

**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.

ORDER (I) AUTHORIZING THE RETENTION AND COMPENSATION OF CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS EFFECTIVE AS OF THE PETITION DATE AND (II) GRANTING RELATED RELIEF

Upon the *Motion of the Debtors for Entry of an Order (I) Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business Effective as of the Petition Date and (II) Granting Related Relief* (the “Motion”);² 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) 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 it appearing that sufficient notice of the Motion has been given and that no further notice is necessary; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and upon the record herein; and after due deliberation thereon; and sufficient cause appearing therefore, it is hereby

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 not otherwise defined herein have the meanings given to them in the Motion.

ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to retain and compensate the Ordinary Course Professionals in the ordinary course of business, in accordance with the terms of this Order, effective as of the Petition Date.
3. The following procedures (collectively, the “OCP Procedures”) are hereby approved in their entirety and shall apply to the retention and compensation of the Ordinary Course Professionals:
 - (a) Within fourteen (14) calendar days of the later of (i) entry of the Proposed Order, or (ii) the date on which the Ordinary Course Professional commences postpetition services for the Debtors, such Ordinary Course Professional shall provide a declaration of disinterestedness, substantially in the form attached to the Motion as **Exhibit C** (each, a “Declaration of Disinterestedness”), to (x) the Debtors, Attn: Dean Vomero, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408; and (y) proposed counsel to the Debtors, Foley Hoag LLP, 1301 Avenue of the Americas, 25th Floor, New York, New York 10019, Attn: Alison Bauer, Esq. (abauer@foleyhoag.com) and Jiun-Wen Bob Teoh, Esq., (jteoh@foleyhoag.com) and 155 Seaport Boulevard, Boston, Massachusetts 02210, Attn: Kenneth S. Leonetti, Esq. (ksl@foleyhoag.com), and Gibbons P.C., 300 Delaware Avenue, Suite 1015, Wilmington, Delaware 19801, Attn: Katharina Earle, Esq. (kearle@gibbonslaw.com) and One Gateway Center, Newark, New Jersey 07102, Attn: Robert K. Malone, Esq. (rmalone@gibbonslaw.com).
 - (b) The Debtors shall file the Declaration of Disinterestedness with the Court and serve it on: (i) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) Attn.: Jane Leamy (jane.m.leamy@usdoj.gov), (ii) counsel to the Senior Secured Noteholders, Greenberg Traurig, LLP, (A) One International Place, Suite 2000, Boston, Massachusetts 02110, Attn: Julia Frost-Davies (Julia.FrostDavies@gtlaw.com) and (B) 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801, Attn: Dennis Meloro (MeloroD@gtlaw.com), and (iii) counsel for any official committee appointed in these Chapter 11 Cases (collectively with the Debtors and proposed counsel to the Debtors, the “Notice Parties”).
 - (c) Any party that wishes to object to the retention of an Ordinary Course Professional shall have fourteen (14) calendar days after the date of service

of the Declaration of Disinterestedness (the “Objection Deadline”) to object to the retention of such Ordinary Course Professional. The objecting party shall file any such objection and serve such objection upon the Notice Parties and the respective Ordinary Course Professional on or before the Objection Deadline. If the parties are unable to reach a resolution of the objection, the matter shall be scheduled for hearing before the Court at the next omnibus hearing date, or other date otherwise agreeable to the relevant parties (subject to the Court’s availability).

- (d) No Ordinary Course Professional shall be paid any fees or expenses until the Objection Deadline has passed with no objections having been filed or, if an objection is filed on or before the Objection Deadline, such objection has been withdrawn, resolved, or overruled by order of the Court.
- (e) The Debtors shall be authorized, but not directed, to pay each Ordinary Course Professional, without further application to the Court, 100% of the postpetition fees and expenses incurred by such professional upon the submission to, and approval by, the Debtors, in consultation with counsel to the Official Committee of Unsecured Creditors and counsel to the Senior Secured Noteholders, of appropriate invoices setting forth in reasonable detail the nature of the services rendered, *provided, however*, that for each Ordinary Course Professional, the total fees and expenses shall not exceed \$70,000.00 per month, calculated as an average over the prior rolling three-month period while the Chapter 11 Cases are pending or \$210,000.00 in the aggregate for any calendar quarter (the “OCP Cap”), *provided, further*, that the Debtors reserve their rights to seek to increase the OCP Cap.
- (f) Any postpetition fees and expenses payable to an Ordinary Course Professional in excess of the applicable OCP Cap shall be subject to approval of the Court in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of the Court.
- (g) Within thirty (30) days of the close of each calendar quarter, beginning with the calendar quarter ending March 31, 2024, the Debtors shall file with the Court and serve on the Notice Parties a statement identifying the aggregate amounts paid to each Ordinary Course Professional in the reported quarter.
- (h) The Debtors right to amend or supplement the OCP List, as necessary, is reserved. In the event that the Debtors amend or supplement the OCP List, the Debtors shall file a notice with the Court and serve it on the Notice Parties.
- (i) To the extent that any agreement between the Debtors and an Ordinary Course Professional provides for the indemnification by the Debtors of such Ordinary Course Professional in connection with the services that are the subject of the Motion (each such agreement, an “OCP Agreement”), the

Ordinary Course Professional shall attach the OCP Agreement to the Declaration of Disinterestedness and, upon the retention of the Ordinary Course Professional in accordance with the OCP Procedures, the indemnification provisions set forth in the OCP Agreement are approved, subject to the following modifications during the pendency of the Chapter 11 Cases:

- i. No Ordinary Course Professional shall be entitled to indemnification, contribution or reimbursement related to postpetition services provided under the OCP Agreement, unless such services and the indemnification, contribution or reimbursement therefor are approved by this Court.
- ii. Notwithstanding anything to the contrary in an OCP Agreement, the Debtors shall have no obligation to indemnify an Ordinary Course Professional or provide contribution or reimbursement to the Ordinary Course Professional for any claim or expense related to such OCP Agreement that is (a) judicially determined, on a final basis, to have arisen from the Ordinary Course Professional's fraud, gross negligence or willful misconduct; (b) for a contractual dispute in which the Debtors allege a breach of the Ordinary Course Professional's contractual obligation under the OCP Agreement, unless this Court determines that indemnification, contribution, or reimbursement would be permissible; or (c) settled prior to a judicial determination as to the exclusions set forth in clauses (a) and (b) above, but determined by this Court, after notice and a hearing, to be a claim or expense for which the Ordinary Course Professional should not receive indemnity, contribution or reimbursement under the terms of the OCP Agreement, as modified by this Order.
- iii. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (b) the entry of an order closing the Chapter 11 Cases, an Ordinary Course Professional 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 OCP Agreement (as modified by this Order), including without limitation, the advancement of defense costs, the Ordinary Course Professional must file an application therefor in this Court, and the Debtors may not pay any such amounts to the Ordinary Course Professional before the entry of an order by this Court approving such payment. This subparagraph (iii) is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and

expenses by any Ordinary Course Professional for indemnification, contribution and/or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, the Ordinary Course Professionals. All parties in interest shall retain the right to object to any application by any Ordinary Course Professional for indemnification, contribution and/or reimbursement.

4. The notice requirement set forth in Rule 6004(a) is satisfied and this Order is immediately effective and enforceable notwithstanding Rule 6004(h), to the extent applicable.

5. The OCP Procedures shall not apply to any professionals retained or to be retained by the Debtors pursuant to a separate application and related order of this Court.

6. The Debtors are authorized to take any actions necessary to effectuate the relief granted pursuant to this Order.

7. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation, interpretation, and enforcement of this Order.

Dated: April 10th, 2024
Wilmington, Delaware


LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE