



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.

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 2:00 p.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 SISP 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 29, 2023

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Receiver

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Proceeding commenced at TORONTO

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