

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

In re

BURGESS BIOPOWER, LLC, *et al.*<sup>1</sup>

Debtors.

Chapter 11

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

**Re. D.I. 9**

**INTERIM ORDER (I) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES; (II) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES; (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT; AND (IV) GRANTING RELATED RELIEF**

Upon the *Motion of the Debtors for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services; (II) Determining Adequate Assurance of Payment for Future Utility Services; (III) Establishing Procedures for Determining Adequate Assurance of Payment; and (IV) Granting Related Relief* (the “Motion”);<sup>2</sup> 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

<sup>1</sup> 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.

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

it appearing that sufficient notice of the Motion has been given and that no other further notice is necessary, except as set forth in the Motion with respect to entry of this Interim Order and notice of the Final Hearing (as defined below); and good cause appearing therefor; it is hereby

ORDERED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors will serve a copy of the Motion and this Interim Order upon each Utility Provider identified on Exhibit C to the Motion, within two (2) business days after entry of this Interim Order by the Court.
3. Until such time as this Court enters a final order on the Motion, or the Court orders otherwise, all Utility Providers are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.
4. Subject to the terms herein, within ten (10) business days after the date of the entry of this Interim Order, the Debtors shall establish a segregated account funded by the Adequate Assurance Deposit for the purpose of providing the Utility Providers with adequate assurance of payment for postpetition Utility Services to the Debtors.
5. The following Adequate Assurance Procedures are hereby approved on an interim basis:
  - a. Any Utility Provider that objects to the Debtors' Proposed Adequate Assurance must serve an Adequate Assurance Request so that it is actually received by 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, 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: Chantelle D. McClamb, Esq. (cmclamb@gibbonslaw.com), and One Gateway Plaza, Newark, New Jersey, 07102, Attn: Robert K. Malone, Esq. (rmalone@gibbonslaw.com); and (iv) counsel to the DIP Lenders and 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).

- b. Any Adequate Assurance Request must: (i) be made in writing; (ii) identify the location for which the Utility Services are provided and the account number for the location; (iii) include information regarding any security deposits paid by the Debtors; (iv) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (v) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- c. Upon the Notice Parties' receipt of an Adequate Assurance Request, the Debtors shall have 21 days from the receipt of the Adequate Assurance Request (the "Resolution Period") to negotiate with the Utility Provider to resolve the Utility Provider's Adequate Assurance Request.
- d. Unless and until a Utility Provider serves an Adequate Assurance Request on the Notice Parties, such Utility Provider shall be (i) deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code and (ii) prohibited from discontinuing, altering or refusing service to, or discriminating against, the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- e. Without further order of the Court but with the consent of the Senior Secured Noteholders, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Adequate Assurance Request if the Debtors, in consultation with the Senior Secured Noteholders, determine that the Adequate Assurance Request is reasonable.
- f. If the Debtors determine, in consultation with the Senior Secured Noteholders, that the Adequate Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, the Debtors, during or immediately after the

Resolution Period, will request a hearing (a “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to Section 366(c)(3) of the Bankruptcy Code.

- g. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing or discontinuing service to the Debtors on account of (i) unpaid charges for prepetition services; (ii) a pending Adequate Assurance Request; and/or (iii) any objections filed in response to the Proposed Adequate Assurance.
- h. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) shall be returned to the Debtors, less any amounts owed on account of unpaid, postpetition Utility Services, by no later than ten (10) business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these Chapter 11 Cases, (ii) the Debtors obtain the affected Utility Company’s consent; or (iii) the Debtors file a notice with the Court and serve upon the affected Utility Company a notice of the Debtors’ intent to return the Adequate Assurance Deposit and receive no response thereto.

6. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

7. The Debtors will cause a copy of this Interim Order, including the Adequate Assurance Procedures, to be served on any subsequently identified Utility Providers and, as soon as possible, increase the aggregate amount in the Adequate Assurance Account by an amount equal to the cost of two weeks of Utility Services provided by such subsequently identified Utility Provider. The Debtors shall supplement Exhibit C to the Motion with the information for any subsequently identified Utility Provider and such supplement shall be filed with the Court and served on subsequently identified Utility Providers.

8. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the

validity of any claim against the Debtors or the existence of any lien against the Debtors' property; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to Section 363 of the Bankruptcy Code; or (f) a limitation on the Debtors' rights under Section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the Proposed Orders once entered. The Debtors expressly reserve their rights to contest the extent, validity or perfection of any asserted claims and liens and to seek avoidance of any such liens.

9. The hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the "Final Hearing") shall be held **on a Date to Be Determined**. Any objections or responses to the entry of a final order on the Motion shall be filed **on a Date to Be Determined** and shall be served on: (a) the Debtors, c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408, Attn: Dean Vomero; (b) Foley Hoag, 1301 Avenue of the Americas, 25<sup>th</sup> 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); (c) Gibbons, P.C., 300 Delaware Ave., Suite 1015, Wilmington, Delaware 19801, Attn: Chantelle D. McClamb, Esq. (cmclamb@gibbonslaw.com), and One Gateway Plaza, Newark, New Jersey, 07102, Attn: Robert K. Malone, Esq. (rmalone@gibbonslaw.com); (d) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware; 19801, Attn: Jane M. Leamy, Esq. (jane.m.leafy@usdoj.gov); (e) counsel to the DIP Lenders and 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 (f) counsel to any statutory committee appointed in these chapter 11 cases. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective upon its entry.

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

14. The Court retains jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Interim Order.

**Dated: February 16th, 2024**  
**Wilmington, Delaware**

  
**LAURIE SELBER SILVERSTEIN**  
**UNITED STATES BANKRUPTCY JUDGE**