to compensate and reimburse Foley Hoag for fees or

expenses incurred on or prior to the Petition Date consistent with its ordinary course billing practice. At the conclusion of Foley Hoag's engagement by the Debtors, if the amount of any advance payment retainer held by Foley Hoag is in excess of the amount of Foley Hoag's outstanding and estimated fees, expenses, and costs, Foley Hoag will pay to the Debtors the amount by which any advance payment retainer exceeds such fees, expenses, and costs, in each case in accordance with the Engagement Agreement.

5. Foley Hoag shall provide ten business-days' notice to the Debtors, the U.S. Trustee, counsel to the Senior Secured Lenders, and any official counsel to the Committee before any increases in the rates set forth in the Application or the Engagement Agreement are implemented and shall file such notice with the Court. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

6. Notwithstanding anything to the contrary in the Application, any order entered in connection therewith, or any agreement entered into in connection with the Debtors' retention of Foley Hoag, Foley Hoag shall not seek reimbursement of expenses for office supplies.

7. Foley Hoag shall use reasonable efforts and coordinate with the Debtors and its other professionals to avoid the duplication of services provided by other professionals retained by the Debtors in these Chapter 11 Cases.

8. No agreement or understanding exists between Foley Hoag and any other person or party, other than as permitted by Bankruptcy Code section 504, to share compensation received for services rendered in connection with the Chapter 11 Cases. Foley Hoag shall not share or agree

to share compensation received for services rendered in connection with the Chapter 11 Cases with any other person or party, other than as permitted by Bankruptcy Code section 504.

9. All fees and expenses incurred by Foley Hoag that are approved by the Court shall be treated as administrative expenses under Bankruptcy Code section 503.

10. Notwithstanding anything in the Application to the contrary, Foley Hoag shall (i) to the extent that Foley Hoag uses the services of independent contractors, subcontractors, or employees of foreign affiliates or subsidiaries (collectively, the “Contractors”) in these cases, pass-through the cost of such Contractors at the same rate that Foley Hoag pays the Contractors; (ii) seek reimbursement for actual costs only; (iii) ensure that the Contractors are subject to the same conflicts checks as required for Foley Hoag; and (iv) file with this Court such disclosures required by Bankruptcy Rule 2014.

11. In the event of any inconsistency between the Application, the Vomero Declaration, the Leonetti Declaration, the Engagement Agreement and this Order, this Order shall govern.

12. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.

14. This Court shall retain jurisdiction with respect to all matters related to the interpretation or implementation of this Order.

Dated: April 10th, 2024
Wilmington, Delaware


LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE