

**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)

(Joint Administration Requested)

Re: D.I. 5

**ORDER (I) APPROVING THE RETENTION OF EPIQ CORPORATE
RESTRUCTURING, LLC AS THE CLAIMS AND NOTICING AGENT TO THE
DEBTORS, EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE,
AND (II) GRANTING RELATED RELIEF**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order (this “Order”) approving the retention and appointment of Epiq Corporate Restructuring, LLC (“Epiq”) as the Claims and Noticing Agent for the Debtors in the Chapter 11 Cases, effective *nunc pro tunc* to the Petition Date, under 28 U.S.C. Section 156(c), Bankruptcy Code Section 105(a), Bankruptcy Rule 2002(f), Local Rule 2002-1(f), and the Court’s Claims Agent Protocol, to, among other things, (a) distribute required notices to parties in interest, (b) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Debtors’ cases, (c) provide such other administrative services as required by the Debtors that would fall within the purview of services to be provided by the Clerk’s office, all as more fully set forth in the Application, and (d) granting related relief, all as more fully set forth in the Application; and upon the First Day Declaration; and upon the Mailloux Declaration; and the Court being authorized under 28 U.S.C. §156(c) to utilize, at the Debtors’ expense, outside agents and

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 otherwise defined herein shall have the meanings ascribed to such terms in the Application.

facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and this Court being satisfied that Epiq has the capability and experience to provide such services and that Epiq does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and this Court having jurisdiction over this matter pursuant to Judicial Code sections 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; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. §157(b)(2), and that the Debtors consent to the entry of a final order under Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to Judicial Code sections 1408 and 1409; and this Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Application is granted as set forth herein.
2. Notwithstanding the terms of the Engagement Agreement attached as Exhibit C to the Application, the Application is approved solely as set forth in this Order and solely with respect

to the “Claims Management” and “Noticing” services set forth in the Services Schedule attached to the Engagement Agreement.

3. The Debtors are authorized to retain and employ Epiq as Claims and Noticing Agent, effective *nunc pro tunc* to the Petition Date, under the terms of the Engagement Agreement, and Epiq is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in the Chapter 11 Cases, and all related tasks, all as described in the Application (the “Claims and Noticing Services”).

4. Epiq shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in the Chapter 11 Cases and is authorized and directed to maintain the Claims Registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court, and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

5. Epiq is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

6. Epiq is authorized to take such other actions as required to comply with the specific duties set forth in paragraph 11 of the Application which have been authorized pursuant to this Order.

7. Epiq shall comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

8. Without further order of this Court, the Debtors are authorized to compensate Epiq for the Claims and Noticing Services in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Epiq and the rates charged for each, and to reimburse Epiq for all reasonable and necessary expenses it may

incur, upon the presentation of appropriate documentation, without the need for Epiq to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

9. Epiq shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices via electronic mail on the Debtors, counsel for the U.S. Trustee, counsel for the Debtors, counsel for the Senior Secured Noteholders, counsel for any statutory committee and any party in interest that specifically requests service of the monthly invoices.

10. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices; provided that the parties may seek resolution of the matter from the Court if resolution is not achieved.

11. Pursuant to Bankruptcy Code section 503(b)(1)(A), the allowed fees and expenses of Epiq under this Order shall be an administrative expense of the Debtors' estates.

12. Epiq may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount of \$25,000.00, and thereafter, Epiq may hold its retainer under the Engagement Agreement during the Chapter 11 Cases as security for the payment of Epiq's final invoice for services rendered and expenses incurred under the Engagement Agreement.

13. The Debtors shall indemnify Epiq and each other Indemnified Person, as that term is defined in the Engagement Agreement (collectively, the "Indemnified Persons") under the terms of the Engagement Agreement, subject to the following modifications:

- a. The Indemnified Persons shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the Claims and Noticing Services provided under the

Engagement Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court;

- b. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify Indemnified Persons, or provide contribution or reimbursement to Indemnified Persons, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Indemnified Person's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of Indemnified Person's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to applicable law, or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which Claims and Noticing Agent should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order;
- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing this chapter 11 case, an Indemnified Person 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 this Order), including without limitation the advancement of defense costs, the Indemnified Person or Epiq must file an application therefor in this Court, and the Debtors may not pay any such amounts to such Indemnified Person before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Indemnified Person for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify the Indemnified Persons. All parties in interest shall retain the right to object to any demand by any Indemnified Person for indemnification, contribution, or reimbursement.

14. Notwithstanding anything to the contrary, Section 8 of the Engagement Agreement regarding limitation of liability shall be given no effect during the Chapter 11 Cases.

15. In the event Epiq is unable to provide the Claims and Noticing Services, Epiq shall immediately notify the Clerk and the Debtors' counsel and cause all original proofs of claim and computer information to be turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' counsel,

16. The Debtors may submit a separate retention application, pursuant to section 327 of the Bankruptcy Code and/or any applicable law, for services that are to be performed by Epiq but are not specifically authorized by this Order.

17. Epiq shall not cease providing Claims and Noticing Services during the Chapter 11 Cases for any reason, including nonpayment, without an order of the Court.

18. In the event of any inconsistency between the Engagement Agreement, the Application, and this Order, this Order shall govern.

19. The Debtors and Epiq are authorized to take all action necessary to effectuate the relief granted in this Order.

20. After entry of an order terminating Epiq's services as the Claims and Noticing Agent, upon the closing of the Chapter 11 Cases, or for any other reason, Epiq shall be responsible for (a) forwarding to the Clerk an electronic version of all imaged claims, (b) uploading the creditor mailing lists into CM/ECF, and (c) docketing a final Claims Register.

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

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

31. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: February 13th, 2024
Wilmington, Delaware


LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE