

**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 EMPLOYMENT AND RETENTION OF
SSG ADVISORS, LLC AS AND INVESTMENT BANKER TO THE DEBTORS
NUNC PRO TUNC TO THE PETITION DATE**

Upon the *Application of the Debtors for Entry of an Order Authorizing the Employment and Retention of SSG Advisors, LLC as Investment Banker to the Debtors Nunc Pro Tunc to the Petition Date* (the “Application”);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* (the “First Day Declaration”); and upon the Declaration of J. Scott Victor in support of the Application (the “Victor Declaration”); and upon the Declaration of Dean Vomero in support of the Application (the “Vomero Declaration”), and that the employment of SSG is necessary and is in the best interests of the Debtors; 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); and it appearing that sufficient notice of the Application has been given; and good cause appearing therefor; it is hereby

ORDERED that

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.

1. The Application is APPROVED as set forth herein.
2. The Debtors are authorized, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, to employ and retain, effective as of the Petition Date, upon the terms and for the purposes set forth in the Engagement Agreement, SSG as investment bankers for the Debtors in the Chapter 11 Cases.
3. Notwithstanding anything to the contrary in this Order, the Application, the Engagement Agreement or the Victor Declaration, SSG shall comply with all requirements of Bankruptcy Rule 2016(a) and Local Rule 2016-2, including all information and time keeping requirements of Local Rule 2016-2(d), except that SSG shall be permitted to keep professional time records in half-hour increments, shall not be required to keep time records on a project category basis and shall not be required to conform to any schedule of hourly rates for its professionals. SSG shall maintain records of services rendered for the Debtors, including summary descriptions of those services, the time expended in providing those services, and the identity of the individuals who provided those services. SSG shall include such records in its final fee application. SSG must submit monthly fee invoices to the (a) U.S. Trustee, (b) any official committee of unsecured creditors (the "Committee"), and (c) counsel to the Senior Secured Lenders (collectively, the "Notice Parties"), describing in narrative fashion the work performed during the monthly period by each professional working on the engagement. SSG must submit the monthly fee invoices to the Notice Parties by the twentieth (20th) day of each calendar month. For the avoidance of doubt, SSG shall be entitled to the payment of its monthly fee at the beginning of the month as provided by the Engagement Agreement while submitting the monthly fee invoice as described herein, without the need for monthly or interim applications for compensation, and the U.S. Trustee shall have review rights pursuant to Bankruptcy Code section 330.

4. With respect to payment by the Debtors' estate of any Transaction Fee and expense reimbursements, SSG shall file a final fee application for final allowance of compensation for services and reimbursement of expenses pursuant to the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any applicable orders of this Court. For the avoidance of doubt, as set forth in the Engagement Letter, SSG shall be entitled to one Transaction Fee, *either* a Restructuring Fee *or* a Sale Fee. SSG's compensation shall be subject to the standard of review provided in section 328(a) of the Bankruptcy Code and not subject to any other standard of review under section 330 of the Bankruptcy Code; provided, however, that the U.S. Trustee shall retain the right to object to the compensation and fees and expenses to be paid to SSG pursuant to a final application and the Engagement Agreement based on the reasonableness standard provided for in section 330 of the Bankruptcy Code, not section 328(a) of the Bankruptcy Code, and the Court shall consider any such objection by the U.S. Trustee under section 330 of the Bankruptcy Code; the Debtors and SSG further stipulate and agree that this Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of SSG's compensation and reimbursement requests under sections 330 and 331 of the Bankruptcy Code. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee on appeal or otherwise, with respect to the reasonableness of SSG's fees and compensation and reimbursement requests.

5. To the extent that SSG uses the services of independent contractors or subcontractors (collectively, the "Contractors") in these cases, SSG shall (i) pass through the cost of such Contractors at the same rate that SSG 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 SSG; and (iv) file with this Court such disclosures required by Bankruptcy Rule 2014.

6. The Indemnification Provisions of the Engagement Agreement are approved, subject to the following limitations during the pendency of the Chapter 11 Cases:

- a) SSG shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Agreement for services, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court; and
- b) The Debtors shall have no obligation to indemnify SSG, or provide contribution or reimbursement to SSG, for any claim or expense to the extent that it is either: (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from SSG's fraud, gross negligence, willful misconduct, or bad faith; (ii) for a contractual dispute in which the Debtors allege breach of SSG's contractual obligations, unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to applicable case law; or (iii) settled prior to such a judicial determination as to exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing pursuant to (c) below to be a claim or expense for which SSG should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order; and
- c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this case (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing the Chapter 11 Cases, SSG believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Engagement Agreement (as modified by the Application and this Order), including without limitation the advancement of defense costs, SSG must file an application therefore in this Court, and the Debtors may not pay any such amounts to SSG before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by SSG for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify SSG. All parties in interest shall retain the right to object to any demand by SSG for indemnification, contribution or reimbursement.

7. All fees and expenses incurred by SSG that are approved by the Court shall be treated as administrative expenses under section 503 of the Bankruptcy Code.
8. In the event of any inconsistency between the Engagement Agreement, the Application, the Victor Declaration, and this Order, this Order shall govern.
9. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
10. 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