

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 1ST
)
JUSTICE OSBORNE) DAY OF NOVEMBER, 2023
)

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER
CORP., KAP POWER CORP., VALIDUS HOSTING INC. AND KINGSTON
COGEN GP INC., EACH BY THEIR COURT APPOINTED RECEIVER AND
MANAGER, KSV RESTRUCTURING INC.**

SISP APPROVAL ORDER

THIS MOTION, made by **KSV Restructuring Inc. ("KSV")**, in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of Validus Power Corp. ("**VPI**"), Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. ("**Hosting**"), Kingston Cogen GP Inc. ("**Kingston GP**", and collectively with each of the foregoing entities, the "**Companies**") and Kingston Cogen Limited Partnership ("**Kingston LP**", and together with the Companies, the "**Validus Entities**"), for an Order, among other things, approving a sale and investment solicitation process for the Validus Entities was heard this day at 330 University Ave, Toronto, Ontario.

ON READING the Motion Record in respect of this motion, filed, the Second Report of the Monitor dated October 19, 2023 (the "**Second Report**"), filed, the Reply Record of Macquarie Equipment Finance Limited, filed, and the Responding Record and Supplementary Responding Record of the Validus Entities, filed in the receivership proceedings, bearing Court File No.: CV-23-00703754-00CL;

AND UPON hearing the submissions of counsel for the Monitor, counsel for Macquarie Equipment Finance Ltd. (the "**Stalking Horse Bidder**"), counsel for Far North Power Corp. (the "**Assignee**"), counsel for the Validus Entities, and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of Katie Parent sworn October 26, 2023, filed.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale and Investment Solicitation Process attached as Schedule "A" (the "**SISP**"), the Order of this Court dated August 10, 2023 (the "**Receivership Order**") issued in the receivership proceedings bearing Court File No. CV-23-00703754-00CL (the "**Receivership Proceedings**") or the Initial Order of this Court dated August 29, 2023 (the "**Initial Order**"), as applicable.

SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the SISP is hereby approved and the Monitor is hereby authorized to implement the SISP pursuant to the terms thereof. The Monitor is hereby authorized to perform all things reasonably necessary to carry out the SISP.
4. **THIS COURT ORDERS** that the Monitor shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or

result from the gross negligence or willful misconduct of the Monitor in performing its obligations under the SISP, as determined by this Court.

STALKING HORSE BID

5. **THIS COURT ORDERS** that the transaction agreement (the "**Transaction Agreement**") appended as Schedule "A" to the offer letter delivered by the Stalking Horse Bidder and the Assignee to the Monitor (the "**Offer Letter**", and the Stalking Horse Bidder and the Assignee's offer for the Receiver's entry into the Transaction Agreement set out therein, the "**Stalking Horse Bid**") is hereby approved solely as the stalking horse bid in the SISP, provided that, nothing herein approves: (i) the acceptance and/or execution of the Transaction Agreement by the Vendors (as defined in the Stalking Horse Bid); or (ii) the sale and the vesting of any Property to the Stalking Horse Bidder, the Assignee or any of their respective designees, if applicable, pursuant to the Transaction Agreement and that the approval of the Vendors' acceptance and execution of the Transaction Agreement and/or any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Bid is the Successful Bid pursuant to the SISP.

6. **THIS COURT ORDERS** that, as soon as reasonably practicable following the Vendors agreeing upon the final Implementation Steps (as defined in the Offer Letter and the Transaction Agreement), the Monitor shall, in each such case: (i) file a copy thereof with this Court; (ii) serve a copy thereof on the Service List; and (iii) provide a copy thereof to each SISP Participant (as hereinafter defined), excluding from the public record any confidential information that the Monitor, the Stalking Horse Bidder and the Assignee agree should be redacted.

BID PROTECTIONS

7. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered to enter into the break fee agreement (the "**Break Fee Agreement**") dated as of October 16, 2023,

between the Monitor and the Stalking Horse Bidder and attached as Appendix "I" to the Second Report, *nunc pro tunc*, and the Break-Up Fee (as defined in the Break Fee Agreement) and the Expense Reimbursement (as defined in the Break Fee Agreement) are hereby approved and the Vendors are hereby authorized and directed to pay the Break-Up Fee and the Expense Reimbursement to the Stalking Horse Bidder (or as it may direct) in the manner and circumstances described in the Break Fee Agreement out of the proceeds from and upon completion of any Successful Bid with any party other than the Stalking Horse Bidder.

8. **THIS COURT ORDERS** that the Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the "**Bid Protections Charge**") on the Property, which charge shall not exceed \$2,260,000, as security for payment of the Break-Up Fee and the Expense Reimbursement in the manner and circumstances described in the Break Fee Agreement.

9. **THIS COURT ORDERS** that the filing, registration or perfection of the Bid Protections Charge shall not be required, and that the Bid Protections Charge shall be valid and enforceable for all purposes, including against any right, title or interest filed, registered, recorded or perfected subsequent to the Bid Protections Charge, notwithstanding any such failure to file, register, record or perfect.

10. **THIS COURT ORDERS** that the Bid Protections Charge shall constitute a charge on the Property and the Bid Protections Charge shall rank in priority to all other Encumbrances in favour of any Person notwithstanding the order of perfection or attachment, other than (i) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable legislation; and (ii) the Receiver's Borrowing Charge (as defined in the Receivership Order).

11. **THIS COURT ORDERS** that, except for the Charges or as may be approved by this Court on notice to parties in interest, the Applicant shall not grant any Encumbrances over any Property

that rank in priority to, or *pari passu* with, the Bid Protections Charge, unless the Applicant also obtains the prior written consent of the Monitor and the Stalking Horse Bidder, or further Order of this Court.

12. **THIS COURT ORDERS** that the Bid Protections Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Bidder shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Bid Protections Charge nor the execution, delivery, perfection, registration or performance of the Transaction Agreement shall create, cause or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Stalking Horse Bidder shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Bid Protections Charge or the execution, delivery or performance of the Transaction Agreement; and

- (c) the payments made by the Applicant pursuant to this Order, the Transaction Agreement and the granting of the Bid Protections Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

PIPEDA

13. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor and its respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants (each, a "**SISP Participant**") and their advisors personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a "**Transaction**"). Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor. Any Successful Party shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the CCAA Parties, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor.

UNKNOWN CONTRACT BAR PROCESS

14. **THIS COURT ORDERS** that capitalized terms used in this section of the Order shall have the following meanings:

- (a) **"Excluded Contract Counterparties"** means any contracts for employment with any of the employees of the Companies;
- (b) **"Known Contract Counterparties"** means a counterparty with a contract with one or more of the Companies who is known to the Monitor based on the books and records of the Companies or who is otherwise known by the Monitor as having a contract with the Companies but, for greater certainty, excluding Excluded Contract Counterparties;
- (c) **"Known Contracts"** means all contracts with the Companies listed on the Known Contract Counterparty List;
- (d) **"Monitor's Website"** means <https://www.ksvadvisory.com/experience/case/validus-power-corp;>
- (e) **"Publication Notice"** means the notice to be published by the Monitor requesting parties to confirm on the Monitor's Website that they are a Known Contract Counterparty and that all of their contracts with the Companies are listed on the Known Contract Counterparty List; and
- (f) **"Unknown Contract Counterparty"** means any Person who has a contract with one or more of the Companies who is not a Known Contract Counterparty.

15. **THIS COURT ORDERS** that within 3 business days from the date of this Order, the Monitor shall post on the Monitor's Website a list of all Known Contract Counterparties and Known Contracts (the **"Known Contract Counterparty List"**).

16. **THIS COURT ORDERS** that as soon as reasonably practicable after the date of this Order, the Monitor shall cause to be published the Publication Notice in the Globe and Mail (National Edition) and such other publications as the Monitor may consider appropriate.

17. **THIS COURT ORDERS** that any person who believes it may have one or more contracts with one or more of the Companies whose identity and/or contract is not listed on the Known Contract Counterparty List shall contact the Monitor by no later than November 28, 2023 (the “**Unknown Contract Bar Date**”) and provide the Monitor with a copy or copies of any or all outstanding contracts.

18. **THIS COURT ORDERS** that any Unknown Contract Counterparty who complies with paragraph 17 above, shall be treated as a Known Contract Counterparty in connection with any motions whereby Known Contract Counterparties are provided with notice.

19. **THIS COURT ORDERS** that upon expiration of the Unknown Contract Bar Date, all other Unknown Contract Counterparties shall be forever barred from asserting that it did not receive adequate notice of any treatment of any contractual right or claim in the connection with these proceedings including, without limitation, any motion or motions for approval of a sale approval order, vesting order, reverse vesting order, distribution order or otherwise, provided that nothing herein prevents any such Unknown Contract Counterparty from asserting a claim against any residual proceeds of sale, Residualco or in the bankruptcy of the Companies.

APPROVAL OF KSV’S ACTIVITIES AND REPORTS

20. **THIS COURT ORDERS** that the activities and conduct of KSV, in its capacities as the Monitor and as the Receiver, prior to the date hereof in relation to the CCAA Parties or the Validus Entities, as the case may be, in these CCAA proceedings and the Receivership Proceedings, as the case may be, are hereby ratified and approved.

21. **THIS COURT ORDERS** that the pre-filing report of the Monitor dated August 23, 2023, the first report of the Monitor dated September 1, 2023 and Second Report be and are hereby approved.

22. **THIS COURT ORDERS** that only KSV in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraphs 20 and 21 of this Order.

EXTENSION OF THE STAY PERIOD

23. **THIS COURT ORDERS** that the Stay Period, as defined in the Initial Order dated August 29, 2023 in this proceeding, be and is hereby extended up to and including December 31, 2023.

GENERAL

24. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Monitor, and its agents, in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, in each case as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

26. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and/or filing.

SCHEDULE "A"
SALE AND INVESTMENT SOLICITATION PROCESS

See attached.

Sale and Investment Solicitation Process

1. On August 10, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order, among other things, appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of the property and undertakings of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Kingston Cogen Limited Partnership, Kingston Cogen GP Inc. and Validus Hosting Inc. (collectively, the “**Validus Entities**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101(1) of the *Courts of Justice Act* (Ontario).
2. On application by the Receiver, on August 29, 2023, the Court granted an order (the “**Initial Order**”), among other things, granting the Validus Entities relief pursuant to the *Companies’ Creditors Arrangement Act* (Canada) and appointing KSV as monitor (in such capacity, the “**Monitor**”) of the Validus Entities.
3. On November 1, 2023, the Court granted a further order (the “**SISP Order**”), among other things: (a) authorizing the Monitor to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof; (b) approving, for purposes of acting as the stalking horse bid in the SISP, the transaction agreement (the “**Stalking Horse Transaction Agreement**”) appended as Schedule “A” to the offer letter delivered by Macquarie Equipment Finance Limited (the “**Proponent**”) and Far North Power Corp. (the “**Assignee**”) to the Monitor on October 16, 2023 (the Proponent and the Assignee’s offer for the entry by the Validus Entities into the Stalking Horse Transaction Agreement set out therein, the “**Stalking Horse Bid**”); (c) approving the Monitor’s entry into the Break-Up Fee Agreement and the Break-Up Fee and the Expense Reimbursement; and (d) granting the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Initial Order or the SISP Order, as applicable.
4. This SISP sets out the manner in which: (a) binding bids for executable transaction alternatives that are superior to the Stalking Horse Bid involving the shares and/or the business and assets of the Validus Entities will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) Court approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of the Validus Entities’ shares, assets and/or business and/or an investment in the Validus Entities, each of which shall be subject to all terms set forth in this SISP.
5. The SISP shall be conducted by the Monitor.
6. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by the Monitor.
7. The SISP will be conducted such that the Monitor will:
 - (a) prepare marketing materials and a process letter;

- (b) prepare and provide applicable parties with access to a virtual data room containing diligence information;
 - (c) prepare and include in the data room one or more template forms of purchase agreements to be used by interested parties when submitting a proposed bid (“**Form of Agreement**”);
 - (d) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to the Monitor); and
 - (e) request that such parties (other than the Proponent and the Assignee) submit a binding offer meeting at least the requirements set forth in Section 9, as determined by the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).
8. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- (a) Court approval of SISP and the Stalking Horse Bid to serve as stalking horse bid in the SISP – November 1, 2023;
 - (b) The Monitor to commence solicitation process – November 2, 2023;
 - (c) Deadline to submit a Qualified Bid – 11:59 p.m. (Toronto time) on December 7, 2023 (the “**Qualified Bid Deadline**”);
 - (d) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – As soon as possible after the Qualified Bid Deadline
 - (e) The Monitor to hold the Auction (if applicable) – on or about December 13, 2023; and
 - (f) Implementation Order (as defined below) hearing by no later than December 21, 2023, subject to Court availability.

The Monitor may, in its discretion, seek court approval for the termination of the SISP and for approval of implementation of the Stalking Horse Bid if no potentially interested parties have executed non-disclosure agreements and commenced due diligence on or prior to November 22, 2023, or if thereafter all parties who executed non-disclosure agreements and conducted due diligence have advised the Monitor that they no longer intend to participate in the SISP.

9. In order to constitute a Qualified Bid, a bid (including an Aggregated Bid (as defined below)) must comply with the following:
- (a) it provides for: (i) the payment in full in cash on closing of the Claim Amount (as defined in the Stalking Horse Transaction Agreement); (ii) the purchase of all of the Proponent's interest in the Receiver's Certificates (as defined in the Appointment Order), if any; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) and (ii) of this Subsection 9(a), including any claims secured by Court-ordered charges (other than the Receiver's Borrowings Charge (as defined in the Appointment Order)), unless otherwise agreed to by the applicable holders thereof in their sole discretion, and the Break-Up Fee and the maximum amount of the Expense Reimbursement (as such terms are defined in the Stalking Horse Transaction Agreement); and (iv) a minimum overbid increment of \$750,000 (the "**Overbid Increment**");
 - (b) An allocation of the purchase price under such bid among the purchased assets of Validus Power Corp. and all other property to be acquired.
 - (c) it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the "**Cash Consideration Value**") and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus the Validus Entities' aggregate cash on hand must be sufficient for payment in full of the items contemplated in subparagraphs (i) to (iii) of Subsection 9(a), including the Break-Up Fee and the maximum amount of the Expense Reimbursement, plus the Overbid Increment, on closing, which Cash Consideration Value is estimated to be \$60,228,822 as of September 22, 2023;
 - (d) it provides details of any assumption of liabilities;
 - (e) it is reasonably capable of being consummated by 30 days after issuance of the Implementation Order if selected as a Successful Bid;
 - (f) it contains:
 - (i) duly executed binding transaction document(s);
 - (ii) the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
 - (iii) a redline to the applicable Form of Agreement provided by the Monitor as described in Subsection 7(c);
 - (iv) evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);

- (v) disclosure of any connections or agreements with any of the Validus Entities or any of their affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of any Validus Entity or any of their affiliates; and
- (vi) such other information as may be reasonably requested by the Monitor, in its discretion;
- (g) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the earlier of (i) completion of a Successful Bid or (ii) December 29, 2023; *provided*, however, that if such bid is selected as a Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- (h) it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees (i.e., bank guarantees) covering the full value of all cash consideration;
- (i) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (j) it is not conditional upon:
 - (i) approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
 - (ii) the outcome of any due diligence by the bidder; or
 - (iii) the bidder obtaining financing;
- (k) it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (l) it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the Canadian energy sector, including an electricity generator, electric utility, retail service provider, or a registered participant with the Ontario Independent Electricity System Operator;
- (m) it includes full details of the bidder's intended treatment of the Validus Entities' employees under the proposed bid;
- (n) it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with Section 18;

- (o) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis;
 - (p) it contains a written acknowledgment that the transaction will proceed on an “as is, where is” basis, without representations or warranties by the sellers except as expressly set out therein; and
 - (q) it is received by the Qualified Bid Deadline.
10. The Qualified Bid Deadline may be extended: (i) by the Monitor for no longer than 7 days in the Monitor’s discretion; or (ii) by further order of the Court. In such circumstances, the milestones contained in Subsections 8(d) through 8(f) shall be extended by the same amount of time. Any other milestone dates in Section 8 may be extended in the Monitor’s discretion; *provided* that the aggregate of all such discretionary extensions shall not exceed 14 days.
 11. The Monitor may combine bids received for individual assets of the Validus Entities for the purpose of determining if such bids, collectively, will be treated as a Qualified Bid (such bid being an “**Aggregated Bid**”); *provided* that any Aggregated Bid must comply with each of the requirements set out in Section 9 (as may be modified in accordance with Section 12) in order to be a Qualified Bid.
 12. The Monitor may waive compliance with any one or more of the requirements specified in Section 9 above and deem a non-compliant bid to be a Qualified Bid; *provided* that the Monitor shall not waive compliance with the requirements specified in Subsections 9(a), (c), (f), (g), (h), (i), (j), (k), (l) or (n) without the prior written consent of the Proponent and the Assignee, each acting reasonably, or further order of the Court. If a bid received is not a Qualified Bid, the Monitor may provide the bidder with an opportunity to remedy any deficiencies and render such bid a Qualified Bid; *provided* that such defects are remedied on or before the deadline set out in Subsection 8(d).
 13. Notwithstanding the requirements specified in Section 9, the transactions contemplated by the Stalking Horse Bid (collectively, the “**Stalking Horse Transaction**”), are deemed to be a Qualified Bid; *provided* that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
 14. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by the Monitor on or before the Qualified Bid Deadline, the Monitor shall proceed with an auction to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto, subject to such additional procedural rules as may be determined by the Monitor to be necessary or desirable in the conduct of the Auction. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, the Monitor shall provide written notice to each party that submitted a Qualified Bid (including the

Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by the Monitor specifying which Qualified Bid is the leading bid.

15. Following selection of a Successful Bid, the Validus Entities shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 8. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Monitor, the Monitor shall apply to the Court for an order or orders, among other things, approving such Successful Bid and/or the mechanics to authorize the Validus Entities and the Monitor, as the case may be, to complete the transactions contemplated thereby, as applicable, and authorizing the Validus Entities or the Monitor, as the case may be, to: (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (ii) undertake such other actions as may be necessary to give effect to such Successful Bid; and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
16. If a selected Successful Bid is not completed within 30 days following issuance of the Implementation Order, the Implementation Order is not granted, or the Monitor otherwise determines a selected Successful Bid will not be completed, the Monitor shall be permitted to designate one or more alternative Successful Bids from the Qualified Bids received prior to or during the Auction, and such alternative Successful Bid shall be deemed the Successful Bid for all purposes hereunder. The foregoing shall not limit the Monitor’s right in the foregoing circumstances to terminate these SISP procedures and pursue any alternative process and any alternative transactions determined by the Monitor to be appropriate, in consultation with the Proponent, as secured creditor.
17. The Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, shall be permitted to modify the Stalking Horse Transaction to exclude any asset for which an alternative bid (an “**Alternative Bid**”, and the assets subject to such Alternative Bid, the “**Excluded SHB Assets**”) is received if:
 - (a) the Proponent and the Assignee agree in writing, in their respective sole discretion, to modify the Stalking Horse Transaction in order to accommodate such proposed Alternative Bid;
 - (b) the Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, agree on the adjustment of the purchase price under the Stalking Horse Transaction to account for the removal of the Excluded SHB Assets and the value of the Alternative Bid;
 - (c) the Monitor determines that the aggregate consideration to be offered by (i) the Stalking Horse Transaction, as so modified (the “**Modified SHB**”) and (ii) the proposed Alternative Bid for the Excluded SHB Assets, would exceed the value of the Stalking Horse Transaction (the “**Excluded Assets Sale**”);
 - (d) the Alternative Bid combined with the Modified SHB meet all of the requirements of a Qualified Bid;

- (e) the Monitor determines that the Modified SHB and the Excluded Assets Sale, collectively, are a Qualified Bid; and
- (f) the Proponent and the Assignee agree that the original Stalking Horse Transaction shall remain open for acceptance notwithstanding the Modified SHB, such that the Stalking Horse Transaction can be completed if for any reason the Modified SHB and the Excluded Assets Sale are not completed.

For greater certainty, if the Modified SHB and Excluded Assets Sale are each designated as a Successful Bid, then the Proponent and the Assignee shall not be entitled to receive any Break Fee or Expense Reimbursement Amount as a result of the completion of such transaction. If the Modified SHB and the Excluded Asset Sale are not selected as a Successful Bid, then the Proponent and the Assignee shall continue to be entitled to receive any Break Fee and Expense Reimbursement (in accordance with the Stalking Horse Transaction Agreement) upon completion of an alternative Successful Bid to which the Proponent and the Assignee are not parties.

18. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. In the event that the Successful Bid is not completed due to a breach or default of the bidder's obligations thereunder, the Deposit shall be forfeited to the Validus Entities as damages and such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Validus Entities have in respect of such breach or default. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the earliest of (i) completion of a Successful Bid; (ii) December 29, 2023; or (iii) the date of the Monitor's determination that such bid will not be pursued further.
19. Except as expressly set out herein, the Monitor may not modify the SISF without court approval; *provided*, however, that the Monitor may implement additional procedural rules that the Monitor determines will better promote the goals of the SISF; *provided* that any additional procedural rules shall not be inconsistent with the Stalking Horse Agreement unless agreed by the Proponent and the Assignee or otherwise ordered by the Court.

SCHEDULE “A”
AUCTION PROCEDURES

1. **Auction.** If the Monitor receives at least one Qualified Bid (other than the Stalking Horse Transaction) including any Aggregated Bid, the Monitor shall conduct and administer the Auction in accordance with the terms of the SISP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.
2. **Participation.** Only parties that submit a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction and, collectively, the parties submitting any Aggregated Bid (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. (Toronto time) on the day prior to the Auction, each Qualified Party (other than the Proponent and the Assignee, in respect of the Stalking Horse Transaction) must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party indicates such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.
3. **Auction Procedures.**
 - (a) **Procedures.** The Auction shall be governed by the following procedures:
 - (i) **Attendance.** Only the Monitor, representatives of the Qualified Parties and each of their respective advisors, and any other person admitted with the consent of the Monitor will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
 - (ii) **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process (excluding, for greater certainty, any discussions among those parties who are bidders in an Aggregated Bid); and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
 - (iii) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Monitor’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments as determined by the Monitor and announced to the Auction participants prior to each round of bidding (the “**Required Bid Increment**”). At the end of

each round of bidding, the Monitor will identify the highest or otherwise best Overbid as the leading bid for the subsequent round (the “**Lead Bid**”);

- (iv) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party (including parties to an Aggregated Bid) has had the opportunity to submit an additional bid or refused to submit an additional bid with full knowledge and written confirmation of the then-existing Lead Bid for that round. If at the commencement of the Auction, no party submits a bid that exceeds the Initial Bid by the Required Bid Increment, then the Initial Bid will be the Successful Bid. If in any round, a Qualified Party (other than the party who submitted the Lead Bid in such round) does not submit an Overbid satisfying the Required Bid Increment, then such Qualified Party (including the parties to any Aggregated Bid if no Aggregated Bid is submitted in a particular round) will no longer be permitted to participate in any subsequent round of the Auction; and
 - (v) **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.
- (b) **Additional Procedures.** The Monitor may announce prior to or during the Auction additional procedural rules, including the process for submission and review of bids, that are reasonable under the circumstances for conducting the Auction; *provided* that those rules are not inconsistent in any material respects with the SISP or the Stalking Horse Agreement.

Selection of Successful Bid

4. **Selection.** Before the conclusion of the Auction, the Monitor will: (a) review each Qualified Bid and Overbid, considering the factors set out in Section 9 of the SISP and, among other things: (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same; (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party’s ability to close a transaction by 30 days after issuance of the Implementation Order and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals); (iv) the likelihood of the Court’s approval of such Overbid; (v) the net benefit to the estate of the Validus Entities of such Overbid; and (vi) any other factors the Monitor may, consistent with its duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the

Successful Bid being selected as such, unless extended by the Monitor, subject to the milestones set forth in Section 8 of the SISP.

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C- 36, AS AMENDED Court File No. CV-23-00705215-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN GP INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

SISP APPROVAL ORDER

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