

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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.

APPLICATION RECORD
(returnable August 29, 2023)

August 23, 2023

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Lawyers for the Applicants, each by the
Receiver

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TAB 1

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
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INC., EACH BY THEIR COURT APPOINTED RECEIVER AND
MANAGER, KSV RESTRUCTURING INC.

NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In writing
- In person
- By telephone conference
- By video conference

at the following location:

330 University Avenue, 9th Floor
Toronto, ON M5G 1R7

(videoconference details to be provided)

on Tuesday, August 29, 2023, at 11:00 a.m., (*or on a day to be set by the registrar*).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto ON M5G 1R7

TO: THE SERVICE LIST

APPLICATION

1. Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc. (each, a “**Company**” and collectively, the “**Companies**”), each by their court appointed receiver and manager, KSV Restructuring Inc. (“**KSV**” and in such capacity, the “**Receiver**”) bring this application for an initial order (the “**Initial Order**”) substantially in the form included at Tab 3 of the Application Record, *inter alia*:

- (a) Abridging and validating the time for service of this Notice of Application and the Application Record and dispensing with further service thereof;
- (b) Declaring that each of the Companies is a company to which *the Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies;
- (c) Declaring that Kingston Cogen Limited Partnership (“**Kingston LP**” and together with the Companies, the “**Validus Entities**”) shall enjoy the benefits of the protections provided to the Companies under the Initial Order;
- (d) Appointing KSV as court-appointed monitor in these proceedings (in such capacity, the “**Monitor**”) in respect of the business and affairs of the Validus Entities; and
- (e) Staying, for an initial period of not more than ten (10) days (the “**Stay**”), all proceedings and remedies (other than the Receivership Order (as defined below)) taken or that might be taken in respect of the Validus Entities, the Monitor or affecting the Validus Entities business or any of their assets, undertakings and properties (“**Property**”), except with the written consent of the Applicant and the Monitor, or with leave of this Court

2. If the proposed Initial Order is granted, the Companies intend to seek an amended and restated initial order (an “**ARIO**”) within 10 days of the Initial Order being granted, extending the Stay and such other relief as the Monitor may recommend at such motion.
3. Such further and other Relief as to this Honourable Court may deem just.
4. The grounds for the application are:
 - (a) the Validus Entities are a group of entities that own and operate electricity generation facilities that provide electricity generation capacity to Ontario’s electricity grid, controlled by Ontario’s Independent Electricity System Operator (“**IESO**”);
 - (b) On August 2, 2023, Macquarie Equipment Finance Limited (“**Macquarie**”) brought an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) to appoint KSV as the receiver and manager of the Validus Entities (in such capacity, the “**Receiver**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* (Ontario);
 - (c) Macquarie is the senior secured lender to the Validus Entities in connection with the secured lease and participation agreement (collectively, the “**Secured Lease**”);
 - (d) Macquarie sought the appointment of the Receiver due to, *inter alia*, numerous defaults in connection with the Validus Entities outstanding liabilities owing to Macquarie under the Secured Lease, as well as a number of events and other allegations which had caused concerns around management of the Validus Entities;

- (e) On August 2, 2023, the Court granted an order appointing KSV as interim receiver over all of the Property of the Validus Entities and adjourned the balance of the application to August 10, 2023;
- (f) On August 10, 2023, the Court granted an Order appointing KSV as receiver and manager over all of the Property of the Validus Entities (the “**Receivership Order**”);
- (g) In order to maximize value for the Property, the Receiver is negotiating the terms of a stalking horse agreement (“**Stalking Horse Bid**”) with Macquarie and Hut 8 Power Inc., as Macquarie’s designated nominee, which bid is proposed to be structured as a reverse vesting order (“**RVO**”) and corporate arrangement;
- (h) The anticipated Stalking Horse Bid is conditional upon, among other things, the completion of sale and investment solicitation process (a “**SISP**”) and implementation of the transaction within a CCAA proceeding;
- (i) Commencement of a SISP as soon as possible is crucial to preserve the going concern value of the Validus Entities’ business given, among other things, (i) expressed concern around employee retention; and (ii) the process for participation in upcoming IESO “Request for Proposal” processes, which start on or about September 29, 2023;
- (j) In light of, among other things, the highly regulated nature of the Validus Entities’ business, the Receiver anticipates that the RVO structure may be the preferred structure for other interested buyers in the process and a CCAA proceeding preserves the greatest degree of bid structure flexibility for any prospective bidders under the anticipated SISP;

- (k) Given the 10-day comeback period under the CCAA, and in light of the urgency noted above, it is critical that these CCAA proceedings commence as soon as practicable so the anticipated SISF may itself commence as soon as practicable;
 - (l) Concurrently with this Application, the Receiver has brought a motion seeking authority to allow it to bring this application pursuant to the CCAA on behalf of the Companies and seek additional relief in respect of Kingston LP as is customary with respect to limited partnerships in connection with CCAA applications for corporate groups;
 - (m) KSV is consenting to act as the Monitor in these proceedings, should the Initial Order be granted;
 - (n) Each of the Companies is a debtor company to which the CCAA applies with liabilities exceeding \$5 million;
 - (o) Such further and other grounds as the lawyers may advise.
5. The following documentary evidence will be used at the hearing of the application:
- (a) Consent of KSV to act as monitor in the CCAA proceedings;
 - (b) the First Report of KSV as receiver and manager of the Companies and the Pre-Filing Report of KSV as proposed Monitor dated August 23, 2023;
 - (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

August 23, 2023

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at TORONTO

NOTICE OF APPLICATION

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Lawyers for the Applicants, each by the Receiver

TAB 2



**First Report to Court of
KSV Restructuring Inc. as
Receiver and Manager of
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.**

August 23, 2023

- and -

**Pre-Filing Report of
KSV Restructuring Inc. as
Proposed Monitor of
Validus Power Corp., Iroquois Falls
Power Corp., Bay Power Corp., Kap
Power Corp., Validus Hosting Inc. and
Kingston Cogen GP Inc.**

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COURT FILE NO.: CV-23-00703754-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

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.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED;
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43,
AS AMENDED

- and -

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.

FIRST REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER
AND
PRE-FILING REPORT OF KSV RESTRUCTURING INC.
AS PROPOSED MONITOR

AUGUST 23, 2023

1.0 Introduction

1. Pursuant to an application filed by Macquarie Equipment Finance Limited (“Macquarie”), the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued an order on August 2, 2023 (the “Interim Receivership Order”) adjourning Macquarie’s application until August 10, 2023 and appointing KSV Restructuring Inc. (“KSV”) as the interim receiver, under section 47.1 of the *Bankruptcy and Insolvency Act* (the “BIA”), of all of the property, assets and undertaking of Validus Power Corp. (“VPC”), Iroquois Falls Power Corp. (“IFPC”), Bay Power Corp. (“Bay”), Kap Power Corp. (“Kap”), Validus Hosting Inc. (“Hosting”), Kingston Cogen GP Inc. (“Kingston GP” and collectively, the “Companies”) and Kingston Cogen Limited Partnership (“Kingston LP” and together with the Companies, the “Validus Entities”) acquired for, or used in relation to, the business carried on by the Validus Entities (the “Property”) until the earlier of:
 - a) the taking of possession of the Property by a receiver, within the meaning of subsection 243 of the BIA; and
 - b) August 10, 2023.

A copy of the Endorsement of the Honourable Justice Kimmel dated August 2, 2023 issued in connection with the Interim Receivership Order is attached as Appendix “A”.

2. On August 10, 2023, following that adjournment, the Court issued an order (the “Receivership Order”) appointing KSV as receiver and manager (in such capacity, the “Receiver”) of the Property. A copy of the Receivership Order is attached as Appendix “B”. On August 18, 2023, the Honourable Justice Osborne issued an endorsement in connection with the Receivership Order (the “Endorsement”), a copy of which is attached as Appendix “C”.
3. The principal purpose of the receivership proceedings is to create a stabilized environment to enable the Receiver to take possession and control of the Property, including replacing management so that the Validus Entities’ business can continue to operate in the normal course.
4. The Receiver is currently in the process of negotiating a proposed offer (the “Offer”) with Macquarie and Hut 8 Power Inc., as Macquarie’s designated nominee (jointly, the “Potential Purchaser”), which contemplates, *inter alia*, that subject to this Court’s approval:
 - a) the Offer would be a “stalking horse bid” in a sale and investment solicitation process (the “SISP”) to be carried out in proceedings to be commenced in respect of the Validus Entities by the Receiver under the *Companies’ Creditors Arrangement Act* (“CCAA”);

- b) a break-up fee and expense reimbursement would become payable upon the closing of a superior bid submitted and selected during the SISP; and
 - c) if the Offer is the successful bid in the SISP, the transaction would be completed pursuant to a Reverse Vesting Order (“RVO”) to be sought in the proposed CCAA proceedings.
5. Subject to the Court granting the proposed initial order (the “Initial Order”), it is contemplated that Court approval of a SISP will be sought once the Offer has been finalized in a form acceptable to the Potential Purchaser and the Monitor.
 6. This report (the “Report”) is filed by KSV in its capacity as Receiver and Proposed Monitor (as defined below).

1.1 Purposes of this Report

1. The purposes of this Report are to provide the Court with:
 - a) background information with respect to the Validus Entities;
 - b) the basis on which the Receiver is seeking authorization to bring the proposed CCAA application on behalf of the Companies;
 - c) KSV’s qualifications to act as monitor (prior to such appointment, the “Proposed Monitor” and following such appointment, the “Monitor”) of the Companies;
 - d) the Validus Entities’ cash flow projection for the period August 19 to December 1, 2023 (the “Cash Flow Forecast”);
 - e) a summary of the anticipated next steps in the CCAA proceedings, should the Court grant the proposed Initial Order; and
 - f) the rationale for the proposed Initial Order, including the orders:
 - i. declaring that Kingston LP shall be granted the protections provided to the Companies under the Initial Order; and
 - ii. recognizing the Court-ordered charges created in the Receivership Order (the “Charges”).

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Receiver and the Proposed Monitor have relied upon unaudited financial information provided by the Validus Entities' employees, the books and records of the Validus Entities¹ and discussions with representatives of the Validus Entities, Macquarie and its legal counsel. The Receiver has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. With the exception of the Court, the Receiver accepts no responsibility for any reliance placed by any third party on the Validus Entities' financial information presented herein.
3. An examination of the Cash Flow Forecast as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Receiver expresses no opinion or other form of assurance as to whether the Cash Flow Forecast will be achieved.

1.4 KSV's Qualifications to Act as Monitor

1. KSV is a licensed trustee within the meaning of subsection 2(1) of the BIA. KSV is not subject to any of the restrictions to act as Monitor set out in Section 11.7(2) of the CCAA.
2. KSV has consented to act as Monitor in the CCAA proceedings should the Initial Order be granted. A copy of KSV's consent to act as Monitor is attached hereto as Appendix "D".
3. Neither KSV nor any of its representatives or affiliates has at any time in the past two years been: (a) a director, officer or employee of any member of the Companies; (b) related to any member of the Companies, or to any director or officer of any member of the Companies; or (c) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of any member of the Companies.

¹ As discussed in the Affidavit of Joshua Stevens of Macquarie dated July 31, 2023, the Validus Entities' books and records have not been kept current and otherwise appear to be significantly deficient. As of the date of this Report, the Receiver has had limited access to the Validus Entities' books and records. The Receiver was only recently provided with access to the Validus Entities' electronic records, which required negotiation with its data hosting service in respect of pre-filing amounts owing to it, and with both the data hosting service and the Validus Entities' legal counsel in respect of privilege issues raised by the Validus Entities' management.

2.0 Background

1. The Validus Entities are a group of privately-held entities that own power generation stations that generate and sell capacity and power to the Independent Electricity System Operator (“IESO”) as a participant in its “capacity auction” market. VPC is a corporation incorporated pursuant to the *Canada Business Corporations Act* and, based on a corporate profile provided to the Receiver, has its registered office at 100 Wellington Street West, Suite 2300, Toronto, Ontario. Each of the other Companies is incorporated pursuant to the Business Corporations Act (Ontario) and, based on corporate profiles provided to the Receiver, has their registered offices as follows:
 - a) IFPC: 1500 Sandhill Drive, 2b, Ancaster, ON; and
 - b) Bay, Power, Hosting, Kingston GP and Kingston LP: 100 Wellington Street West, Suite 2300, Toronto, Ontario.

A copy of the corporate structure for the Validus Entities is attached as Appendix “E”.

2. The Property is principally comprised of four power plants in Ontario located in North Bay, Kapuskasing, Iroquois Falls and Kingston. As at the date of this Report, only the plants in Kingston and Iroquois Falls are operational; these plants are on standby and can supply power to the IESO if called upon as a participant in its capacity auction market. The Kapuskasing and North Bay plants are being maintained and secured but are not otherwise operational at this time.
3. Immediately following its appointment, the Receiver engaged Ryan Forget of Complete Energy Consulting Inc. to act as a consultant to the Receiver to assist with day-to-day operational, security and asset maintenance issues. Mr. Forget is a former senior employee of the Validus Entities.
4. The Receiver has been provided with unaudited financial statements for the period ended July 31, 2023 for VPC, IFPC and Kingston LP, copies of which are attached as Appendix “F”. The Receiver has not been provided, nor has it been able to locate, any financial statements for the other Validus Entities, being Bay, Kap, Hosting and Kingston GP. The Receiver is continuing to search for financial statements for those entities and, if located, will file a supplemental report prior to the return of this motion. Given the state of the Validus Entities’ books and records, the book values of the Property, to the extent available, may not be reliable. The ultimate realizable value of the Property will be determined by the outcome of a Court-supervised SISP.
5. Based on the Receivership Application Materials, the following creditors have security interests against the Property:
 - a) Macquarie demanded \$55,598,575 as of July 24, 2023 and holds senior security against substantially all Property. The responding materials filed by the Validus Entities in the receivership proceedings made claims disputing approximately \$9 million of the amount demanded by Macquarie. The Receiver is reviewing this issue;

- b) Canada Revenue Agency (“CRA”), which registered a lien in the amount of approximately \$6 million against certain real property owned by IFPC. CRA’s lien was registered due to IFPC’s failure to remit HST collected by IFPC as part of the sale and leaseback transaction between Macquarie and IFPC in April 2022;
 - c) TD Bank (“TD”), which registered a security interest against VPC pursuant to the *Personal Property Security Act* (Ontario) in respect of amounts that TD claims relate to six letters of credit issued by TD against which TD holds guaranteed investment certificate security (the Receiver has not yet verified TD’s security and is unaware of the quantum of its potential claims); and
 - d) Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation, which registered security in the amount of \$179,206 against VPC in respect of a motor vehicle (a Mercedes G-63 G-Wagon SUV).
6. Each of the Companies has liabilities exceeding \$5 million.
 7. The Receivership Application Materials provide additional background information about the Validus Entities, their financial position, the Validus Entities’ defaults under their lease arrangements with Macquarie, and the basis for Macquarie’s application for the Receivership Order. Court materials filed in the receivership proceedings and the CCAA proceedings, including the Receivership Application Materials, are available on the Receiver’s website at: <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

3.0 The CCAA Application

1. As set out in the Receivership Application Materials, the Potential Purchaser advised that it intends to submit a bid for all or substantially all of the Property, which transaction is proposed to be effected pursuant to an RVO to be issued by the Court in the proposed CCAA proceedings.
2. At the hearing to consider the receivership application, the Validus Entities’ legal counsel raised concerns with respect to a provision that was included in the draft receivership order, which granted the Receiver the authority to commence a CCAA proceeding. Paragraph 61 of the Endorsement provides that the Receivership Order would need to be amended to authorize the Receiver to bring a CCAA application on behalf of the Companies.
3. The Receiver has considered whether it is reasonable and appropriate, at this time, to commence CCAA proceedings on behalf of the Companies. The Receiver believes it is for the following reasons:
 - a) the Offer is conditional on the Court issuing an RVO in the context of a CCAA proceeding;
 - b) the Validus Entities hold numerous permits and licences that allow it to operate in a highly regulated industry. As such, the Potential Purchaser requires that an RVO be issued due to, *inter alia*, uncertainty related to the transferability of these licenses and permits in a commercially reasonable timeframe;

- c) the Receiver is of the view that it is likely that any other purchaser would also require the preservation of permits and licenses pursuant to an RVO;
- d) the implementation steps also contemplate a corporate arrangement pursuant to one or both of the *Business Corporations Act* (Ontario) and the *Canada Business Corporations Act*, which is more commonly completed in CCAA proceedings than in receivership proceedings;
- e) the Potential Purchaser has indicated that it is not prepared to pay any amounts owing to CRA in respect of the HST obligation that IFPC failed to remit when it entered into the sale leaseback transaction with Macquarie. Completion of the contemplated transaction under the CCAA will reverse the priority of the HST obligation;
- f) the Receiver is of the view that any purchaser will also require that the HST obligation be reversed and that the super-priority status of this obligation outside of the CCAA is an impediment to a going-concern transaction. Reversing priorities in insolvency proceedings is a common consideration in choice of insolvency proceeding²;
- g) there is significantly more precedent for the issuance of RVOs in a CCAA proceeding than in a receivership or other insolvency processes;
- h) as a result of issues concerning the transferability of the licenses and the unpaid HST obligation, there is a greater likelihood that the SISP will result in a going-concern transaction if conducted under the CCAA than in a receivership;
- i) given the forgoing, the Receiver believes conducting the SISP through the CCAA process may enhance interest from other potential bidders;
- j) commencement of the CCAA proceedings now will permit the 10-day statutory comeback to run while the parties continue to negotiate the Offer and finalize the terms of the SISP;
- k) timing is important – the SISP should commence as quickly as possible due to the following issues:
 - i. KSV, as interim receiver, advised in its report dated August 9, 2023 that the Companies' employees had significant concerns about the role of former management, which led to frustration and a lack of confidence in the business. This is due to, *inter alia*, the Validus Entities deducting RRSP contributions from payroll but not remitting them to the Validus Entities' RRSP plan at Canada Life, and the termination of health benefits. Stability is required among the workforce so that employees do not look for new employment. The Validus Entities have already lost one former plant manager since these proceedings commenced. The Receiver is of

² The Receiver notes that the Validus Entities took the position at the receivership application that there are sufficient input tax credits ("ITCs") to offset the entirety of the potential HST obligation for which CRA registered a \$6 million lien against IFPC's real property. Given the state of the Validus Entities' books and records, the Receiver has not been able to verify the HST obligation and/or the extent of any offsetting ITCs. The Receiver has been in contact with CRA representatives and has requested that CRA perform a trust exam to determine the Validus Entities' source deduction and HST obligations.

the view that mass resignation is a risk without a reasonably clear plan to preserve the business as a going concern. A stalking horse bid provides employees with certainty that there is a going-concern solution for the business; and

- ii. in order to generate revenue for the business, the Validus Entities need to participate in an annual capacity auction conducted by IESO. The Receiver needs to take steps to participate in the auction commencing immediately. In the Receiver's opinion, the Validus Entities are more likely to be successful in the capacity auction process if there is a stalking horse buyer as it provides a degree of certainty to IESO that there will be a going-concern solution for the business. Without knowing that there is a buyer, IESO may have concerns awarding the Receiver a contract to provide energy. The bid deadline for participating in the auction is November 29, 2023 and there are milestones that the Receiver will need to satisfy before then to preserve the ability of the Validus Entities or their successors to participate in the auction. The Receiver understands that missing this auction would preclude the Validus Entities from continuing to act as a participant in the IESO capacity auction market for 2024, which could significantly impair the value of the Property to the detriment of all stakeholders.
4. Based on the foregoing, the Receiver is of the view that it should be authorized to bring the proposed CCAA application on the Companies' behalf so that a SISP can be commenced as soon as possible in the CCAA.
 5. As at the date of this Report, the Receiver is reviewing the Offer and issues related to the Offer. The Receiver intends to bring a motion in the CCAA proceeding to approve the SISP once the Offer has been finalized in a form acceptable to the Potential Purchaser and the Monitor.

4.0 Validus Entities' Refinancing Efforts

1. The Validus Entities' former President and Chief Executive Officer of the Companies, Todd Shortt, discussed in his affidavit sworn on August 10, 2023 a potential refinancing transaction he is negotiating with Dominion Lending Centres ("Dominion"), as broker. The Receiver has not received an update concerning the refinancing since the receivership application. The relief being sought at this time does not preclude Mr. Shortt from continuing to advance and complete the refinancing or from otherwise participating in a SISP. Pursuing both of these initiatives contemporaneously is consistent with paragraph 57 of the Endorsement, which states:

"...the Receiver could pursue this possible commitment together with, and in addition to, any possible alternative commitments such as might be revealed through a court supervised sales process."

2. As discussed in the Endorsement, the Receiver has communicated with the Validus Entities, via its legal counsel, concerning the status of the refinancing and offering to assist in that regard. As of the date of this Report, the Receiver has not had a response.

5.0 Proposed Initial Order

1. The Receiver is seeking an Initial Order, which is largely consistent with the model Initial Order (the “Model Order”), however certain provisions, such as requirement for cash management, an administration charge, directors’ charge or DIP charge are unnecessary largely as a result of the ongoing receivership.
2. The Receiver highlights the following two provisions that deviate from the Model Order:
 - a) Kingston LP, being a limited partnership, cannot be an applicant under the CCAA. However, it is contemplated to be involved in the SISF and any resulting transaction with the Potential Purchaser. Accordingly, Kingston LP requires the benefit of the stay of proceedings in the CCAA to prevent any disruption to its business and operations, and so that its assets can be conveyed in the CCAA proceedings. In the Receiver’s view, there is no prejudice to any stakeholder by extending the stay to Kingston LP and it is consistent with the typical treatment of a limited partnership when its affiliates are subject to CCAA proceedings; and
 - b) the Charges created under the Receivership Order, being the Receiver’s Charge and the Receiver’s Borrowings Charge (of up to \$1 million), are to be recognized under the proposed Initial Order. The Receiver’s Charge is in respect of the fees and disbursements of the Monitor and its legal counsel. Any funding required during the CCAA proceedings will be advanced pursuant to Receiver’s Certificates and secured by the Receiver’s Borrowings Charge, in accordance with the Receivership Order, with such charge recognized in the Initial Order.
3. Based on the foregoing, the Receiver believes the provisions of the proposed Initial Order are reasonable and appropriate in the circumstances.

6.0 Cash Flow Forecast

1. The Receiver has assisted with the preparation of a cash flow forecast for the period August 19, 2023 to December 1, 2023. The Cash Flow Forecast and the Validus Entities’ statutory report thereon pursuant to Section 10(2)(b) of the CCAA (which is executed by the Receiver on behalf of the Validus Entities), are attached hereto as Appendix “G”.
2. The Cash Flow Forecast reflects that the Validus Entities will not require additional funding during the projection period. To the extent actual cash receipts are lower than projected and insufficient to cover projected expenses, the Receiver has the authority to borrow pursuant to the terms of the Receivership Order. As at the date of this Report, there have been no advances made to the Receiver under the Receiver’s Borrowings Charge and/or Receiver’s Certificates issued by the Receiver.
3. Based on the Receiver’s review of the Cash Flow Forecast, the cash flow assumptions appear reasonable. KSV’s statutory report on the Cash Flow Forecast is attached hereto as Appendix “H”.

7.0 Anticipated Next Steps

1. Should the Initial Order be granted, the Receiver intends to:
 - a) finalize the terms of a SISP to be conducted by the Monitor, subject to Court approval, which is intended to include the Offer by the Potential Purchaser as the stalking horse bid;
 - b) work with the Potential Purchaser with a view to settling the terms of the Offer;
 - c) review issues related to the Offer, including reviewing the concerns raised by the Validus Entities concerning the amount of Macquarie's debt;
 - d) prepare motion materials for the comeback motion or shortly thereafter, which may include approval of the SISP, subject to the status of the negotiation of the Offer;
 - e) continue its ongoing efforts to stabilize the Validus Entities' operations, including working to restore coverage under the Validus Entities' employee benefit plans, which Canada Life is presently refusing to do. (This may require an urgent motion before the Court); and
 - f) continue to follow up with the Validus Entities' legal counsel on the status of a refinancing transaction with Dominion, as broker, in accordance with paragraphs 56 and 57 of the Endorsement.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Court:
 - a) authorize the Receiver to bring a CCAA application on behalf of the Companies; and
 - b) grant an Initial Order under the CCAA on the terms of the draft Initial Order set out in the application materials filed by the Receiver on behalf of the Companies.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER AND PROPOSED MONITOR OF
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.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00703754-00CL DATE: 2 August 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: **Macquarie Equipment Finance Limited v.
Validus Power Corp.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Jeremy Opolsky	Applicant	jopolsky@torys.com
Scott Bomhof		sbomhof@torys.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Catherine Francis	Respondents	cfrancis@mindengross.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Brett Harrison	CIBC	Brett.harrison@mcmillan.ca
Evan Cobb	Counsel for the Proposed Receiver	Evan.cobb@nortonrosefulbright.com
David Sieradzki	KSV Restructuring Inc. (Proposed Receiver)	dsieradzki@ksvadvisory.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. The applicant seeks the appointment of KSV Restructuring Inc. ("KSV") as receiver and manager (in such capacity, the "Receiver") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* (Ontario) over all of the undertakings, properties and assets ("Property") of the respondents to this application (collectively, the "Debtors" or "Validus Group").
2. The Validus Group is a power generation company that generates and sells power to the Independent Energy System Operator ("IESO") as a participant in its "capacity auction" market. The Validus Group's operations consist of four power plants located in the Ontario regions of North Bay, Kapuskasing, Iroquois Falls and Kingston. They also own a non-operational data centre in North Bay.
3. There are complicated lending and transactional documents between the applicant and the Debtors. The Debtors are indebted to the Applicant in the total outstanding amount of \$55,598,575 as of July 31, 2023. The Debtors granted the Applicant first-ranking security over substantially all of their Property. The Applicant has a contractual right to appoint a receiver in the event of defaults.
4. In addition to monetary defaults, the Applicant has detailed in its supporting evidence various other financial and operational defaults of the Debtors, including failing to pay rent and remit HST, failing to pay and remit taxes, incurring a large lien in respect of unpaid taxes, allegedly breaching an agreement with a key customer, failing to properly maintain books and records and failing to maintain insurance.
5. The Debtors' principals are alleged to have misappropriated and failed to return funds from a bank account with CIBC that the bank alleges they were erroneously granted access to, and allegedly failed to provide benefits and RRSP contributions to their unionized employees in accordance with a collective bargaining agreement. The Applicant has identified further concerns about the retention of senior management and employee. The allegations raise serious concerns about the stability of the Debtors.
6. Since early 2023, the Applicant has made numerous payments on behalf of the Debtors on account of critical items, in order to protect its collateral and minimize the risk of potential destabilization of the Debtors and their operations. Those payments included: (i) \$675,379.60 of insurance premiums that were required to prevent the Debtors' insurance coverage from lapsing; and (ii) \$745,990.78 of the Debtors' accounts payable, including for gas transportation services, gas procurement services, legal fees and information technology services. Those amounts were subsequently repaid to the Applicant on July 24, 2023 through a set-off.
7. After making efforts to accommodate the Debtors starting in early 2023, including by agreeing to enter into a forbearance agreement with the Debtors in February 2023, the situation arguably got worse, not better. The Applicant is no longer willing to continue deferring amounts due and payable and/or funding operational expenses in the absence of a court-supervised process.
8. The Applicant issued demand letters and notices of intention to enforce security pursuant to section 244 of the BIA first on June 9, 2023 addressing the immediate defaults. On June 9, 2023, the Applicant sent out notices of intention to enforce security pursuant to section 244 of the BIA giving notice to the Debtors of the Applicants' intention to enforce against security. New demands were sent out on July 24, 2023 for repayment of all rent and HST outstanding and accelerated, as of July 31, 2023. The proposed Receiver has proceeded cautiously and took the time to make arrangements with a licensed operator who can assume control of the Debtors' Property before bringing this application.
9. The Debtors asked for the receivership application to be adjourned for a few weeks to allow time for them to respond. They would also like to use that time to try to find an alternative source of debt and/or equity so that the Applicant can be repaid in full (something that they have been working on since the beginning of 2023, although they say there may be a recent development that gives them reason for greater optimism). They suggest that the Applicant has more than sufficient security for its debt and already has *de facto* control of the bank accounts and is, thus protected. Despite the ongoing dealings and demands and notices, the Debtors claimed that this application came out of the blue.
10. The Applicant does not agree that it has sufficient comfort from the security it has. By way of example, it points to a recent failed sales process that the Debtors undertook for the sale of one of the power plants

and the lack of liquidity or any market interest at least in that property. There are no valuations, which the Applicant in part blames upon the state of disarray of the Debtors' books and records.

11. The Applicant has made it known that one of its intended objectives in the receivership is a sale process and stalking horse bid for substantially all of the Debtors' assets, the terms of which the Debtors say they expect they will object to. A CCAA application is also contemplated. The SISP and CCAA application are matters that were not intended to be addressed at the time of the receivership application, but the prospect of them may be relevant.
12. They are entitled to respond to the application, but the time they ask for is too long having regard to the circumstances described by the Applicant in its supporting material. Given the seriousness of the allegations and the urgency of some of the circumstances described, but recognizing that the Debtors should be permitted to address these allegations if they can, the court granted a brief adjournment of this application to August 10, 2023, on terms which include an interim receivership order to allow the Receiver to gain access to information and documents and some additional insight and transparency into the records and operations of the business, without taking possession of the Property, and to provide some additional protections if, in the meantime, further funding advanced by the Applicant for operational needs.
13. Counsel for the Applicant and the Debtors were asked to work out the terms of this interim receivership order which they have now done. I am satisfied that the Applicant has sent the s. 244 notices and shown that it is necessary for the protection of the Debtors' estate for the benefit of all stakeholders, as well as the interests of the Applicant, such that the appointment of an interim receiver is appropriate under s. 47(1) of the BIA and that it is just and convenient for this interim receivership order to be granted pursuant to s. 101 of the *Courts of Justice Act*, pending the return of this application.
14. Given the short duration of this interim order, I am satisfied that the inclusion of the stay and requirement for services to be continued in favour of the Debtors is appropriate, as it is supported by the Applicant's record filed for the full receivership order and is important for the protection of the Debtors' estate in this interim period.
15. Some other secured creditors were identified by the Applicant. They were all given notice of this hearing and none appeared. The Applicant shall serve this endorsement and the order signed today on the service list, including but not limited to all secured creditors, and they shall have the opportunity to appear at the next attendance should they wish to do so.
16. The parties shall work out a timetable for the exchange of any additional material to be relied upon at the return of this application, all of which shall be served, filed and uploaded into CaseLines by no later than 2 p.m. on August 9, 2023. A copy of this endorsement shall also be uploaded into CaseLines by the Applicant.
17. Order to go in the form signed by me today.



KIMMEL J.

Appendix “B”



Court File No. CV-23-00703754-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 10th
JUSTICE OSBORNE) DAY OF AUGUST, 2023

B E T W E E N:

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

**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.**

Respondents

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

ORDER
(Appointing Receiver)

THIS APPLICATION made by Macquarie Equipment Finance Ltd. (the “**Applicant**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties

of 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. (collectively, the “**Debtors**”, and each a “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtors, or any of them, including, without limitation, the real property described in Schedule “A” hereto, was heard this day by judicial video conference via Zoom in Toronto, Ontario.

ON READING the Notice of Application of the Applicant, dated July 31, 2023, filed; the affidavit of Joshua Hamilton Stevens, sworn July 31, 2023 (the “**Stevens Affidavit**”) and the exhibits thereto, filed; the factum of the Applicant, dated July 31, 2023, filed; the consent of KSV to act as Receiver, dated July 24, 2023, filed; the supplemental affidavit of Joshua Hamilton Stevens, sworn August 2, 2023, and the exhibits thereto, filed; the second supplemental affidavit of Joshua Hamilton Stevens, sworn August 8, 2023, and the exhibits thereto, filed; the reply factum of the Applicant, dated August 9, 2023, filed; the affidavit of Todd Shortt, sworn August 7, 2023, filed; the affidavit of Todd Shortt, sworn August 10, 2023, and the exhibits thereto, filed; and the first report of KSV as interim receiver of the Debtors, dated August 9, 2023, filed;

AND UPON hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Debtors, counsel for Canadian Imperial Bank of Commerce, and such other counsel who were present, no one else appearing although duly served as appears from the lawyer’s certificates of service of Mike Noel sworn August 1, 2, 8 and 9, 2023, filed; the affidavit of service of Kunalan Shelvarajah sworn August 1, 2023, filed; and the affidavit of service of Sivarajah Sivaperuman sworn August 9, 2023, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, or any of them, including, without limitation, the real property known described in Schedule “A” hereto (the “**Property**”).

RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, including, without limitation the Debtors’ bank accounts wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, or any of them, including the powers to enter into any agreements, incur any obligations in the ordinary course of business in connection with the Property, cease to carry on all or any part of the business, reject or cease to perform any contracts of the Debtors, or any of them, or in respect of the Property;
- (d) to engage construction managers, project managers, contractors, subcontractors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants,

managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any of them, or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, or any of them, and to exercise all remedies of the Debtors, or any of them, in collecting such monies or accounts, including, without limitation, to enforce any security held by the Debtors, or any of them;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors, or any of them;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of the Debtors, or any of them, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, or any of them, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to investigate, and report to this Court on, intercompany payments, transactions and other arrangements between any of the Debtors and other Persons (as defined below), including without limitation the Validus Group (as defined below), that

appear to the Receiver to be out of the ordinary course of business. All Persons shall be required to provide any and all information and documents related to the Debtors requested by the Receiver in connection with such investigations;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of any and all such Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion, and with the Applicant's consent, may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property in these proceedings;
- (n) to report to, meet with and discuss with such affected Persons as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority, including, without limitation, the Independent Electricity System Operator and the Ontario Energy Board, and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors, or any of them, or any person that the Receiver engages pursuant to paragraph 3(d), and to meet with and discuss with such governmental authority and execute any agreements, or provide any notices, required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, or any of them, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors, or any of them;
- (r) to undertake any investigations deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (s) to apply to this Court for such further relief, advice and directions as the Receiver may determine as necessary or desirable;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtors, or any of them, may have; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtors, or any of them, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that: (i) the Debtors; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, equity holders, including, without limitation, investors and shareholders, and all other persons acting on their instructions or behalf; (iii) all construction managers, project managers, contractors, subcontractors and service providers, and all other persons acting on their instructions or behalf; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer, in the cloud or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer, cloud or other system and providing the Receiver with any and all access codes, account names, account numbers, account creating credentials that may be required to gain access to the information.

7. **THIS COURT ORDERS** that all Persons, including, without limitation, Validus Power Services Inc., other entities within the Validus group of companies and entities and any other affiliates of the Debtors (collectively, the “**Validus Group**”), and each of them, shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any of them, and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Validus Group, or any of them, shall be required to do the following things: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days’ notice of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors, or any of them, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors, or any of them, or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtors, or any of them, the Receiver, or affecting the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Debtors, or any of them, to carry on any business which the Debtors, or any of them, is not lawfully entitled to carry on; (ii) exempt the Receiver or the

Debtors, or any of them, from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, or any of them, without written consent of the Receiver or leave of this Court.

ACCELERATED LEASE PAYMENTS

13. **THIS COURT ORDERS** that notwithstanding anything in this Order to the contrary, nothing in this Order shall prohibit, restrict, pause or interfere with the running of the notice period in respect of the Accelerated Payments (as defined in the Stevens Affidavit), and the Debtors' respective obligations therefor, pursuant to the July Demand Letters (as defined in the Stevens Affidavit) delivered by the Applicant to the Debtors.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that all Persons, including, without limitation, the Validus Group, having oral or written agreements with the Debtors, or any of them, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll services, insurance, employee benefits, transportation services, utility or other services to the Debtors, or any of them, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver (including, where a notice of termination may have been given with an effective date after the date of this Order), and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal

prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

15. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

16. **THIS COURT ORDERS** that all employees of the Debtors, or any of them, shall remain the employees of the applicable Debtor until such time as the Receiver, on behalf of the applicable Debtor, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

17. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete

one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder 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 of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

19. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any

gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

20. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

23. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant by way of a credit facility, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest, fees and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. **THIS COURT ORDERS** that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Receiver’s Certificates**”), as modified to reflect the terms of the credit facility between the Receiver and Applicant referred to in paragraph 23, for any amount borrowed by it pursuant to this Order.

26. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

SERVICE AND NOTICE

27. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice->

commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

28. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to any creditors of the Debtors, or any of them, or other interested parties at their respective addresses as last shown on the records of the Debtors, or any of them, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

CRITICAL PAYMENTS

30. **THIS COURT ORDERS** that the Receiver may make payments owing by the Debtors, or any of them, to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order where such payments are deemed by the Receiver critical to

the operation of the Debtors and/or for any matter concerning safe care and operation of the Debtors; provided that any such payment that exceeds \$25,000, or where the aggregate of all such payments exceeds \$200,000 shall require the prior written consent of the Applicant.

GENERAL

31. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy or monitor of the Debtors, or any of them.

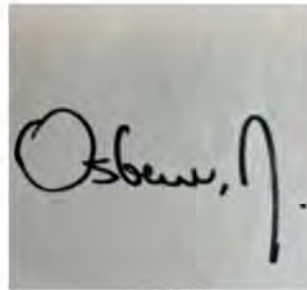
33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

34. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

35. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the estates of the Debtors, or any of them, with such priority and at such time as this Court may determine.

36. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

37. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof without any need for entry and/or filing.



2023.08.1

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SCHEDULE "A"

DESCRIPTION OF REAL PROPERTY

Iroquois Falls Power Corp.

Firstly:

PIN 65337-0369 (LT)

PCL 9012 SEC NEC SRO; PT LT 11 CON 5 TEEFY PT 1, 6R6645 T/W PT 1 TO 4, 6R6644 & 1 TO 6, 6R6626 AS IN C447208 AMENDED BY C470222 T/W PT 2 TO 7 & 13 TO 16, 6R6645 AS IN C447209 AMENDED BY C470223 T/W PT 2, 6 TO 12, 6R6645 AS IN C447211 AMENDED BY C470225 T/W PT 17 TO 19, 6R6645 AS IN C447212 AMENDED BY C470226 T/W PT 1, 6R6898 AS IN C469024 AMENDED BY C470227 T/W PT 4 & 5, 6R6896 AS IN C469025 AMENDED BY C470228 T/W C469026 AMENDED BY C470229 T/W PT 1 & 2, 6R6853 AS IN C474890 AMENDED BY C521180 ; TOWN OF IROQUOIS FALLS

Secondly:

PIN 65337-0456 (LT)

SURFACE RIGHTS ONLY; PT S 1/2 LT 12 CON 3 TEEFY PT 1, 6R5962 EXCEPT PT 1, 6R8283 S/T PT 2, 6R6832 AS IN C469070 AMENDED BY C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 & C470230; DISTRICT OF COCHRANE

Thirdly:

PIN 65337-0458 (LT)

SURFACE RIGHTS ONLY; S 1/2 LT 12 CON 3 TEEFY EXCEPT PT 1, 6R5962, PTS 2 & 3, 6R8283 & PT 1, 6R8318, S/T PT 1, 3 & 4, 6R6832 AS IN C469070 AMENDED BY C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 & C470230 ; DISTRICT OF COCHRANE

Fourthly:

PIN 65337-0372 (LT)

PCL 9070 SEC NEC; LOCATION RY 357 TEEFY COMPOSED OF THOSE PARTS OF THE BED OF THE ABITIBI RIVER LYING IN FRONT OF LT 11, CON 5, PT 2, 6R6853; DISTRICT OF COCHRANE

Fifthly:

PIN 65337-0373 (LT)

PCL 9070 SEC NEC; LOCATION RY 357 TEEFY COMPOSED OF THOSE PARTS OF THE BED OF THE ABITIBI RIVER LYING IN FRONT OF LT 11, CON 3, PT 1, 6R6853; DISTRICT OF COCHRANE

Kap Power Corp.

Firstly:

PIN 65095-0051 (LT)

PCL 12700 SEC CC; PT LT 24 CON 11 O'BRIEN PT 2, 6R6749 T/W PT 3, CR548 AS IN C478024; TOWN OF KAPUSKASING

Secondly:

PIN 65095-0052 (LT)

PCL 12927 SEC CC; PT LT 23 CON 10 O'BRIEN PT 1, 6R5800 T/W PARTS 1 & 2, 6R6731 AS IN C452347 T/W PT 3, 6R6731 AS IN C451853 T/W PARTS 4 & 5, 6R6731 AS IN C451851 T/W PARTS 3 TO 7, 6R6749 AS IN C453701 T/W PT 3, CR548 AS IN C478024; TOWN OF KAPUSKASING

Bay Power Corp.

PIN 49127-0021 (LT)

PCL 18734 SEC WF; PT LT 21 CON 2 WIDDIFIELD PT 7 & 8, 36R9382 T/W PT 1, 36R9384 AS IN LT332823, PT 1, 36R9381 AS IN LT332824, PT 2, 36R9381 AS IN LT332826, PT 2, 36R9384 AS IN LT332902, PT 3 & 9, 36R9381 AS IN LT332885, PT 7 & 8, 36R9381 AS IN LT333337, PT 4-6, 36R9381 AS IN LT339664, PT 2, 36R9382 & PT 1, 2, 3 & 5, 36R10374 AS IN LT366707, PT 1-3, 36R10375 AS IN LT366710; T/W LT366708 & LT366709; NORTH BAY ; DISTRICT OF NIPISSING

Kingston Cogen GP Inc.

Firstly:

PIN 45132-0375 (LT)

PT LT 23 CON 1 ERNESTOWN PT 1 29R6737,; TOGETHER WITH AN EASEMENT AS IN LA69824; TOGETHER WITH AN EASEMENT AS IN LA208637; TOGETHER WITH AN EASEMENT AS IN LA208644; TOGETHER WITH AN EASEMENT AS IN LA210426; TOGETHER WITH AN EASEMENT AS IN LA210734; TOGETHER WITH AN EASEMENT AS IN LA210736; TOGETHER WITH AN EASEMENT AS IN LA210738; TOGETHER WITH AN EASEMENT OVER PTS 1 - 49 29R9849 UNTIL 2025/12/31 AS IN LX37160;

TOGETHER WITH AN EASEMENT OVER PTS 1,3,4 29R6966 UNTIL 2025/12/31 AS IN LX37161; TOGETHER WITH AN EASEMENT OVER PTS 1 - 50 29R9850 UNTIL 2025/12/31 AS IN LX37162; TOGETHER WITH AN EASEMENT OVER PTS 1 - 11 29R9845 UNTIL 2030/12/31 AS IN LX37163; TOGETHER WITH AN EASEMENT OVER PTS 1 - 71 29R9851 UNTIL 2025/12/31 AS IN LX37164; TOGETHER WITH AN EASEMENT OVER PTS 1 - 14 29R9846 UNTIL 2025/12/31 AS IN LX37165; TOGETHER WITH AN EASEMENT OVER PTS 1 - 16 29R9847 AS IN LX37166; TOGETHER WITH AN EASEMENT OVER PTS 1 - 7 29R6860, PTS 1 & 2 29R7373, PTS 1 - 13 29R7650 AS IN LX37167; LOYALIST TOWNSHIP

Secondly:

PIN 45132-0377 (LT)

PT LT 24 CON BROKEN FRONT ERNESTOWN, PTS 1 TO 12 29R9843; T/W LA69824;; TOGETHER WITH AN EASEMENT OVER PTS 1 - 49 29R9849 UNTIL 2025/12/31 AS IN LX37160; TOGETHER WITH AN EASEMENT OVER PTS 1,3,4 29R6966 UNTIL 2025/12/31 AS IN LX37161; TOGETHER WITH AN EASEMENT OVER PTS 1 - 50 29R9850 UNTIL 2025/12/31 AS IN LX37162; TOGETHER WITH AN EASEMENT OVER PTS 1 - 11 29R9845 UNTIL 2030/12/31 AS IN LX37163; TOGETHER WITH AN EASEMENT OVER PTS 1 - 4 29R9844 AS IN LX37168; TOGETHER WITH AN EASEMENT OVER PTS 1 - 12 29R9843 AS IN LX37169; SUBJECT TO AN EASEMENT OVER PTS 1 - 12 29R9843 IN FAVOUR OF LA285539 (PARCELS 1,2,3); EXCEPT PTS 1 - 12 29R9843 & LA285539 (PARCEL 4) AS IN LX37170; LOYALIST TOWNSHIP

Thirdly:

PIN 45132-0362 (LT) – (Registered Owner: Invista (Canada) Company)

LOC. CL14116, BEING PT OF THE BED OF LAKE ONTARIO IN FRONT OF LT 24, BROKEN FRONT CON. ERNESTOWN, PT 1 29R9227; LOYALIST

Pursuant to Instrument No. LX37609 registered on October 26, 2011, being an Application General (Sublease).

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of 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. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 10th day of August, 2023 (the "**Order**") made in an action having Court file number _____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____, which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ___ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2023.

KSV RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____
Name:
Title:

MACQUARIE EQUIPMENT FINANCE LIMITED v VALIDUS POWER CORP. et al.

Court File No. CV-23-00703754-00CL

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(Appointing Receiver)**

Torys LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2
Fax: 416.865.7380

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Alina Butt (LSO#: 84168W)
Tel: 416.865.7973 | abutt@torys.com

Lawyers for Macquarie Equipment Finance Limited,
the Applicant

Appendix “C”



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-23-00703754-00CL

DATE: August 18th 2023

REGISTRAR: Tiana Khan

NO. ON LIST: 4

TITLE OF PROCEEDING: **MACQUARIE EQUIPMENT FINANCE LIMITED v VALIDUS
POWER CORP. et al**

BEFORE JUSTICE: **Justice Osborne**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
NOEL, MICHAEL	MACQUARIE EQUIPMENT FINANCE LIMITED	mnoel@torys.com (416) 865-7378
BOMHOF, SCOTT	MACQUARIE EQUIPMENT FINANCE LIMITED	sbomhof@torys.com (416) 865-7370
OPOLSKY, JEREMY	MACQUARIE EQUIPMENT FINANCE LIMITED	jopolsky@torys.com (416) 865-8117
BUTT, ALINA	MACQUARIE EQUIPMENT FINANCE LIMITED	abutt@torys.com (416) 865-7973

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
FRANCIS, CATHERINE LOUIS	VALIDUS POWER CORP.	cfrancis@mindengross.com (416) 369-4137

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

HARRISON, BRETT	CIBC - Canadian Imperial Bank of Commerce	Brett.harrison@mcmillan.ca (416) 865-7932
COBB, EVAN	Counsel KSV Restructuring Inc. (Proposed Receiver)	Evan.cobb@nortonrosefulbright.com (416) 216-1929
SIERADZKI, DAVID	KSV Restructuring Inc. (Proposed Receiver)	dsieradzki@ksvadvisory.com 416-932-6030
KOFMAN, BOBBY	KSV Restructuring Inc. (Proposed Receiver)	bkofman@ksvadvisory.com (416) 932-6228

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Applicant, Macquarie Equipment Finance Limited, seeks the appointment of a receiver over the properties and assets of the Respondents/Debtors pursuant to both section 243 of the *Bankruptcy and Insolvency Act* (BIA) and section 101 of the *Courts of Justice Act* (CJA). The Respondents oppose the appointment of a full Receiver today, but consent to the continuation of the previously ordered interim receivership.
2. This Application originally came on before Kimmel, J. on August 2, 2023 at which time an interim receivership order (limited in scope) was made, and the matter was adjourned until the hearing of this Application on August 10, 2023, to give the Respondents a full opportunity to file materials and respond.
3. Defined terms in this Endorsement have the meaning given to them in the motion materials, the August 2 Endorsement, and/or the First Report of the Interim Receiver dated August 9, 2023, unless otherwise stated.
4. At the conclusion of the two hour hearing, I granted the relief sought by the Applicant in the form of a full receivership, following which I signed and released an order that had been approved by the parties as to form and content. It was important to the parties that the Application be disposed of promptly, since the interim receivership expired on the day of the hearing. I indicated that reasons would follow. These are those reasons.
6. The test for the appointment of a receiver pursuant to section 243 of the *BIA* or section 101 of the *CJA* is not in dispute. Is it just or convenient to do so?
7. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.
8. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.
9. The appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage: *BCIMI Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at paras. 43-44.

10. As I observed in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, the Supreme Court of British Columbia, citing *Bennett on Receivership*, 2nd ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25):
- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
 - b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
 - c. the nature of the property;
 - d. the apprehended or actual waste of the debtor's assets;
 - e. the preservation and protection of the property pending judicial resolution;
 - f. the balance of convenience to the parties;
 - g. the fact that the creditor has a right to appointment under the loan documentation;
 - h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
 - i. the principle that the appointment of a receiver should be granted cautiously;
 - j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
 - k. the effect of the order upon the parties;
 - l. the conduct of the parties;
 - m. the length of time that a receiver may be in place;
 - n. the cost to the parties;
 - o. the likelihood of maximizing return to the parties; and
 - p. the goal of facilitating the duties of the receiver.
11. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: "these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).
12. It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29.
13. Accordingly, is it just or convenient to appoint a receiver in the particular circumstances of this case?

14. As stated, in my view it is not only just *or* convenient, but indeed it is just *and* convenient to appoint a receiver here.
15. Much of the context of, and background to, this Application are set out in the Endorsement of Justice Kimmel dated August 2 and need not be repeated here. Moreover, much of the underlying chronology of events is not in dispute. Most of the key events in the chronology are set out in the Chronological Summary found at Tab 1 of the Applicant's Compendium.
16. In the main, The Validus Group is a power generation company that generates and then sells power to the Independent Energy System Operator (IESO) as a participant in IESO's capacity auction market. The principal operations of The Validus Group consist of four power plants Located in Ontario: North Bay, Kapuskasing and Kingston. There is a data centre in North Bay.
17. Validus Power Corp. is a holding company, the primary or sole assets of which consist of the shares or units held in each of the other Debtors, each of which are direct or indirect wholly-owned subsidiaries. Four of those Debtors, in turn, own the operating assets corresponding to the four power plants.¹
18. Pursuant to what, for today's purposes, can generally be described as the loan agreements between the Applicants on the one hand and the Debtors/Respondents on the other hand, the Debtors are indebted to the Applicant in a significant amount.
19. The parties entered into a sale and leaseback transaction originally in respect of the Iroquois Falls power plant, pursuant to which the Applicants purchased substantially all of the turbines, plant and equipment used in that plant operation from Iroquois Falls Power Corp. (IFPC). The Applicant paid a purchase price of \$45 million plus HST.
20. The Applicants then leased the purchased assets back to IFPC under a lease agreement which required IFPC to make regular monthly rent payments and pay all other amounts when due. The Applicant was (and is) entitled to accelerate all payments due as liquidated damages and demand payment of same if there is a default by IFPC or any of the other Debtors. Each of the other Debtors guaranteed both the obligations of IFPC and the guarantee obligations of the other guarantors.²
21. All of the Debtors provided the Applicant with first ranking security over substantially all of their property and assets, subject to certain limited exceptions set out in the materials and about which there is no issue today.
22. While there was, as at the hearing of the Application, some dispute as to the precise amount and whether or not there had been double counting as to certain input factors, the Applicants submit that the total outstanding amount was, as of July 31, 2023, \$55,598,575. The Respondents expressly conceded in argument that the amount was at least in excess of \$40 million.
23. Pursuant to the loan agreements, the Applicant has a contractual right to appoint a receiver if an event of default has occurred. The Applicant has first-in-time registrations against each of the debtors under the PPSA and against all of the real property of the Debtors registered on title, as well as physical possession of the shares and units that Validus Parent pledged pursuant to the loan agreements.
24. Events of default have clearly occurred. In addition to the fundamental monetary defaults in the form of the failure to repay amounts when due, there are additional covenant and operating defaults, including the failure to pay rent, the failure to remit HST and other taxes, the breach of an agreement with a key customer, and the failure to properly maintain books and records, and to maintain insurance.

¹ The one exception to that is the turbines, plant and equipment for the Iroquois Falls plant, which is all owned by the Applicant.

² The guarantees are unlimited with the exception of Validus Holdings which provided a limited recourse guarantee.

25. I observe, as did Justice Kimmel, that during 2023, the Applicant has made various payments on behalf of the Debtors in respect of critical items, in order to protect further erosion from its collateral and, as Justice Kimmel noted, to minimize the risk of potential destabilization of the Debtors and their operations.
26. The parties entered into a forbearance agreement in February, 2023. The Debtors have breached the terms of that forbearance agreement. The Applicant issued demands and section 244 *BIA* Notices on June 9, 2023 and again on July 24, 2023. The proposed Receiver has made arrangements with a licensed operator who can assume control of the Property of the Debtors in the event the Application is granted.
27. The Application was adjourned on August 2 at the request of the Debtors to permit them an opportunity to file responding materials and attempt to find an alternative source of debt or equity financing to permit the repayment of the Applicant. Justice Kimmel observed that this was something on which the Debtors had been working since the beginning of 2023, although they submitted to the Court on August 2 that there may be a recent development offering greater hope for success.
28. The Applicant submits that it has lost confidence in management of the Respondents, that (as further described below) a recent sales process completely failed, that there is no apparent liquidity in the Property of the Debtors, the books and records are in disarray with the result that an accurate valuation is difficult if not impossible, and that it is contractually entitled to the appointment of a Receiver which is now appropriate.
29. The principals of the Debtors are alleged to have misappropriated and failed to return funds from a bank account to which they were erroneously granted access (CIBC) and are alleged to have failed to provide benefits and RRSP contributions to their unionized employees pursuant to a collective bargaining agreement.
30. The Applicant submits that its significant efforts to accommodate the Debtors have included the provision of a four month rent holiday in February of this year, and the facilitating, at their expense, of an unsuccessful out of court sales and marketing process in respect of one of the Debtors, in addition to the payments on behalf of the debtors referred to above, in the aggregate amount of at least \$1,421,370.38. Unfortunately, none of these efforts has led to a viable path forward.
31. The sale and marketing process took place. in March and April of this year. For parties submitted nonbinding expressions of interest. One bid or made a binding offer on which it defaulted. The process concluded unsuccessfully.
32. The Applicant observes that one of its intended objectives in the receivership, if granted, is a sales process which will likely include a stalking horse bid for substantially all of the assets of the Debtors, in turn likely in conjunction with a filing pursuant to the CCAA. The Debtors submit that they will object to this and indeed this entire Application is a ruse to allow the Applicants to acquire their assets at less than full value.
33. As stated, I was satisfied at the conclusion of oral argument that a full receivership was appropriate and I so ordered. The parties agreed on the form and content of the order given that disposition, and I was satisfied that the draft order was both consistent with the terms of the Model Order of the Commercial List and appropriate in the circumstances of this case, with the one exception that I declined to grant an order authorizing the Applicant to commence a CCAA process. In my view, that was premature, although I was clear that my decision in declining to grant that relief was without prejudice to the ability of the Applicant to seek that relief in the future.
34. I accept the position of the Applicant that it has not acted in a rushed or rash fashion. Indeed, the chronology of the events since the original defaults as summarized above demonstrate that the contrary is true. The Respondents submitted that the Application on August 2 before Justice Kimmel came out of the blue and took them by surprise.

35. I appreciate that the preference of the Respondents would have been to avoid such an Application, but in my view they can hardly be surprised given the defaults, the terms of the forbearance agreement, the contractual consent to the appointment of a receiver in the event of default, the failed sales process, the continued HST arrears (and corresponding Canada Revenue Agency lien for approximately \$6 million) the continued arrears of municipal taxes, and most fundamentally, the continued default and demands under the loan agreements notwithstanding the demands made on June 9, 2023 together with corresponding section 244 *BIA* Notices, demanding payment of the Base Rent and HST arrears.
36. In any event, the Respondents filed full responding materials and made submissions at the hearing of the Application.
37. I am satisfied that, as submitted by the Applicant, there is disarray in management of the Applicant, and there is a real risk both to the existing employees of the Respondents in terms of the payment of salaries and wages and the remittance of statutory source deductions, and also to the stability of the operations of the Debtors in the sense of a real risk that the existing employees may leave. That would without question destabilize if not impair irrevocably the operation of the Debtors.
38. In this regard, I observe the position of the Interim Receiver as set out in its First Report to the Court dated August 9, 2023, in which the Interim Receiver observes among other things that the employees have expressed a lack of confidence in management; concern if management remains in control of the business of the Debtors; and frustration with respect to benefit and RRSP amounts withdrawn from their payroll but not remitted as required. All of these factors contributed to the expressed view of the Interim Receiver that mass resignation is a risk.
39. Moreover, the First Report reflects that the cash flow prepared for the receivership period reflects that substantially all cash receipts will be required to maintain the operations of the business. The result, as reflected in the cash flow, is that the projected cash receipts are not sufficient to service the lease arrangements of the Debtors by way of payment of the monthly base rent of \$1.4125 million. In addition, there is no funding to service the past-due amounts which total approximately \$9.6 million inclusive of HST, representing six monthly payments, before interest and costs.
40. Further as noted above, there has been a default in the payment of insurance premiums, some of which have already been paid by the Applicant to protect its position. Additional funding to maintain coverage will be required. No prudent operator would continue to own let alone operate power plant assets without appropriate insurance coverage in place.
41. Within the next 10 days alone, \$306,000 will be required for insurance premiums together with \$108,000 for payroll. There is no funding available for immediate payroll needs.
42. In short, there is just no funding available either to finance the immediate operational and/or debt servicing needs and obligations of the Respondents, nor to begin to repay the amounts already overdue. I conclude that the collateral of the Applicant is at risk.
43. The Respondents rely upon the Affidavit of Mr. Todd Shortt sworn August 7, 2023 and the Supplementary Affidavit of Mr. Shortt sworn August 10, 2023 together with the exhibits thereto. Mr. Shortt concedes that the Debtors have struggled with their operations and that a dispute with Hut 8 Mining Corp. in respect of a lease in North Bay, Ontario has resulted in the Debtors losing an important source of revenue which in turn had a snowball effect on the rest of the operations (para. 22).
44. Mr. Shortt also states that the Debtors have been working to obtain alternative financing to fully repay the Applicant and that indeed financing has been arranged although it needs to be formally documented. He states that he believes that the appointment of a full receiver would destroy the business.

45. The financing commitment the Debtors say they have received is attached as Exhibit “A” to Mr. Shortt’s Supplementary Affidavit. He states that the conditions are marked as fulfilled. Indeed, the document reflects that certain documentation has been “provided”.
46. I agree with the concerns expressed by counsel to the Applicant that this commitment letter does not provide the certainty urged upon me that the Applicant will be repaid in full, let alone by a date certain. I say this for a number of reasons.
47. First, the commitment is from a broker, not from the lender or syndicate of lenders itself or themselves (which are not identified). The commitment is “based on the information provided to us” which is not defined in the commitment letter nor elsewhere in the record, such as by an affidavit from or own behalf of the proposed lender(s).
48. The concern of the Applicant, with which I agree and accept, is exacerbated by the inadequate record keeping of the Debtors (see, for example, the Affidavit of Joshua Stevens sworn July 31, 2023, para 54(a), and the April 16, 2023 Notice of Default and Reservation of Rights from the Applicant to the Debtors setting out Specified Events of Default, including among other things, a breach of the obligation to provide annual financial statements, semi-annual financial statements, bank statements and other reports required (d); and a breach of the obligation to maintain proper books, accounts and records in accordance with Section 4.23 of the Participation Agreement (p)).
49. How, the Applicant asks rhetorically, can the Debtors purport to have satisfied the proposed lenders represented by the letter of commitment, in the absence of books and records, and financial statements?
50. I accept that concern, which I share. I further observe that even if the proposed lender or lenders were in fact satisfied, there is no evidence in the record to demonstrate this. There is nothing beyond the commitment letter. There is no affidavit, as noted above, from or on behalf of the proposed lenders addressing this issue or even stating more generally that the financing commitment was unconditional and unequivocal and that the lenders were prepared to advance funds immediately or by any date certain.
51. Second, the proposed financing commitment is expressly conditional on factors, in addition to those that are indicated on the document as having been provided, in respect of which there is no evidence that they have been satisfied.
52. For example, Mr. Shortt is required to be a guarantor. It may be reasonable to assume that he would agree to such an obligation, but there is no evidence of this, and there is certainly no guarantee to which the terms have already been agreed. Presumably, that remains to be done.
53. Moreover, the “Lender Fee” is stated as being: “1.50% plus 20% equity in the four power plants”. There is no evidence of any agreements in place pursuant to which the transfer of 20% of the equity in the four power plants is to be transferred. Such agreements would require the consent of the Applicant as a first order of business. Even if that were forthcoming, as it may well be, the complexity of the existing loan agreements between the Applicants and the Debtors suggests that there would be significant time required to negotiate and finalize the terms of this 20% equity purchase.
54. At a minimum, I am comfortable concluding that the result, for the purposes of the disposition of the Application today, is that there remains significant uncertainty in the conditionality of the financing required. Even if the proposed transactions proceeded expeditiously and smoothly, a certain amount of time would be required to negotiate and conclude the equity purchase agreements, with the additional result that there is no certainty as to the date upon which the funding would be available even if the agreements all closed seamlessly.
55. Required “standard loan documentation” has not yet been reflected as having been provided.

56. Most fundamentally, however, if the proposed commitment letter represents a financing commitment that can be closed, and funds advanced, in relatively short order, so much the better. Nothing in my conclusion to appoint a full receiver prevents or prohibits the Receiver from continuing discussions with the proposed lender or lenders to pursue this proposed commitment and determine whether it is in the best interests of stakeholders. Indeed, I was clear at the hearing of the motion and am clear now that I would expect the Receiver to do nothing less.
57. If that funding commitment closed relatively quickly, it follows that the cost of the Receivership would be minimized. However, in the interim, stability will be maximized and the Receiver could pursue this possible commitment together with, and in addition to, any possible alternative commitments such as might be revealed through a court supervised sales process.
58. In any event, the complete absence of any interim funding from any source further reinforces my conclusion that a full Receiver should be appointed now since, in the absence of funding available to continue operations even in the immediate term (and to pay, among other things, payroll to maintain the employees), the circumstances all but guarantee the further destabilization of the business of the Debtors, the further erosion of the security of the Applicant, and the further risk to all stakeholders of an outcome that is less than optimal.
59. Considering all of the factors relevant to the appointment of a receiver, and in particular the relative prejudice to the Applicant on the one hand and the Debtors and other stakeholders on the other hand, the balance of convenience clearly favours the appointment of a full Receiver at this time in my view.
60. The Receiver can and I expect will sort out issues such as the potential for double counting in respect of certain stipulated loss amounts. I expect that it goes without saying that nothing in my decision to appoint a full Receiver would entitle the Applicant to recover amounts in excess of those which it is owed. But again, the Receiver will sort all of that out. It can also address matters such as the inadvertent payment, and refusal to repay, the amounts in respect of CIBC.
61. For all of these reasons, I am satisfied that the Receiver should be appointed on the terms set out in the order agreed as to form and content (without, for the time being, the authority to commence a CCAA proceeding).
62. I am grateful to all counsel for their submissions.

Oleary, J.

Appendix “D”

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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.

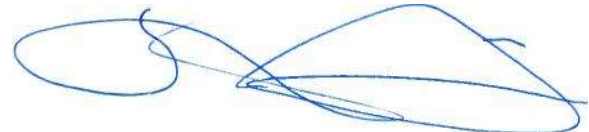
CONSENT

KSV RESTRUCTURING INC., hereby consents to act as the court-appointed monitor of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc. in connection with their proceedings pursuant to the *Companies' Creditors Arrangement Act* and pursuant to the terms of an order substantially in the form filed.

DATED AT TORONTO, ONTARIO this 21st day of August, 2023

KSV RESTRUCTURING INC.

Per:



Name: David Sieradzki
Title: Managing Director

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

Court File No. ■

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

CONSENT

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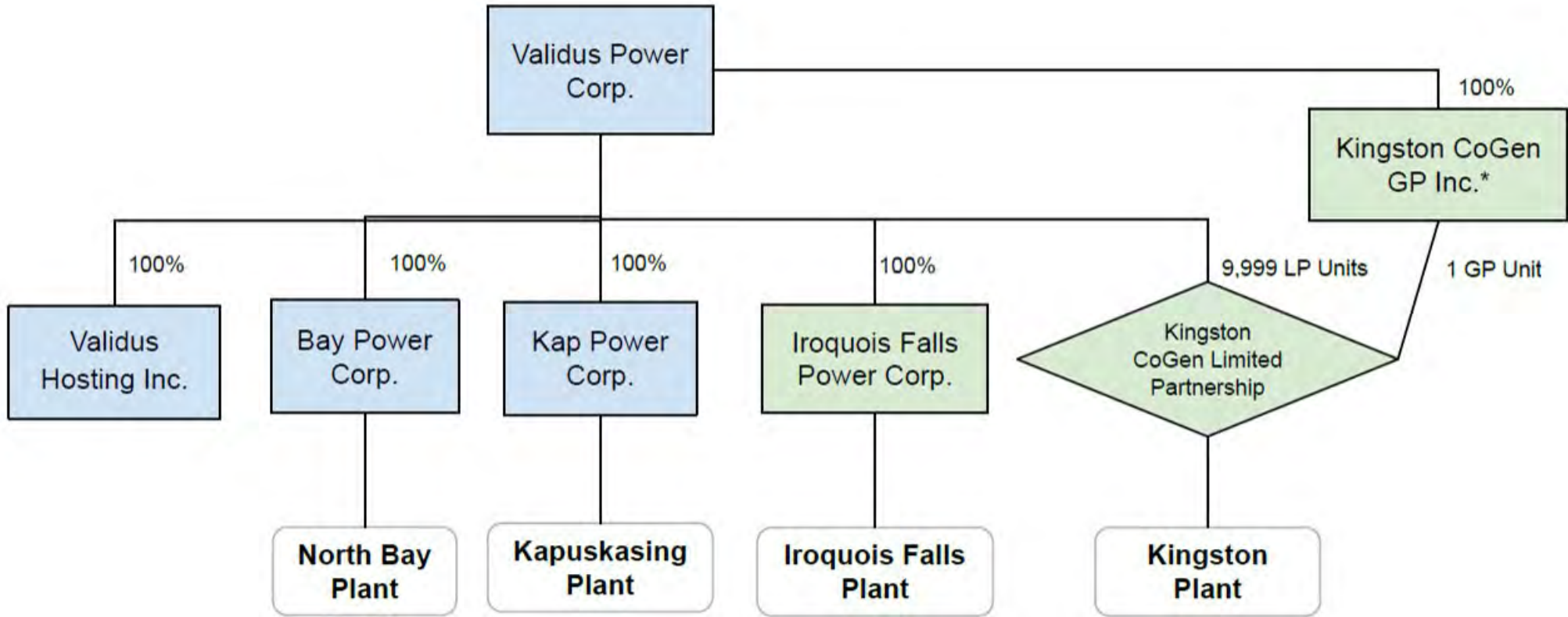
Evan Cobb LSO#: 55787N

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evan.cobb@nortonrosefulbright.com

Lawyers for the Applicants, each by the Receiver

CAN_DMS:\1000799728

Appendix “E”



Appendix “F”

Validus Power Corp.
Balance Sheet
As of 31 July 2023

	31 Jul 23
ASSETS	
Current Assets	
Chequing/Savings	
Bank - TD Term Deposit	1,506,445.00
Libro - Chequing	-486,790.17
Libro - Membership shares	50.00
Libro - US Acct	195.00
TD	-86,290.40
TD Bank - Canadian	-2,460,521.06
TD Bank - US	34.48
Total Chequing/Savings	-1,526,877.15
Accounts Receivable	
Accounts Receivable	6,181,699.09
Total Accounts Receivable	6,181,699.09
Other Current Assets	
Due from Bay Power Corp	127,541.20
Due from Iroquois Falls	-1,225,835.50
Due from Kap Power Corp	116,501.55
Due from Kingston Cogen	-3,025,455.64
Due from Sunnyside Consulting	-274,647.13
Libro - GIC	568,561.00
Total Other Current Assets	-3,713,334.52
Total Current Assets	941,487.42
Fixed Assets	
Computers	5,309.94
Furniture and Equipment	33,223.50
Investments in Power Plants	45,560,643.50
Paving	38,439.52
Signs	5,535.00
Vehicles	173,590.00
Total Fixed Assets	45,816,741.46

Validus Power Corp.
Balance Sheet
As of 31 July 2023

	31 Jul 23
Other Assets	
Prepaid Deposit	713,580.53
Term Deposit	68,561.00
Total Other Assets	782,141.53
TOTAL ASSETS	47,540,370.41
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
*Accounts Payable	9,936,830.22
Accounts Payable	2,205.05
Accounts Payable - USD	3,031,848.45
Total Accounts Payable	12,970,883.72
Credit Cards	
Amex	1,638.50
Total Credit Cards	1,638.50
Other Current Liabilities	
Due to/from 2707038 Ontario Inc	-710,564.06
Due to/from Acuity Enterprises	-10.00
Due to/from DSG Inc.	2,874,795.30
Due to/from Urica Energy Manage	374,985.00
Greg Foss Loan Payable	1,525,000.00
GST/HST Payable	2,770,706.33
Loan Payable - MacQuarie	36,000,000.00
Payroll Liabilities	1,751,468.00
RRSP Contributions	69,590.42
Total Other Current Liabilities	44,655,970.99
Total Current Liabilities	57,628,493.21
Total Liabilities	57,628,493.21

Validus Power Corp.
Balance Sheet
As of 31 July 2023

	<u>31 Jul 23</u>
Equity	
Capital Stock	100.00
Retained Earnings	-5,618,480.83
Net Income	<u>-4,469,741.97</u>
Total Equity	<u>-10088122.80</u>
TOTAL LIABILITIES & EQUITY	<u>47,540,370.41</u>

Validus Power Corp.
Profit & Loss
January through July 2023

	Jan - Jul 23
Ordinary Income/Expense	
Income	
Interest income	10,731.11
Revenue	193,132.10
Total Income	203,863.21
Cost of Goods Sold	
Construction Materials Costs	63,614.36
Subcontractors Expense	6,300.00
Total COGS	69,914.36
Gross Profit	133,948.85
Expense	
Auto and Truck Expenses	355.00
Bank Service Charges	50,954.57
Business Licenses and Permits	-1,600.00
commissions US	31,403.00
Consulting	1,819,334.55
Electricity Expenses - IESO	20,056.46
Gas Expense	130,650.00
Insurance Expense	371,424.00
Interest Expense	19,242.58
Janitorial Services	1,837.96
Office Supplies	3,050.62
Payroll Expenses	1,481,846.02
Professional Fees	243,108.26
Property Taxes	14,855.78
Rent Expense	210,387.14
Repairs and Maintenance	47,737.97
Shop Supplies	43,845.15
Software expense	55,635.21
Telephone Expense	26,802.99
Travel	6,128.31
Utilities	85,587.59
Total Expense	4,662,643.16
Net Ordinary Income	-4,528,694.31

Validus Power Corp.
Profit & Loss
January through July 2023

	<u>Jan - Jul 23</u>
Other Income/Expense	
Other Expense	
Foreign Exchange	<u>-58,952.34</u>
Total Other Expense	<u>-58,952.34</u>
Net Other Income	<u>58,952.34</u>
Net Income	<u><u>-4,469,741.97</u></u>

Iroquois Falls Power Corp.

Balance Sheet

As of July 31, 2023

	TOTAL
Assets	
Current Assets	
Cash and Cash Equivalent	
Bank - CIBC CDN	2,385,775.49
Bank - Credit Card Shelley	-9,126.49
Bank - IF	-649,148.75
Bank - MacQuarie	-143,249.21
Chequing	-1,298.06
CIBC - USD	492.87
Total Cash and Cash Equivalent	\$1,583,445.85
Accounts Receivable (A/R)	
Accounts Receivable (A/R)	0.00
Due to/from MacQuarrie	0.00
Total Accounts Receivable (A/R)	\$0.00
Due to/from KCLP	
	-31,811.00
Due to/from VPC	32,151,512.13
Inventory Asset	51,863.40
Prepaid expenses	0.00
Total Current Assets	\$33,755,010.38
Non-current Assets	
Property, plant and equipment	
Property, Plant and Equipment	0.00
Total Property, plant and equipment	\$0.00
700 CAPEX	
	24,080.00
Land	124,278.00
Total Non Current Assets	\$148,358.00
Total Assets	\$33,903,368.38
Liabilities and Equity	
Liabilities	
Current Liabilities	
Accounts Payable (A/P)	
Accounts Payable (A/P)	374,936.83
Accounts Payable (A/P) - USD	5,103.35
Total Accounts Payable (A/P)	\$380,040.18
Accrued liabilities	
Accrued liabilities	5,672,663.80
Corporate taxes payable	2,000,000.00
Deferred income	0.00
GST/HST Payable	5,292,197.19
GST/HST Suspense	-1,685,395.00
Payroll Liabilities	332,009.40
RRSP Payable	164,210.24
Union Dues Payable	7,566.25
Wage Adj Accrual	22,268.69
Total Current Liabilities	\$12,185,560.75

Iroquois Falls Power Corp.

Balance Sheet

As of July 31, 2023

	TOTAL
Total Liabilities	\$12,185,560.75
Equity	
Opening Balance Equity	23,444,242.17
Retained Earnings	-3,141,536.96
Profit for the year	1,415,102.42
Total Equity	\$21,717,807.63
Total Liabilities and Equity	\$33,903,368.38

Iroquois Falls Power Corp.

Profit and Loss

April - July, 2023

	TOTAL
INCOME	
Capacity Obligation Availability Charge	-63,720.00
Capacity Obligation-Capacity Charge	-8,496.00
Class B Global Adjustment Settlement Amount	-31,783.89
Net Energy Market Settlement for Generators	-5,942.68
Network Service Charge	-2,760.80
Other Miscellaneous Charges - IESO	107.03
Services	1,985,682.84
Services-Capacity Obligation Availability Payment	290,280.00
Total Income	\$2,163,366.50
COST OF GOODS SOLD	
202 Fuel Transportation - Enbridge	38,709.05
Total Cost of Goods Sold	\$38,709.05
GROSS PROFIT	\$2,124,657.45
EXPENSES	
Bank charges	12.20
Disposal Fees	10.00
Dues and Subscriptions	1,767.50
Legal and professional fees	550.00
Meals and entertainment	1,461.83
Other general and administrative expenses	111,365.09
Promotional	40.00
Repair and maintenance	15,329.87
Shipping and delivery expense	926.56
Supplies	3,605.01
Utilities	738.15
Wages and benefits	573,755.40
Total Expenses	\$709,561.61
OTHER EXPENSES	
Exchange Gain or Loss	-6.58
Total Other Expenses	\$ -6.58
PROFIT	\$1,415,102.42

Kingston Cogen Limited Partnership

Balance Sheet

As of July 31, 2023

	TOTAL
Assets	
Current Assets	
Cash and Cash Equivalent	
Bank - CIBC KCLP	39,618.65
Bank - Kingston	673,453.89
Bank - MacQuarie	-128,618.78
Credit Card - Shelley	-23,049.45
Petty Cash	1,000.00
Total Cash and Cash Equivalent	\$562,404.31
Accounts Receivable (A/R)	
Accounts Receivable (A/R)	130,886.50
Total Accounts Receivable (A/R)	\$130,886.50
Due/to From IFPC	25,000.00
Prepaid expenses	0.00
Total Current Assets	\$718,290.81
Non-current Assets	
Property, plant and equipment	
Land	490,351.00
Machinery and equipment	15,661,119.41
Total Property, plant and equipment	\$16,151,470.41
Due to/from Validus	1,574,267.01
Total Non Current Assets	\$17,725,737.42
Total Assets	\$18,444,028.23
Liabilities and Equity	
Liabilities	
Current Liabilities	
Accounts Payable (A/P)	
Accounts Payable (A/P)	205,693.28
Accounts Payable (A/P) - USD	7,874.61
Total Accounts Payable (A/P)	\$213,567.89
Accrued Liabilities	0.00
accrued vacation	98,804.84
Bonus Accrual	80,900.46
GST/HST Payable	398,258.22
Payroll Liabilities	115,726.57
RRSP Payable	43,125.42
Total Current Liabilities	\$950,383.40
Total Liabilities	\$950,383.40
Equity	
Opening Balance Equity	16,557,005.65
Partnership Units - GP	26,701.00
Retained Earnings	375,840.73
Profit for the year	534,097.45
Total Equity	\$17,493,644.83
Total Liabilities and Equity	\$18,444,028.23

Kingston Cogen Limited Partnership

Profit and Loss

April - July, 2023

	TOTAL
INCOME	
Services	1,003,189.93
Total Income	\$1,003,189.93
GROSS PROFIT	\$1,003,189.93
EXPENSES	
202 Fuel Transportation	31,180.40
Disposal Fees	
426 Waste Disposal - Non Hazardous	3,678.97
Total Disposal Fees	3,678.97
Employer Portion RRSP, CPP, EI	37,986.14
Gross Payroll	329,042.50
Other general and administrative expenses	288.33
300 Benefits	12,598.64
302 Fitness for Duty Testing	195.00
402 Operations - Chemicals & Treatment - Water	114.00
413 Gasoline / Diesel Fuel / Propane	4,292.28
415 Other Operating Expenses	578.00
500 Maintenance - Air System Maintenance	493.12
504 Maintenance - Building and Grounds Maint.	42.72
515 Maintenance - LV Electrical Maint.	51.12
516 Maintenance - Consumables	4,930.27
604 Computer Hardware / Software	7,790.45
612 Internet	1,600.00
616 Meal Expenses	214.25
617 Membership Fees	1,038.41
618 Mileage	104.40
621 Office Furniture / Equipment	786.59
623 Other Miscellaneous General & Admin	800.00
627 Telephone Mobile	890.53
628 Telephone Office Landlines	11,959.50
631 Uniforms Cleaning Service	3,265.33
Total Other general and administrative expenses	52,032.94
Utilities	
422 Utilities - Electricity	14,875.65
424 Utilities- Water & Sewer	295.88
Total Utilities	15,171.53
Total Expenses	\$469,092.48
PROFIT	\$534,097.45

Appendix “G”

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.

Projected Statement of Cash Flow

For the Period August 19 to December 1, 2023

(Unaudited; \$C)

Week	Notes	For the weeks ending															Total
		25-Aug-23	01-Sep-23	08-Sep-23	15-Sep-23	22-Sep-23	29-Sep-23	06-Oct-23	13-Oct-23	20-Oct-23	27-Oct-23	03-Nov-23	10-Nov-23	17-Nov-23	24-Nov-23	01-Dec-23	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Receipts																	
	1																
	2	1,550,655	-	-	-	1,446,651	-	-	-	-	1,550,655	-	-	-	1,446,651	-	5,994,612
	3	-	-	-	-	-	-	-	-	-	-	25,000	-	-	-	-	25,000
	4	-	-	-	-	-	-	-	-	-	-	-	-	-	495,209	-	495,209
		1,550,655	-	-	-	1,446,651	-	-	-	-	1,550,655	25,000	-	-	1,941,860	-	6,514,821
Disbursements																	
	5	80,904	194,535	85,109	170,109	85,109	40,109	85,109	170,109	85,109	35,109	90,109	35,109	220,109	35,109	90,109	1,501,855
	6	74,504	198,563	120,563	66,326	45,563	60,296	351,563	45,563	45,563	45,563	45,563	45,563	45,563	45,563	45,563	1,281,876
		46,517	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	81,517
		-	-	16,950	-	-	-	16,950	-	-	-	-	16,950	-	-	-	50,850
		-	-	-	-	-	138,439	-	-	-	-	127,299	-	-	-	110,655	376,393
	7	-	-	-	-	-	-	-	-	-	-	-	-	-	1,795,775	-	1,795,775
		201,925	395,598	225,121	238,935	133,171	241,343	456,121	218,171	133,171	83,171	265,470	100,121	268,171	1,878,946	248,826	5,088,265
Net cash flow before the undernoted																	
		1,348,729	(395,598)	(225,121)	(238,935)	1,313,480	(241,343)	(456,121)	(218,171)	(133,171)	1,467,483	(240,470)	(100,121)	(268,171)	62,914	(248,826)	1,426,556
	8	-	300,000	-	-	-	-	250,000	-	-	250,000	-	-	-	-	200,000	1,000,000
		1,348,729	(695,598)	(225,121)	(238,935)	1,313,480	(241,343)	(706,121)	(218,171)	(133,171)	1,217,483	(240,470)	(100,121)	(268,171)	62,914	(448,826)	426,556
Opening Cash Balance																	
		7,686	1,356,415	660,817	435,696	196,761	1,510,241	1,268,898	562,776	344,605	211,434	1,428,917	1,188,447	1,088,326	820,154	883,068	7,686
Net cash flow																	
		1,348,729	(695,598)	(225,121)	(238,935)	1,313,480	(241,343)	(706,121)	(218,171)	(133,171)	1,217,483	(240,470)	(100,121)	(268,171)	62,914	(448,826)	426,556
Closing Cash Balance																	
		1,356,415	660,817	435,696	196,761	1,510,241	1,268,898	562,776	344,605	211,434	1,428,917	1,188,447	1,088,326	820,154	883,068	434,242	434,242

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. (the "Applicants")
Notes to Projected Statement of Cash Flow
For the Period August 19 to December 1, 2023
(Unaudited; \$C)

Purpose and General Assumptions

1. The purpose of the projection is to present a cash flow forecast of the Applicants for the period August 19, 2023 to December 1, 2023 (the "Period").

The cash flow projection has been prepared based on hypothetical and most probable assumptions.

Assumes the Iroquois Falls Power Corp. ("IFPC") and Kingston Cogen Limited Partnership ("KCLP") plants are not called upon to provide power during the Period.

Probable and Hypothetical Assumptions

2. Represents payments from the Independent Electricity System Operator ("IESO") to IFPC and KGLP for being a capacity market participant and being on standby to provide electricity generation to the market if requested by IESO. Payments are received two months after the period in which they are earned and include HST.
3. Represents a payment from IESO for testing that occurred in June 2023.
4. Represents the return of a deposit paid by IFPC and KCLP to IESO for participating in the capacity market during the spring and summer of 2023.
5. Includes employment related disbursements, including: (i) payroll and source deductions; (ii) reimbursement of pre-filing out-of-pocket costs paid by employees; (iii) reimbursement of health care costs that the employees paid personally but were to be covered by the Applicants' benefits plan, which has been terminated; (iv) RRSP contributions deducted by the Applicants from employee paycheques but which the Applicants did not remit to the RRSP plan; and (v) unremitted union dues.
6. Includes estimated maintenance costs, gas and fuel transport costs required for IFPC to perform testing in September, and insurance premiums.
7. Represents the full-year deposit paid to IESO by IFPC, KCLP, Bay Power Corp. and Kap Power Corp. to participate in the capacity auction.
8. Represents the estimated fees of KSV as receiver and CCAA monitor, as well as those of its legal counsel.

COURT FILE NO.: _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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., KINGSTON
COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN GP INC.**

APPLICANTS

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 10(2)(b) of the CCAA)

KSV Restructuring Inc. as Receiver and Manager of 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. (collectively, the "Applicants") has developed the assumptions and prepared the attached statement of projected cash flow as of the 22nd day of August, 2023 for the period August 19, 2023 to December 1, 2023 ("Cash Flow"). All such assumptions are disclosed in the notes to the Cash Flow.

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow as described in Note 1 to the Cash Flow, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Cash Flow.

Since the Cash Flow is based on assumptions regarding future events, actual events will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in Note 1 using a set of hypothetical and probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 22nd day of August, 2023.

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS RECEIVER AND MANAGER OF
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.**

Appendix “H”

COURT FILE NO.: _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**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., KINGSTON COGEN LIMITED PARTNERSHIP AND
KINGSTON COGEN GP INC.**

PROPOSED MONITOR'S REPORT ON CASH FLOW STATEMENT
(paragraph 23(1)(b) of the CCAA)

The attached statement of projected cash-flow of 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. (collectively, the "Applicants") as of the 22nd day August, 2023, consisting of a weekly projected cash flow statement for the period August 19, 2023 to December 1, 2023 (the "Cash Flow") has been prepared by KSV Restructuring Inc. in its capacity as Receiver and Manager of the Applicants (the "Receiver") for the purpose described in Note 1, using probable and hypothetical assumptions set out in the notes to the Cash Flow.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by the Receiver. We have reviewed the support provided by the Receiver for the probable and hypothetical assumptions and the preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed by the Receiver are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto this 22nd day of August, 2023.

A handwritten signature in blue ink that reads "KSV Restructuring Inc." The signature is written in a cursive, flowing style.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSED CCAA MONITOR OF
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.**

MACQUARIE EQUIPMENT FINANCE LIMITED v. VALIDUS POWER CORP., et al.
 IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY
 AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF
 JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED

Court File No. CV-23-00703754-00CL

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.

Court File No. ■

**ONTARIO
 SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST**

Proceeding commenced at TORONTO

**FIRST REPORT OF THE RECEIVER AND PRE-FILING
 REPORT OF THE PROPOSED MONITOR DATED
 AUGUST 23, 2023**

NORTON ROSE FULBRIGHT CANADA LLP

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Lawyers for the Receiver and Proposed Monitor

TAB 3

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEEKDAY, THE #
)	
JUSTICE)	DAY OF MONTH, 20YR

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.

INITIAL ORDER

THIS APPLICATION, made by Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc. (each, a “**Company**” and collectively, the “**Companies**”), each by their court appointed receiver and manager, KSV Restructuring Inc. (“**KSV**” and in such capacity, the “**Receiver**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an Initial Order, was heard this day via videoconference.

ON READING the First Report of KSV as receiver and manager of the Companies and Kingston Cogen Limited Partnership (“**Kingston LP** and together with the Companies, the “**Validus Entities**”) and the Report of KSV as proposed Monitor dated [DATE], and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel to the Receiver, Macquarie Equipment Finance Limited, [NAMES], no one appearing for [NAME] although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of KSV to act as the Monitor of the Validus Entities,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that each Company is a company to which the CCAA applies. Although not an Applicant, Kingston LP shall have the benefits of the protections and authorizations provided by this Order.

RECEIVERSHIP ORDER

3. THIS COURT ORDERS that nothing in this Order shall operate to interfere, stay or limit the provisions of the Order of this Court made on August 10, 2023 (the “**Receivership Order**”), pursuant to which KSV was appointed receiver and manager of the Property (defined below) or the powers given to the Receiver pursuant to the Receivership Order including, for greater certainty, (a) organizational control and executory authority in respect of the Validus Entities and the Business (as defined below); (b) the ability of the Receiver to borrow funds pursuant to paragraphs 23-26 of the Receivership Order including to fund the administrative costs of this proceeding; and (c) the granting and enforceability of the Receiver’s Charge and the Receiver’s Borrowing Charge (as defined below in the Receivership Order).

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Validus Entities, by the Receiver, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that, subject to paragraph 3 above, the Validus Entities shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to paragraph 3 above, and further Order of this Court, the Validus Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Validus Entities, by the Receiver, are authorized

and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Validus Entities, by the Receiver, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Validus Entities in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Validus Entities, by the Receiver, shall be entitled but not required to pay all reasonable expenses incurred by the Validus Entities, by the Receiver, in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Validus Entities or the Receiver following the date of this Order.

8. THIS COURT ORDERS that the Validus Entities, by the Receiver, shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Validus Entities in connection with the sale of goods and services by the Validus Entities, but only where such Sales Taxes are accrued or collected after the date of the Receivership Order, or where such Sales Taxes were accrued or collected prior to the date of the Receivership Order but not required to be remitted until on or after the date of the Receivership Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Validus Entities.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Validus Entities, by the Receiver, shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Validus Entities, by the Receiver, and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein or in the Receivership Order, the Validus Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Validus Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Validus Entities, by the Receiver, shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Validus Entities, by the Receiver, to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. THIS COURT ORDERS that the Validus Entities, by the Receiver, shall provide each of the relevant landlords with notice of the Validus Entities’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Validus Entities’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Validus Entities, by the Receiver, or by further Order of this Court upon application by the Validus Entities, by the Receiver, on at least two (2) days notice to such landlord and any such secured creditors. If the Validus Entities, by the Receiver, disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Validus Entities’ claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Receiver, on behalf of the Validus Entities, and the Monitor 24 hours’ prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Validus Entities in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE VALIDUS ENTITIES OR THE PROPERTY

14. THIS COURT ORDERS that until and including September 8, 2023, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process, which for greater certainty shall not include the Receivership Order, in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Validus Entities or the Monitor, or affecting the Business or the Property, except with the written consent of the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Validus Entities or their employees or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Validus Entities or the Monitor, or affecting the Business or the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Validus Entities to carry on any business which the Validus Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Validus Entities, except with the written consent of the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Validus Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, construction management service, project management services, permit and

planning management services, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Validus Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Validus Entities, and, subject to the Receivership Order, that the Validus Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Validus Entities, by the Receiver, in accordance with normal payment practices of the Validus Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Validus Entities, by the Receiver, and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Validus Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPOINTMENT OF MONITOR

19. THIS COURT ORDERS that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Validus Entities with the powers and obligations set out in the CCAA or set forth herein, and the Validus Entities and their officers and directors, if any, and employees shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

20. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Validus Entities' receipts and disbursements;

- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Validus Entities, to the extent that is necessary to adequately assess the Validus Entities' business and financial affairs or to perform their duties arising under this Order;
- (d) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (e) perform such other duties as are required by this Order or by this Court from time to time.

21. THIS COURT ORDERS that KSV, in its capacity as Monitor, shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

22. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

23. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Validus Entities with information of the Validus Entities as may be available in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor determines is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor may agree.

24. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

25. THIS COURT ORDERS that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Validus Entities as part of the costs of these proceedings. The Validus Entities, by the Receiver, are hereby authorized and directed to pay the accounts of the Monitor and counsel for the Monitor on such terms as they may agree.

26. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

SERVICE AND NOTICE

27. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Validus Entities of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

28. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of

documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

29. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Validus Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Validus Entities' creditors or other interested parties at their respective addresses as last shown on the records of the Validus Entities and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

30. THIS COURT ORDERS that the Validus Entities, by the Receiver, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Validus Entities' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100-2-175 (SOR/DORS).

GENERAL

31. THIS COURT ORDERS that the Validus Entities, by the Receiver, or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Validus Entities, the Business or the Property.

33. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Validus Entities, by the Receiver, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Validus Entities, by the Receiver, and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Validus Entities, by the Receiver, and the Monitor and their respective agents in carrying out the terms of this Order.

34. THIS COURT ORDERS that each of the Validus Entities, by the Receiver, and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

35. THIS COURT ORDERS that any interested party (including the Validus Entities, by the Receiver, and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

36. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order, without any need for entry and/or filing.

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

INITIAL ORDER

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Lawyers for the Applicants, each by the Receiver

TAB 4

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEEKDAY, THE #
)	
JUSTICE)	DAY OF MONTH, 20YR

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 ~~[APPLICANT'S NAME]~~ (the
"Applicant") 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.

INITIAL ORDER

THIS APPLICATION, made by ~~the Applicant~~ Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc. (each, a "**Company**" and collectively, the "**Companies**"), each by their court appointed receiver and manager, KSV Restructuring Inc. ("KSV" and in such capacity, the "Receiver"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an Initial Order, was heard this day ~~at 330 University Avenue, Toronto, Ontario~~ via videoconference.

ON READING the ~~affidavit of [NAME] sworn [DATE]~~ First Report of KSV as receiver and manager of the Exhibits thereto Companies and Kingston Cogen Limited Partnership ("Kingston LP and together with the Companies, the "Validus Entities") and the Report of KSV as proposed Monitor dated [DATE], and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel ~~for~~ to the Receiver, Macquarie Equipment Finance Limited, [NAMES], ~~no one appearing for [NAME] although duly served as appears from the affidavit of service of~~ may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2)

[NAME] sworn [DATE] and on reading the consent of ~~[MONITOR'S NAME]~~ KSV to act as the Monitor of the Validus Entities,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated² so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that ~~the Applicant~~ each Company is a company to which the CCAA applies. Although not an Applicant, Kingston LP shall have the benefits of the protections and authorizations provided by this Order.

RECEIVERSHIP ORDER

3. THIS COURT ORDERS that nothing in this Order shall operate to interfere, stay or limit the provisions of the Order of this Court made on August 10, 2023 (the "Receivership Order"), pursuant to which KSV was appointed receiver and manager of the Property (defined below) or the powers given to the Receiver pursuant to the Receivership Order including, for greater certainty, (a) organizational control and executory authority in respect of the Validus Entities and the Business (as defined below); (b) the ability of the Receiver to borrow funds pursuant to paragraphs 23-26 of the Receivership Order including to fund the administrative costs of this proceeding; and (c) the granting and enforceability of the Receiver's Charge and the Receiver's Borrowing Charge (as defined below in the Receivership Order).

~~may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

~~² If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

PLAN OF ARRANGEMENT

4. ~~3.~~ THIS COURT ORDERS that the ~~Applicant~~ Validus Entities, by the Receiver, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

5. ~~4.~~ THIS COURT ORDERS that ~~the Applicant,~~ subject to paragraph 3 above, the Validus Entities shall remain in possession and control of ~~its~~ their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to paragraph 3 above, and further Order of this Court, the ~~Applicant~~ Validus Entities shall continue to carry on business in a manner consistent with the preservation of ~~its~~ their business (the "Business") and Property. The ~~Applicant is~~ Validus Entities, by the Receiver, are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

~~5. — [THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system³ currently in place as described in the Affidavit of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation~~

³ ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross border and inter company transfers of cash.~~

~~applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]~~

6. THIS COURT ORDERS that the ~~Applicant~~Validus Entities, by the Receiver, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the ~~Applicant~~Validus Entities in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the ~~Applicant~~Validus Entities, by the Receiver, shall be entitled but not required to pay all reasonable expenses incurred by the ~~Applicant~~Validus Entities, by the Receiver, in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the ~~Applicant~~Validus Entities or the Receiver following the date of this Order.

8. THIS COURT ORDERS that the ~~Applicant~~Validus Entities, by the Receiver, shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be

deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant Validus Entities in connection with the sale of goods and services by the Applicant Validus Entities, but only where such Sales Taxes are accrued or collected after the date of ~~this~~ the Receivership Order, or where such Sales Taxes were accrued or collected prior to the date of ~~this~~ the Receivership Order but not required to be remitted until on or after the date of ~~this~~ the Receivership Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant Validus Entities.

9. THIS COURT ORDERS that until a real property lease is disclaimed ~~for-resiliated~~⁴ in accordance with the CCAA, the Applicant Validus Entities, by the Receiver, shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant Validus Entities, by the Receiver, and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

⁴~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

10. THIS COURT ORDERS that, except as specifically permitted herein or in the Receivership Order, the ~~Applicant is~~ Validus Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~ Validus Entities to any of ~~its~~ their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of ~~its~~ their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the ~~Applicant~~ Validus Entities, by the Receiver, shall, subject to such requirements as are imposed by the CCAA ~~and such covenants as may be contained in the Definitive Documents (as hereinafter defined)~~, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of ~~its~~ their business or operations, ~~and to dispose of redundant or non-material assets not exceeding \$~~250,000~~ in any one transaction or \$~~1,000,000~~ in the aggregate~~⁵;
- (b) ~~terminate the employment of such of its~~ employees or temporarily lay off such of their employees as it deems appropriate~~;~~ and
- (c) pursue all avenues of refinancing of ~~its~~ their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the ~~Applicant~~ Validus Entities, by the Receiver, to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the ~~Applicant~~ Validus Entities, by the Receiver, shall provide each of the relevant landlords with notice of the ~~Applicant~~ Validus Entities's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the

⁵ ~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant Validus Entities's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant Validus Entities, by the Receiver, or by further Order of this Court upon application by the Applicant Validus Entities, by the Receiver, on at least two (2) days notice to such landlord and any such secured creditors. If the ~~Applicant disclaims or resiliates~~ Validus Entities, by the Receiver, disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~for resiliation~~ of the lease shall be without prejudice to the Applicant's Validus Entities' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer ~~for resiliation~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~for resiliation~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant Receiver, on behalf of the Validus Entities, and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~for resiliation~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant Validus Entities in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT VALIDUS ENTITIES OR THE PROPERTY

14. THIS COURT ORDERS that until and including ~~[DATE — MAX. 30 DAYS]~~ September 8, 2023, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process, which for greater certainty shall not include the Receivership Order, in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant Validus Entities or the Monitor, or affecting the Business or the Property, except with the written consent of ~~the Applicant and~~ the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the

~~Applicant~~ Validus Entities or their employees or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the ~~Applicant~~ Validus Entities or the Monitor, or affecting the Business or the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of ~~the Applicant and~~ the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the ~~Applicant~~ Validus Entities to carry on any business which the ~~Applicant is~~ Validus Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the ~~Applicant~~ Validus Entities, except with the written consent of ~~the Applicant and~~ the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the ~~Applicant~~ Validus Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, construction management service, project management services, permit and planning management services, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the ~~Applicant~~ Validus Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the ~~Applicant, and~~ Validus Entities, and, subject to the Receivership Order, that the ~~Applicant~~ Validus Entities shall be entitled to the continued use of

~~its~~their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the ~~Applicant~~Validus Entities, by the Receiver, in accordance with normal payment practices of the ~~Applicant~~Validus Entities or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~Validus Entities, by the Receiver, and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the ~~Applicant~~Validus Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

~~**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**~~

~~19. — THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.~~

~~**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**~~

⁶ This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

~~20.— THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.~~

~~21.— THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")⁸ on the Property, which charge shall not exceed an aggregate amount of \$●, as security for the indemnity provided in paragraph [20] of this Order. The Directors' Charge shall have the priority set out in paragraphs [38] and [40] herein.~~

~~22.— THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.~~

APPOINTMENT OF MONITOR

~~19. 23.— THIS COURT ORDERS that [MONITOR'S NAME]KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ApplicantValidus Entities with the powers and obligations set out in the CCAA or set forth herein and that the Applicant, and its shareholders, the Validus Entities and their officers, and directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order if any, and employees shall co-operate fully with the Monitor~~

⁷The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

⁸Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

20. ~~24.~~ THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant's~~ Validus Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- ~~(c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;~~
- ~~(d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;~~
- ~~(e) advise the Applicant in its development of the Plan and any amendments to the Plan;~~
- ~~(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;~~
- (c) ~~(g)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~ Validus Entities, to the extent that is necessary to adequately assess the ~~Applicant's~~ Validus Entities' business and financial affairs or to perform ~~its~~ their duties arising under this Order;

(d) ~~(h)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(e) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

21. ~~25.~~ THIS COURT ORDERS that ~~the~~ KSV, in its capacity as Monitor, shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

22. ~~26.~~ THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

23. ~~27.~~ THIS COURT ORDERS that that the Monitor shall provide any creditor of the ~~Applicant and the DIP Lender~~ Validus Entities with information ~~provided by~~ of the ~~Applicant~~ Validus Entities as may be available in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor ~~has been advised by the~~

~~Applicant~~determines is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor ~~and the Applicant~~ may agree.

24. ~~28.~~ THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

25. ~~29.~~ THIS COURT ORDERS that the Monitor, and counsel to the Monitor ~~and counsel to the Applicant~~ shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the ~~Applicant~~Validus Entities as part of the costs of these proceedings. The ~~Applicant is~~Validus Entities, by the Receiver, are hereby authorized and directed to pay the accounts of the Monitor, and counsel for the Monitor ~~and counsel for the Applicant~~ on a [TIME INTERVAL] basis ~~and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$●[, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time~~such terms as they may agree.

26. ~~30.~~ THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

~~31. — THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$●, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs [38] and [40] hereof.~~

DIP FINANCING

~~32. — THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP LENDER'S NAME] (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$● unless permitted by further Order of this Court.~~

~~33. — THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.~~

~~34. — THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or *as may be reasonably required* by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.~~

~~35. — THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs [38] and [40] hereof.~~

~~36. — THIS COURT ORDERS that, notwithstanding any other provision of this Order:~~

~~(a) — the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;~~

~~(b) — upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ● days notice to the Applicant and the~~

~~Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and~~

~~(e) — the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.~~

~~37. — THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.~~

~~VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER~~

~~38. — THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows⁹:~~

~~First — Administration Charge (to the maximum amount of \$●);~~

~~Second — DIP Lender's Charge; and~~

⁹~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

~~Third—Directors' Charge (to the maximum amount of \$●).~~

~~39.—THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.~~

~~40.—THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.~~

~~41.—THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.~~

~~42.—THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) 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 Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;~~
- (b) ~~none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and~~
- (c) ~~the payments made by the Applicant pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.~~

~~43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.~~

SERVICE AND NOTICE

27. ~~44.~~ THIS COURT ORDERS that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~ [The Globe and Mail](#) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the ~~Applicant~~ [Validus Entities](#) of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

28. ~~45.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of

documents made in accordance with the Protocol (which can be found on the Commercial List website at

<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL

~~@~~ <https://www.ksvadvisory.com/experience/case/validus-power-corp.>

29. ~~46.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the ~~Applicant~~ [Validus Entities](#) and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the ~~Applicant's~~ [Validus Entities'](#) creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~ [Validus Entities](#) and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

30. THIS COURT ORDERS that the Validus Entities, by the Receiver, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Validus Entities' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100-2-175 (SOR/DORS).

GENERAL

31. ~~47.~~ THIS COURT ORDERS that the ~~Applicant~~ [Validus Entities, by the Receiver,](#) or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. ~~48.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as ~~an interim receiver, a receiver, a receiver and manager, or~~ a trustee in bankruptcy of the ~~Applicant~~Validus Entities, the Business or the Property.

33. ~~49.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the ~~Applicant~~Validus Entities, by the Receiver, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Applicant~~Validus Entities, by the Receiver, and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~Validus Entities, by the Receiver, and the Monitor and their respective agents in carrying out the terms of this Order.

34. ~~50.~~ THIS COURT ORDERS that each of the ~~Applicant~~Validus Entities, by the Receiver, and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

35. ~~51.~~ THIS COURT ORDERS that any interested party (including the ~~Applicant~~Validus Entities, by the Receiver, and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

36. ~~52.~~ THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order, without any need for entry and/or filing.

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

Court File No. ■

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.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL DIVISION

Proceeding commenced

INITIAL OF

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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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

APPLICATION RECORD

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