

ORIGINAL

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Calpine Corporation, et al.,

Debtors.

)
)
) Chapter 11
)
) Case No. 05-60200 (BRL)
) Jointly Administered
)
)

COMMISSION
CLERK

**INTERIM ORDER AUTHORIZING RETENTION OF
MILLER BUCKFIRE & CO., LLC AS FINANCIAL ADVISORS
AND INVESTMENT BANKERS FOR THE DEBTORS**

Upon the application (the "Application")¹ of the above-captioned debtors (collectively, the "Debtors") pursuant to Fed. R. Bankr. P. 2014(a) for an interim order under section 327(a) and 328(a) of the Bankruptcy Code authorizing the employment and retention of Miller Buckfire & Co., LLC as financial advisors and investment bankers of the Debtors; and upon the Affidavit of Kenneth A. Buckfire in support of the Application; and it appearing that Miller Buckfire neither holds nor represents any interest adverse to the Debtors' estates; and it appearing that Miller Buckfire is "disinterested," as that term is defined in section 101(14) of the Bankruptcy Code; and it appearing that the relief requested is in the best interest of the Debtors' estates, their

creditors and other parties in interest; it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); it appearing that venue of this proceeding and this Application in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; notice of this Application and the opportunity for a hearing on this Application was appropriate under the particular

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¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

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circumstances and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED

1. The Application is approved on an interim basis until such time as the Court conducts a final hearing on this matter (the "Final Hearing").

2. The Final Hearing shall take place before this Court at 10:00 a.m. (prevailing Eastern Time) on March 22, 2006.

3. The Debtors shall serve a copy of this Interim Order and notice of the Final Hearing on all creditors and parties in interest within five (5) days of the entry of this Interim Order.

4. Any objections to the relief requested by the Application on a final basis must be filed with the Court and served on the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attention: Paul Kenan Schwartzberg and Kirkland & Ellis LLP, attorneys for the Debtors, Matthew Cantor, Esq., Kirkland & Ellis LLP, 153 East 53rd Street, New York, NY 10022 so as to be actually received by no later than March 17, 2006, at 4:00 pm, prevailing Eastern Time.

5. Miller Buckfire is found to be a "disinterested person" within the meaning of 11 U.S.C. § 101(14).

6. In accordance with sections 327(a), 328(a) and 1107(a) of the Bankruptcy Code, the Debtors are authorized to employ and retain Miller Buckfire as their financial advisors and investment bankers in these Chapter 11 Cases on an interim basis effective as of the Petition Date, pursuant to the terms set forth in the Application and the Engagement Letter.

7. The Engagement Letter, as modified by this Interim Order, is approved pursuant to 11 U.S.C. § 328(a) and the Debtors are authorized to pay, reimburse and indemnify Miller

Buckfire according to the terms and at the times specified in the Engagement Letter, as modified by this Interim Order.

8. Miller Buckfire shall be compensated in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and such procedures as may be fixed by order of this Court; provided, however, that Miller Buckfire shall not receive any payments from the Debtors on account of any monthly fee statement until the occurrence of the Final Hearing and the entry of a final order approving Miller Buckfire's retention it being understood that such Final Hearing shall occur no later than sixty (60) days after the mailing of the notice of the Final Hearing.

9. Notwithstanding the foregoing, fee applications filed by Miller Buckfire shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and not subject to the standard of review set forth in section 330 of the Bankruptcy Code.

10. The first sentence of Paragraph 7 of the Engagement Letter shall be deleted and replaced by the following:

"Miller Buckfire has been retained under this agreement as an independent contractor with no agency relation to the Company or to any other party, it being understood that Miller Buckfire shall have no authority to bind, represent or otherwise act as an agent, executor, administrator, trustee, lawyer or guardian for the Company, nor shall Miller Buckfire have the authority to manage money or property of the Company."

11. Notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court, any orders of this Court or any guidelines regarding submission and approval of fee applications, Miller Buckfire and its professionals (i) shall only be required to maintain time records for services rendered postpetition, in half-hour (.5) increments and (ii) shall not be required to provide or conform to any schedule of hourly rates.

12. The United States Trustee retains all rights to object to Miller Buckfire's interim and final fee applications (including expense reimbursement) on all grounds including but not limited to the reasonableness standard provided for in Section 330 of the Bankruptcy Code.

13. All requests of Miller Buckfire for payment of indemnity pursuant to the Engagement Letter shall be made by means of an application (interim or final as the case may be) and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought, provided, however, that in no event shall Miller Buckfire be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct.

14. In no event shall Miller Buckfire be indemnified if the Debtor or a representative of the estate, asserts a claim for, and a court determines by final order that such claim arose out of, Miller Buckfire's own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

15. In the event that Miller Buckfire seeks reimbursement for attorneys' fees from the Debtors pursuant to the Engagement Letter, the invoices and supporting time records from such attorneys shall be included in Miller Buckfire's own applications (both interim and final) and such invoices and time records shall be subject to the United States Trustee's guidelines for compensation and reimbursement of expenses and the approval of the Bankruptcy Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

16. The Retainer shall constitute a general security retainer for postpetition services and expenses until the conclusion of these Chapter 11 Cases, at which point Miller Buckfire will apply the Retainer against its then-unpaid Completion Fee and any other unpaid fees and expenses in respect of Miller Buckfire's fee applications filed and approved in accordance with applicable provisions of the Bankruptcy Code; provided, however, that the Official Committee of Unsecured Creditors retains all rights to object to the nature of the Retainer prior to the Final Hearing. Notwithstanding the foregoing, any party in interest shall have the right to raise before the Court the application of Miller Buckfire's Retainer, if any, to administrative expenses of the estates at any time, and Miller Buckfire reserves the right to contest any such matters.

17. Miller Buckfire shall make an additional disclosure in the form of a supplemental affidavit, to the extent such disclosure has not been previously made, no later than five (5) days prior to the Final Hearing date of any Miller Buckfire clients identified as creditors of the Debtors representing equal to or greater than 1% of Miller Buckfire's annual revenues.

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

19. The terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

20. The requirement set forth in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Application or otherwise waived.

21. To the extent that this Interim Order is inconsistent with any prior order or pleading with respect to the Application in these cases or the Engagement Letter, the terms of this Interim Order shall govern.

22. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

Dated: January 26, 2006
New York, New York

/s/Burton R. Lifland
United States Bankruptcy Judge