

**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.

**AIDE MEMOIRE OF THE MONITOR  
returnable October 23, 2023**

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Lawyers for the Monitor

TO: **THE SERVICE LIST**

## A. OVERVIEW

1 The sole purpose of the October 23, 2023 hearing is to set return date and litigation timetable for the Monitor's SISP Motion (defined below). The Monitor asks that the court book the SISP Motion for 3 hours on November 1, 2023 and endorse the following timetable:

- (a) Motion Record: served **October 19, 2023**
- (b) Moving party factum: no later than 5pm ET on **October 23, 2023**
- (c) Deadline for Responding Materials (Record and Factum): no later than 5pm ET on **October 25, 2023**
- (d) Deadline for Reply Materials of Monitor and Responding Materials (Record and factum) of Stalking Horse Bidders: no later than 5PM ET on Monday **October 30, 2023**
- (e) Return of the SISP Motion: **November 1, 2023**

## B. BACKGROUND

2 From the outset, the stated purpose of both proceedings has been to conduct a sale and investment solicitation process ("**SISP**") for the Property. The Monitor has worked with Macquarie Equipment Finance Ltd. ("**Macquarie**"), the Debtors' senior secured lender, and Macquarie's assignee, Far North Power Corp., ("**Far North**" and together with Macquarie, the "**Stalking Horse Bidders**"), a company controlled by Hut 8 Mining Corp., to negotiate and settle the stalking horse offer (the "**Stalking Horse Offer**"), along with a SISP. The Stalking Horse Offer is structured as a credit bid of the secured debt held by Macquarie, which is calculated to be approximately \$57.2 million as of September 22, 2023 (the "**Macquarie Claim Amount**").

3 On October 19, 2023, the Monitor served a motion (the "**SISP Motion**") seeking approval of, among other things, the proposed SISP and acceptance of the Stalking Horse Offer for purposes of the SISP. In its materials, the Monitor has addressed the known concerns of the Validus Entities and/or Mr. Shortt based on his prior affidavit.

### **C. CORRESPONDENCE RE SCHEDULING**

4 On October 18, 2023, the Monitor provided Minden Gross with advance copies of the proposed SISP, Stalking Horse Offer and the relevant excerpt of the Monitor's report summarizing its analysis of the Macquarie claim. The Monitor has also corresponded with Minden Gross on scheduling matters throughout. The Monitor originally planned to schedule the motion for October 26, 2023. After a request from Minden Gross to delay the motion, the Monitor sought a new date and was advised that November 1, 2023 is available before Justice Osborne. Minden Gross confirmed that November 1, 2023 was acceptable. On October 20, 2023, the Monitor sent its proposed timetable to Minden Gross to try and reach agreement on a schedule. As of the date of this aide memoire, Minden Gross has not responded to the Monitor's proposed timetable, but instead served its aide memoir for this scheduling matter on October 20, 2023.

### **D. OCTOBER 23 SCHEDULING HEARING**

5 The Monitor is cognizant of the amount of time that has passed since it first reported that it was negotiating the proposed Stalking Horse Offer with the Stalking Horse Bidders. The delay has been due to a number of factors, including the lack of diligence that was available to the Stalking Horse Bidders given the state of the Validus Entities' books and records, complexities related to the credit bid nature of the Stalking Horse Offer and the Monitor's analysis of concerns that had been raised by Minden Gross, which the Monitor has addressed in its Report.

6 The Monitor believes it is imperative that the SISP be commenced imminently to preserve jobs and the value of the business. The Stalking Horse Offer provides stability to the business including for key employees who are integral to the business remaining compliant with the regulatory framework. As set out in the Report, if employees cannot be retained, the operations and value of the business could be materially impacted. Employee retention is a considerable concern for the Monitor and the Monitor has previously reported on concerns expressed by employees as well as issues surrounding employee morale.

7 The Monitor agrees with Minden Gross that the SISP Motion must fully address all of the issues that are relevant to the conduct of the SISP. This includes the calculation of the Macquarie Claim Amount, given that the Macquarie Claim Amount is proposed to set the base price for other Qualified Bids in the SISP. However, other concerns, such as the tax treatment under the Stalking Horse Offer, need not be argued at the SISP Motion. As clearly stated in the SISP Motion, the Monitor is **not** requesting approval of the Stalking Horse Offer at this time and, as such, argument on the tax issue(s) is premature and is rightly addressed at a subsequent approval hearing. Again, this position is reflected in the Monitor's report.

8 As set out above, based on correspondence with Minden Gross, the Monitor understood that November 1, 2023 was an acceptable date and the only issue was the timetable for delivery of materials. However, the Respondent has still not responded to the Monitor's proposed timetable. In the Monitor's view, the issue of the Macquarie Claim Amount is a matter of contractual interpretation that can be properly determined on the Monitor's proposed timeline. The Monitor respectfully requests the Court set down the SISP Motion for 3 hours on November 1, 2023 and endorse the proposed timetable.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 21<sup>st</sup> day of October, 2023.

  
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Court File No.: CV-23-00705215-00CL

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.

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Proceeding commenced at Toronto

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