

**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) ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION
AND REIMBURSEMENT OF EXPENSES FOR RETAINED PROFESSIONALS
AND (II) GRANTING RELATED RELIEF**

Upon the *Motion of the Debtors for Entry of an Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* (the “Motion”);² and upon consideration of 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 the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference* of 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 it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the

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.

Motion is in the best interests of the Debtors, their estates, their creditors, and other interested parties; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Except as may otherwise be provide in orders of this Court authorizing the retention of specific Retained Professionals, all Retained Professionals in these Chapter 11 Cases may seek compensation for professional services rendered and reimbursement of expenses incurred in accordance with the following Compensation Procedures:

(a) On or after the fourteenth (14th) day of each calendar month following the month for which compensation is sought, each Retained Professional seeking allowance of its monthly fees and expenses may file an application (including the relevant time entry and description and expense detail) with the Court pursuant to section 331 of the Bankruptcy Code for allowance of compensation for services rendered and reimbursement of expenses incurred during the preceding month (a "Monthly Fee Application"), and serve a copy of such Monthly Fee Application by first class mail or email on the following parties (collectively, the "Notice Parties"): (i) the Debtors, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408, Attn: Dean Vomero; (ii) Foley Hoag, 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); (iii) Gibbons, P.C., 300 Delaware Ave., Suite 1015, Wilmington, Delaware 19801, Attn: Katharina Earle, Esq. (kearle@gibbonslaw.com), and One Gateway Plaza, Newark, New Jersey, 07102, Attn: Robert K. Malone, Esq. (rmalone@gibbonslaw.com); (iv) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware; 19801, Attn: Jane M. Leamy, Esq. (jane.m.leamy@usdoj.gov); (v) counsel to the DIP Lenders the Senior Secured Noteholders, Greenberg Traurig, LLP, One International Place, Suite 2000, Boston, MA 02110, Attn: Julia Frost-Davies (julia.frostdavies@gtlaw.com), and 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801, Attn: Dennis Meloro (melorod@gtlaw.com); and (vi) counsel to any statutory committee appointed in these Chapter 11 Cases. Any Retained Professional that fails to file a Monthly Fee Application for a particular month or months may subsequently submit a consolidated Monthly Fee Application that includes a request for compensation earned or expenses incurred during previous months. All Monthly Fee Applications shall comply with the applicable provisions of the Bankruptcy Code, the Bankruptcy

Rules, the Local Rules, and applicable orders of the Court. The first Monthly Fee Application submitted by each Debtor Retained Professional shall cover the period from the Petition Date through and including February 29, 2024, unless later submitted as a consolidated Monthly Fee Application.

- (b) Each Notice Party will have twenty (20) days after service of a Monthly Fee Application (the “Objection Deadline”) to object to the requested fees and expenses in accordance with the procedures described in subparagraph (c) below. Upon the expiration of the Objection Deadline, each Retained Professional may file with the Court a certificate of no objection (a “CNO”), as appropriate, with respect to the unopposed portion of the fees and expenses requested in its Monthly Fee Application. After a CNO is filed, the Debtors are authorized to pay the applicable Retained Professional an amount (the “Actual Monthly Payment”) equal to the lesser of (i) 80% of the fees and 100% of the expenses requested in the Monthly Fee Application (the “Maximum Monthly Payment”) or (ii) 80% of the fees and 100% of the expenses not subject to an unresolved objection pursuant to subparagraph (c) below.
- (c) If any Notice Party objects to a Retained Professional’s Monthly Fee Application, it must, on or before the expiration of the Objection Deadline, file with the Court and serve on such Retained Professional and each other Notice Party a written objection (an “Objection”) so as to be received on or before the Objection Deadline. Any such Objection shall identify with specificity the objectionable fees and/or expenses, including the amount of such objected to fees and/or expenses, and the basis for such Objection. Thereafter, the objecting party and the affected Retained Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution within fourteen (14) days after service of the Objection, the affected Retained Professional may either: (i) file a response to the Objection with the Court, together with a request for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment made to such Retained Professional (the “Incremental Amount”) or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and rule on the Objection if requested by the parties.
- (d) With respect to the first three-month period after the Petition Date, ending April 30, 2024, and each subsequent three-month period thereafter, each Retained Professional may file with the Court and serve on the Notice Parties an application (an “Interim Fee Application”) for interim allowance of compensation and reimbursement of expenses sought in the Monthly Fee Applications filed during each such three-month period (the “Interim Fee Period”) pursuant to section 331 of the Bankruptcy Code. The Interim Fee Application must identify the covered Monthly Fee Applications and include any other information requested by the Court or required by the applicable Local Rules. Interim Fee Applications may be filed with the Court and served

on the Notice Parties forty-five (45) days after the end of the applicable Interim Fee Period. Each Retained Professional may file its first Interim Fee Application, if any, on or after June 14, 2024. Objections, if any, to the Interim Fee Applications shall be filed and served upon the affected Retained Professional and the Notice Parties so as to be received on or before the twentieth (20th) day (or the next business day if such day is not a business day) following service of the Interim Fee Application.

- (e) If any Interim Fee Applications are filed, the Debtors shall request that the Court schedule a hearing on Interim Fee Applications at least once every three (3) months or at such other intervals as the Court deems appropriate. Upon allowance by the Court of a Retained Professional's Interim Fee Application, the Debtors shall be authorized to pay such Retained Professional all requested fees (including the 20% holdback) and expenses not previously paid.
- (f) The pendency of an Objection to payment of compensation or reimbursement of expenses shall not disqualify a Retained Professional from the future payment of compensation or reimbursement of expenses pursuant to the Compensation Procedures.
- (g) Neither (i) the payment of or the failure to pay, in whole or in part, compensation for services and reimbursement of expenses under the Compensation Procedures nor (ii) the filing of or the failure to file an Objection to any Monthly Fee Application or Interim Fee Application will bind any party in interest or the Court with respect to the allowance of any Interim Fee Application or Final Fee Application (as defined below) for compensation for services and reimbursement of expenses of Retained Professionals. All fees and expenses paid to Retained Professionals in accordance with the Compensation Procedures are subject to disgorgement until final allowance by the Court.
- (h) Retained Professionals shall file final applications for compensation and reimbursement of expenses (collectively, the "Final Fee Applications") by such deadline as may be established in a confirmed chapter 11 plan or in an order of the Court. All Final Fee Applications shall comply with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable orders of the Court.
- (i) Copies of all Monthly Fee Applications, Interim Fee Applications, Final Fee Applications and notices of any hearings thereon (each, a "Hearing Notice") must be served upon only the Notice Parties. All other parties who file a request for service of notices pursuant to Bankruptcy Rule 2002 shall be entitled to receive only a copy of the Hearing Notice. Notice given in accordance with the Proposed Order is deemed sufficient and adequate and in full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

- (j) Any Retained Professional that fails to file a Monthly Fee Application or an Interim Fee Application when due shall be ineligible to receive further monthly or interim payments of fees or expenses with respect to any subsequent period until such time as a Monthly Fee Application or an Interim Fee Application covering the prior period is filed and served by the Retained Professional. There shall be no other penalties for failing to file a Monthly Fee Application or an Interim Fee Application in a timely manner.

3. In each Interim Fee Application and Final Fee Application, all attorneys who have been or are hereafter retained pursuant to sections 327 or 1103 of the Bankruptcy Code, unless such attorney is employed and retained pursuant to an order granting the OCP Motion and is not required to file fee applications in accordance with the terms thereof, shall apply for compensation for professional services rendered and for reimbursement of expenses incurred in connection with the Chapter 11 Cases in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of this Court. Other Retained Professionals will also endeavor to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330 by Attorneys in Larger Chapter 11 Cases*, effective as of November 1, 2013.

4. Nothing in this Order shall alter the fee application requirements outlined in sections 330 and 331 of the Bankruptcy Code.

5. All of the time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

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

7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: April 9th, 2024
Wilmington, Delaware


LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE