

**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
INVOLVING VALIDUS POWER CORP. and 1000745924 ONTARIO INC.

**MOTION RECORD
returnable February 28, 2024
(Stay Extension and Other Relief)**

February 26, 2024

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7
Fax: 416.216.3930

Jennifer Stam, LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Evan Cobb, LSO#: 55787N
Tel: 416.216.1929
evan.cobb@nortonrosefulbright.com

Lawyers for the Monitor

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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TAB 1

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

**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
INVOLVING VALIDUS POWER CORP. and 1000745924 ONTARIO INC.

NOTICE OF MOTION

KSV Restructuring Inc., in its capacity as monitor (the “**Monitor**”) of Validus Power Corp. and 1000745924 Ontario Inc., will make a motion to a Judge of the Superior Court of Justice (Commercial List), on Wednesday, February 28, 2024 at 11:00 a.m. or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario. Please advise if you intend to join the motion by emailing Katie Parent at katie.parent@nortonrosefulbright.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER, among other things:

- 1 If necessary, abridging the time for service and filing of this notice of motion and motion record;
- 2 Extending the Stay Period (as defined below) up to and including to April 15, 2024;
- 3 Directing the Land Registry Offices for the Land Titles Divisions of Cochrane (No. 6), Lennox (No. 29) and Nipissing (No. 36) to delete and expunge from title to the applicable Property (as defined in the Fifth Report) certain encumbrances pertaining to the applicable Property;

- 4 Declaring that the Priority Payments Indemnity Charge (as defined below) has been terminated, released and discharged; and
- 5 Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1 On August 10, 2023, the Court granted an Order (the “**Receivership Order**”) appointing KSV Restructuring Inc. (“**KSV**”) as the receiver and manager (in such capacity the “**Receiver**”) of the properties, assets and undertakings (the “**Property**”) of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen GP Inc. (collectively, the “**Companies**”), along with Kingston Cogen Limited Partnership (“**Kingston LP**”, and together with the Companies, the “**Validus Entities**”);

2 On August 29, 2023, upon application by the Companies, by the Receiver, the Court granted an Initial Order in these proceedings (the “**Initial Order**”) that, among other things, appointed KSV as the Monitor and extended the stay of proceedings to Kingston LP;

3 On September 8, 2023, the stay of proceedings in favour of the Validus Entities was extended to December 1, 2023;

4 On November 2, 2023, the Court further extended the stay of proceedings in favour of the Validus Entities to December 31, 2023 (the “**Stay Period**”);

Extension of Stay Period

5 On January 4, 2024, the Court approved, among other things:

- (a) a reverse approval and vesting order (“**RVO**”) approving a sale transaction (the “**Transaction**”) in respect of certain shares and assets of the Validus Entities to Macquarie Equipment Finance Ltd. (“**Macquarie**” and Far North Power Corp. (“**Far North**”));
- (b) a further extension of the Stay Period to February 29, 2024 to allow the Monitor to close the Transaction and to allow the Monitor to complete additional residual matters in these proceedings; and
- (c) the amendment of the style of cause in these CCAA proceedings, to delete and replace all named applicants, except for Validus Power Corp., and add as an additional applicant, 1000745924 Ontario Inc. (together with Validus Power Corp., the “**Remaining Entities**”) These amendments were to only become effective upon the closing of the Transaction;

6 The Transaction closed February 15, 2024;

7 A further extension of the Stay Period is required to complete certain residual matters in these proceedings including the collection of deposits and cash collateral and other post-closing matters in respect of the Transaction;

8 In discharging its duties pursuant to the Receivership Order and the Initial Order, the Receiver and the Monitor, respectively on behalf of the Validus Entities and the Remaining Entities, as applicable, has acted and continues to act in good faith and with due diligence;

9 The cash on hand in the Monitor’s trust account (approximately \$1.2 million) is projected to be sufficient to fund the costs of these proceedings through the proposed stay extension;

Priority Payments Indemnity Charge

10 Pursuant to the RVO, the Court also granted a charge (the “**Priority Payments Indemnity Charge**”) on certain interests as security in respect of the Priority Payments Indemnity (as defined in the RVO);

11 The RVO provides for the automatic termination of the Priority Payments Indemnity Charge upon the completion of certain terms, which the Monitor has completed;

12 Far North and Macquarie have requested that relief be sought from the Court declaring that the Priority Payments Indemnity Charge has been terminated, released and discharged, and shall no longer constitute a charge on the Property and that the Priority Payments Indemnity Charge no longer encumbers those assets;

Vesting Receivership Order from Title

13 Upon the granting of the Receivership Order on August 10, 2023, KSV, in its capacity as the Receiver of the Property of the Validus Entities, registered on title a copy of the Receivership Order;

14 As part of the Transaction and the RVO, on closing the Receiver’s Charge and Receiver’s Borrowing Charge (as both terms are defined in the Receivership Order and collectively referred to as the “**Charges**”) were released off of title of the Property of the Purchased Entities (as defined in the RVO) and the Purchased Entities were removed from the receivership proceedings and these CCAA proceedings (i.e., because Far North acquired all of the issued and outstanding shares and units, as applicable, of the Purchased Entities through the Transaction);

15 The instruments relating to the registration of the Receivership Order were inadvertently omitted from the RVO as instruments to be discharged by the Land Registry Office;

16 Registrations have been made to attempt to effect such discharges; however, out of an abundance of caution, and to avoid the potential need to bring another motion for this relief, the Monitor is requesting an order directing those encumbrances to be discharged;

Other

17 The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

18 Rules 1.04 and 37 of the Rules of Civil Procedure; and

19 Such further and other grounds as counsel may advise and this Honourable Court may deem just;

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1 The Fifth Report of the Monitor dated February 26, 2024; and

2 Such further and other evidence as counsel may advise and this Court may permit.

February 23, 2024

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7
Fax: 416.216.3930

Jennifer Stam, LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Evan Cobb, LSO#: 55787N
Tel: 416.216.1929
evan.cobb@nortonrosefulbright.com

Lawyers for the Monitor

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING
VALIDUS POWER CORP. and 1000745924 ONTARIO INC.

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

Proceeding commenced at Toronto

NOTICE OF MOTION

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam, LSO#: 46735J

Tel: 416.202.6707

jennifer.stam@nortonrosefulbright.com

Evan Cobb, LSO#: 55787N

Tel: 416.216.1929

evan.cobb@nortonrosefulbright.com

Lawyers for the Monitor

TAB 2



**Fifth Report to Court of
KSV Restructuring Inc. as
Monitor of
Validus Power Corp. and
1000745924 Ontario Inc.**

February 26, 2024

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COURT FILE NO.: CV-23-00705215-00CL

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. AND
1000745924 ONTARIO INC.

FIFTH REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

FEBRUARY 26, 2024

1.0 Introduction

1. Pursuant to an application filed by Macquarie Equipment Finance Limited (“Macquarie”) to appoint KSV Restructuring Inc. (“KSV”) as receiver and manager of the Property (as defined below), 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 as interim receiver (the “Interim Receiver”) under section 47.1 of the *Bankruptcy and Insolvency Act* (Canada) (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 (collectively, the “Property”) until the earlier of:
 - a) the taking possession of the Property by a receiver, within the meaning of subsection 243 of the BIA; and
 - b) August 10, 2023.
2. On August 10, 2023, the Court issued an order (the “Receivership Order”) appointing KSV as receiver and manager of the Property (the “Receiver”). A copy of the Receivership Order is attached as Appendix “A”. On August 18, 2023, the Honourable Justice Osborne issued an endorsement in connection with the Receivership Order, a copy of which is attached as Appendix “B”.

3. The principal purpose of the receivership proceedings was to create a stabilized environment to enable the Receiver to take possession and control of the Property, including replacing the Validus Entities' executive management team, so that the business of the Validus Entities could continue to operate in the normal course, while steps were being taken by the Receiver and Macquarie to prepare for a sale and investment solicitation process (the "SISP"). In that regard, Macquarie's application materials also indicated that it intended to submit an offer to serve as a stalking horse bid in a SISP and that a condition of that bid would be that the SISP and resulting transaction be implemented within proceedings under the *Companies' Creditors Arrangement Act* (Canada) ("CCAA").
4. On August 11, 2023, Hut 8 Mining Corp. (now known as Hut 8 Corp., "Hut 8"),¹ a public company listed on the Nasdaq and Toronto Stock Exchange, announced that it had entered into a transaction support agreement with Macquarie to potentially acquire certain assets of the Validus Entities through a stalking horse bid in the SISP that was intended to be submitted to the Receiver.
5. On August 29, 2023, the Receiver brought a motion seeking authority to bring an application to have the Companies granted protection under the CCAA, and, if granted such authority, a concurrent application to have the Companies granted protection under the CCAA. The Receiver also sought to extend the stay of proceedings in the CCAA proceedings to Kingston LP. The Receiver's rationale for seeking CCAA protection for the Validus Entities was set out in its first report to Court dated August 23, 2023, which was also the pre-filing report of KSV as proposed monitor in the CCAA proceedings (the "Pre-Filing Report"). A copy of the Pre-Filing Report is provided in Appendix "C", without attachments.
6. On August 29, 2023, the Court granted an initial order under the CCAA in respect of the Validus Entities (the "Initial Order"). Copies of the Initial Order and the endorsement of Mr. Justice Osborne dated August 29, 2023 are provided in Appendices "D" and "E", respectively.
7. Prior to the start of the SISP, a stalking horse offer was submitted by Macquarie and Far North Power Corp. ("Far North"), an entity incorporated by Hut 8 (jointly, Macquarie and Far North are defined as the "Purchasers").
8. The transaction in the stalking horse offer (the "Transaction") was documented in, *inter alia*, an offer letter dated October 16, 2023 from the Purchasers (the "Offer Letter"), a transaction agreement between the Validus Entities, by the Monitor, and the Purchasers (as amended and restated, the "Transaction Agreement"), a document setting out the terms and conditions of the Offer Letter, including with respect to the transaction contemplated by the Transaction Agreement (as amended and restated, the "Terms and Conditions") (collectively, the Offer Letter, Transaction Agreement and Terms and Conditions are referred to as the "Transaction Documents").

¹ On December 1, 2023, Hut 8 issued a press release announcing it had merged with US Bitcoin Corp. The merged entity continues business as "Hut 8 Corp.".

9. The Monitor carried out the SISP in accordance with a Court Order made on November 1, 2023. No other Qualified Bids were received prior to the Bid Deadline (as both terms are defined in the SISP) and the Purchasers' offer was declared the Successful Bid (as defined in the SISP).
10. On January 4, 2024, the Court approved the Transaction and granted a reverse vesting order ("RVO"). A copy of the RVO is provided in Appendix "F". The RVO, among other things:
 - a) added 1000745924 Ontario Inc. ("ResidualCo") as a debtor company in these CCAA proceedings and the receivership proceedings;
 - b) effective immediately prior to the Effective Time, approved the transfer to and vesting in ResidualCo of the Validus Entities' right, title and interest in and to, and liabilities and obligations under, the Excluded Assets, the Excluded Contracts and the Excluded Liabilities; and
 - c) granted a charge in favour of the Monitor (the "Priority Payments Indemnity Charge") on the Bay Power Interests, the Kap Power Interests and the IFPC Interests.
11. As summarized in further detail below, the Transaction closed on February 15, 2024 (the "Closing Date").
12. This report (the "Report") is filed by KSV as Monitor. Capitalized terms used in this Report and not otherwise defined herein have the meaning given to them in the Transaction Documents.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide an update on the outstanding matters in these proceedings following completion of the Transaction;
 - b) summarize the cash on deposit, which is projected to be sufficient to fund the costs of these proceedings, and the anticipated further recoveries being pursued by the Monitor;
 - c) set out the basis for the relief being requested in connection with the confirmation of release of the Priority Payments Indemnity Charge and the deletion of certain encumbrances from title to real property conveyed to the Purchasers pursuant to the RVO; and
 - d) provide the Monitor's recommendations for an order, among other things:
 - extending the Stay Period (as defined in the Initial Order) from February 29, 2024 to April 15, 2024;

- declaring that the Priority Payments Indemnity Charge has been terminated, released and discharged; and
- directing the Land Registry Offices for the Land Titles Divisions of Cochrane (No. 6), Lennox (No. 29) and Nipissing (No. 36) to delete and expunge from title to the applicable Property certain encumbrances pertaining to the applicable Property.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions²

1. In preparing this Report, KSV has relied upon unaudited financial information provided by the Validus Entities' employees and consultants³, the books and records of the Validus Entities⁴ and discussions with representatives of the Validus Entities, Macquarie and its legal counsel. KSV 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, KSV 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. 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.
3. With the exception of the Court, KSV accepts no responsibility for any reliance placed by any third party on the Validus Entities' financial information presented herein.

2.0 Background

1. The Validus Entities are a group of privately-held companies that owned and operated power generation plants and sell capacity and power to the Independent Electricity System Operator ("IESO") as a participant in its "capacity auction" market. The Property is principally comprised of four power plants in Ontario located in North Bay, Kapuskasing, Iroquois Falls and Kingston. As at the Closing Date, the plants in Kingston and Iroquois Falls were operational; these plants were on standby to supply power to the IESO. The Kapuskasing and North Bay plants were being maintained and secured but were not otherwise operational over the course of these proceedings.

² In this section, references to KSV refer to its capacity as Receiver, Monitor and in its personal capacity.

³ Certain individuals having executive titles were retained pursuant to consulting agreements.

⁴ As discussed in the Affidavit of Joshua Stevens of Macquarie dated July 31, 2023, the Validus Entities' books and records were not kept current and otherwise appear to be significantly deficient.

2. 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 at the plants. Mr. Forget is a former senior employee of the Validus Entities. The Receiver also engaged Ryan Chua, the former general counsel of the Validus Entities, to assist in certain matters related to the SISP. As set out in the Monitor's fourth report dated December 22, 2023 (the "Fourth Report"), Mr. Chua served as the first director of ResidualCo.
3. At the commencement of the receivership, the Receiver terminated substantially all Validus Entities' employees whose work was not involved in plant operations and who had or may have had working arrangements with the Validus Entities.
4. A summary of the Validus Entities' creditors and other stakeholders was summarized in the Fourth Report and is not repeated herein. A copy of the Fourth Report is provided in Appendix "G", without attachments.
5. The receivership application materials provide additional background information about the Validus Entities, their financial position, the Validus Entities' defaults under their secured lease arrangements with Macquarie and the basis for Macquarie's application for the Receivership Order. Court materials filed in these proceedings, including the prior reports filed by KSV as Interim Receiver, Receiver and Proposed Monitor, are available on KSV's website at: <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

3.0 The Transaction

1. As noted above, the Transaction closed on February 15, 2024. A detailed description of the Transaction was provided in the Fourth Report and is not repeated herein.
2. On the Closing Date, Far North paid the cash portion of the purchase price comprised of the following:

Description	Amount (\$)
Priority Payments Closing Amount	1,666,399
Administrative Expense Closing Amount	750,000
Total	2,416,399

3. As a result of the closing of the Transaction, *inter alia*, the shares (and in the case of Kingston LP, the limited partnership units) of the Purchased Entities (being IFPC, Kingston LP, Kingston GP, Bay, Kap and Hosting) vested in Far North. Accordingly, in accordance with the RVO, KSV has been discharged as Monitor and Receiver of the Purchased Entities.

4.0 Cash Position

1. The Receivership Order authorized the Receiver to borrow monies up to the principal amount of \$1 million, which borrowings (plus interest and fees) were secured by a Receiver's Borrowing Charge, subordinate only to the Receiver's Charge. Both of these Court-ordered charges were recognized and preserved in these CCAA proceedings pursuant to paragraph 3 of the Initial Order.

2. On November 1, 2023, the Court authorized an increase in the Receiver's Borrowings Charge from \$1 million to \$1.5 million. As at the date of this Report, Macquarie has advanced \$1.5 million to the Receiver to fund these proceedings. On November 17, 2023, the Receiver issued a Receiver's Certificate evidencing this advance. The Receiver's Certificate was assigned from Macquarie to Far North as part of the Transaction. The Receiver's Borrowings were not credited as part of the Transaction and, as result, remain outstanding and owing to Far North.
3. As of the date of this Report, the bank balance in the Receiver's account was approximately \$1.2 million, which includes \$622,000 that was transferred on February 22, 2024 to the Receiver by TransCanada PipeLines Limited ("TCE"). TCE held this cash as collateral in connection with contracts between it and VPC, which contract has been assigned (to be effective on April 1, 2024) pursuant to the Transaction.
4. The Monitor is of the view that the cash on deposit is projected to be sufficient to fund the costs of these proceedings during the proposed extension period. A cash flow projection has not been prepared as all or substantially all of the remaining costs to be funded are projected to be professional fees or repayment of amounts owing under the Receiver's Certificate.
5. The Monitor does not expect there will be funds available for distribution to unsecured creditors of VPC and/or ResidualCo.

5.0 Outstanding Matters

1. At this time, the Monitor is focused on completing certain post-closing matters, which include the following:
 - a) pursuing deposits excluded from the Transaction totalling approximately \$1.3 million held by TD Bank and Libro Credit Union as security for certain letters of credit in favour of IESO and Enbridge Gas Inc. which have been replaced by Far North, in accordance with the Transaction Documents;
 - b) dealing with Far North in respect of a temporary assignment from VPC of all of VPC's right, title and interest in and to certain firm transportation capacity on the TCE pipeline system prior to implementing a permanent assignment on or around April 1, 2024; and
 - c) addressing any sundry post-closing matters in accordance with the Transaction Documents, including in connection with the filing of outstanding HST returns.
2. Once these matters are addressed, the Monitor intends to repay: (a) the amount owing to Far North under the Receiver's Certificate as a result of Macquarie's assignment of same to Far North upon completion of the Transaction, which amount is secured by the Receiver's Borrowing Charge (\$1.5 million plus interest); and (b) to Far North any surplus remaining from the Administrative Expense Closing Amount (\$750,000) paid by Far North on the Closing Date.
3. The Monitor believes it should be able to address the above issues prior to April 15, 2024, following which the Monitor intends to bring a motion to, among other things, terminate the CCAA and receivership proceedings and seek Court approval to file assignments in bankruptcy for VPC and ResidualCo.

6.0 Extension of the Stay of Proceedings

1. The Monitor recommends that the Court issue an order granting an extension of the Stay Period from February 29, 2024 to April 15, 2024 for the following reasons:
 - a) as the Monitor is providing the overall supervision during these proceedings and given that VPC does not have any executive level management, it is the Monitor's view that the good faith and due diligence standard should be based on its conduct during these proceedings. The Monitor (and Receiver) are of the view that they have advanced these proceedings in good faith and with due diligence and that they are causing VPC and ResidualCo to carry out their obligations in accordance with the Transaction Documents and orders issued in these proceedings;
 - b) an extension will provide sufficient time for the Monitor to complete the post-closing matters set out above;
 - c) the cash on hand is projected to be sufficient to fund the ongoing costs of these proceedings; and
 - d) no parties will be prejudiced as a result of the proposed extension.

7.0 Priority Payments Indemnity Charge

1. As set out in prior reports to Court, the Monitor facilitated an audit conducted by Canada Revenue Agency ("CRA") on VPC's payroll and other accounts. As a result of that audit, on December 21, 2023, CRA submitted its deemed trust claim against VPC in the amount of \$1,666,399 for unpaid source deductions. This amount was part of the purchase price consideration paid in cash by Far North on the Closing Date. Shortly following the Closing Date, the Monitor remitted this amount to CRA to discharge VPC's priority obligations.
2. The Transaction Documents originally estimated the liability for such priority obligations to be \$1.5 million, which amount was to be funded on closing but which also provided for an indemnity in favour of the Monitor and Receiver for any liability in respect of the priority payments of VPC that is in excess of the Priority Payments Closing Amount (the "Priority Payments Indemnity"), which indemnity is secured by the Priority Payments Indemnity Charge.
3. In an email dated January 12, 2024, CRA confirmed that the deemed trust claim submitted on December 21, 2023 represented the final payroll amounts claimed by CRA against VPC. The full amount of the priority amount, being \$1,666,399 was funded by Far North on Closing and, as set out above, has been remitted by the Monitor to CRA.
4. Pursuant to paragraph 25 of the RVO, the Priority Payments Indemnity Charge automatically terminates on the later of (i) the payment in satisfaction of all of the Priority Payments of VPC in excess of the Priority Payments Closing Amount, as determined by CRA (if any), or (ii) receipt of confirmation from CRA by the Assignee, on notice to the Monitor, that no Priority Payments of Validus Parent in excess of the Priority Payment Closing Amount are owing.

5. Far North has requested that the Monitor seek a declaration from the Court that the Priority Payments Indemnity has been terminated for purposes of clear confirmation that this charge no longer constitutes an encumbrance on those assets. Accordingly, the Monitor is seeking a declaration that the Priority Payments Indemnity Charge has been terminated, released and discharged as the terms and conditions related to that Priority Payments Indemnity and related Court-ordered charge have been satisfied.

8.0 Land Registry

1. Upon its appointment, the Receiver registered on title to the Validus Entities' real property a copy of the Receivership Order. On closing of the Transaction, the Receiver's Charge and Receiver's Borrowing Charge were released from title of the Property of the Purchased Entities and the Purchased Entities were removed from the receivership proceedings and these CCAA proceedings.
2. The instruments relating to the registration of the Receivership Order were inadvertently omitted from the RVO as instruments to be discharged by the Land Registry Office.
3. Registrations have been made to attempt to effect such discharges; however, out of an abundance of caution, the Monitor is requesting an order directing those encumbrances to be discharged. This relief is consistent with the relief already granted under the RVO.

9.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the relief sought by the Monitor in Section 1.1.1(d) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS MONITOR IN THE CCAA PROCEEDINGS OF
VALIDUS POWER CORP. AND 1000745924 ONTARIO INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”



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.

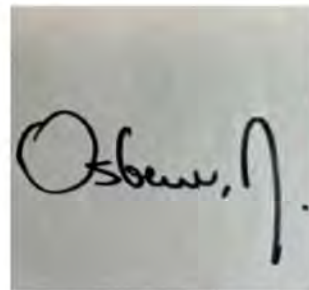
33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.



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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

Scott A. Bomhof (LSO#: 37006F)
Tel: 416.865.7370 | sbomhof@torys.com

Jeremy Opolsky (LSO#: 60813N)
Tel: 416.865.8117 | jopolsky@torys.com

Mike Noel (LSO#: 80130F)
Tel: 416.865.7378 | mnoel@torys.com

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

Lawyers for Macquarie Equipment Finance Limited,
the Applicant

Appendix “B”



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 “C”



**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 SISF.
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 “D”



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) TUESDAY, THE 29th
)
JUSTICE OSBORNE) DAY OF AUGUST, 2023

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

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

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 August 23, 2023, 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, and those other parties present, no one else on the Service List appearing although duly served as appears from the affidavit of service of Katie

Parent sworn August 23, 2023 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.

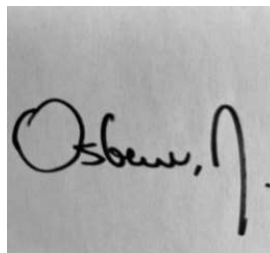
32. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Validus Entities, the Business or the Property.

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.



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT 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

NORTON ROSE FULBRIGHT CANADA LLP

222 Bay Street, Suite 3000
Toronto, ON M5K 1E7
Fax: 416.216.3930

Jennifer Stam LSO#: 46735J

Tel: 416.202.6707

jennifer.stam@nortonrosefulbright.com

Evan Cobb LSO#: 55787N

Tel: 416.216.1929

evan.cobb@nortonrosefulbright.com

Lawyers for the Applicants, each by the Receiver

Appendix “E”



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE
NO.:

CV-23-00703754-00CL

DATE: 29 August 2023

NO. ON LIST: 4

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

BEFORE JUSTICE: **OSBORNE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Jennifer Stam	KSV Restructuring Inc.	jennifer.stam@nortonrosefulbright.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Scott A. Bomhof	Macquarie Equipment Finance Limited	sbomhof@torys.com
Jeremy Opolsky	Macquarie Equipment Finance Limited	jopolsky@torys.com
Ryan Gelbart	Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp, Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc, and Kingston Cogen Limited Partnership	rgelbart@mindengross.com
Catherine Francis	Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp, Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc,	cfrancis@mindengross.com

	and Kingston Cogen Limited Partnership	
Jesse Mighton	Hut 8 Mining Corp.	mightonj@bennettjones.com

For Other:

Name of Person Appearing	Name of Party	Contact Info
Bobby Kofman	KSV Restructuring Inc.	bkofman@ksvadvisory.com
Jordan Wong	KSV Restructuring Inc.	jwong@ksvadvisory.com

ENDORSEMENT OF JUSTICE OSBORNE:

1. This Endorsement should be read together with my Endorsement of the same date released in CV-23-00703754-00CL the receivership proceeding involving the same entities.
2. By order dated August 10, 2023 made in that earlier proceeding, I appointed KSV Restructuring Inc. as Receiver and Manager of 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”). The Companies now bring this Application, by and through the Receiver (the “Receiver” or the “Applicant”).
3. By Endorsement of today’s date also made in that earlier proceeding, I granted an order authorizing a Receiver to commence an application and seek relief pursuant to the CCAA. Immediately upon granting that order, I heard submissions in what is now this proceeding as to whether the relief sought in the form of an initial order and so-called “first date relief” should be granted.
4. For the reasons set out below, I am satisfied that it should be.
5. The Service List has been served with the materials. This matter did not proceed *ex parte*. Of course, this is only the initial return of the Application.
6. The relief sought today is unopposed, and in particular is not opposed by the Companies/Respondents or by the CRA. The Respondents are represented in Court today and the CRA has received the materials and counsel have advised the Applicant of the fact that the CRA is not opposing the relief sought.
7. The Receiver relies on the First Report of the Receiver, which is also the Pre-filing Report of the Proposed Monitor (KSV in each case) dated August 23, 2023, together with Appendices thereto.
8. The Report sets out the basis for the relief sought. Defined terms in this Endorsement have the meaning given to them in the Report and/or my earlier Endorsement made in the receivership proceeding.
9. At the time I granted the receivership order on August 10, 2023, appointing the Receiver in the earlier proceeding, I was of the view that the relief sought in respect of authorizing the Receiver to commence a proceeding pursuant to the CCAA was premature and while I declined to grant that relief then, I was clear that my decision was without prejudice to the ability of the Receiver to seek that relief in the future. My view on August 10 was that affected stakeholders needed more time to absorb what would be a somewhat fundamental step.

10. As contemplated, that relief was sought and granted today in the receivership proceeding. Once authorized, the Receiver immediately commence to this Application. Accordingly, the issue in this Application is whether the relief that the Receiver has been authorized to seek, should in fact be granted.
11. The principal purpose for the CCAA application is to provide a forum for the conduct of a sale and investment solicitation process (“SISP”) in respect of the assets and operations of the Companies.
12. Obviously, a SISP could be conducted within the previously existing receivership. However, for the reasons expressed by the Applicant, fully supported and strongly recommended by the proposed Monitor (KSV, who is already the Receiver), I am satisfied that relief under the CCAA should be granted.
13. The granting of the order sought provides the maximum chance that the business of the Respondents can be preserved as a going concern, in turn maximizing the chances of continuing the employment for some of the existing employees and maximizing the outcome for all stakeholders.
14. The background to, and context for, this Application is in large part set out in my Endorsement of August 10 made in the receivership proceeding. I have not repeated those here, but incorporate them by reference.
15. The Companies own and operate for power plants in Ontario, two of which provide electricity generation capacity to Ontario’s electricity grid, controlled by the Independent Electricity System Operator (“IESO”).
16. Macquarie Equipment Finance Limited brought the receivership application on August 2, 2023 for the appointment of a receiver. It holds security in respect of obligations under a secured lease as described in my endorsement of August 10. The obligations of the Companies have not been performed and they are in default.
17. The defaults include monetary repayment defaults, operating defaults, and covenant defaults including the failure to remit HST and other taxes, maintain insurance, and the failure to maintain books and records.
18. The receivership order was granted to provide stability to the business, which included the replacement of management and the planned implementation of a SISP in an effort to preserve and maximize value for stakeholders.
19. At the time, the Companies submitted that they were making efforts to attempt to secure a refinancing commitment which, if completed, was intended to be in a quantum sufficient to pay out the significant indebtedness owed to Macquarie, and the tax arrears and other obligations outstanding. That has not occurred.
20. Since that time, the Receiver has not received any response or indication from the Respondents that the previously contemplated Refinancing would be forthcoming imminently. I pause to observe, however, that counsel for the Respondents advised the Court that they intend to participate in the proposed SISP by submitting a bid.
21. The Receiver has, however, received a proposed Offer from a Potential Purchaser which includes both a reverse vesting structure, and a proposed stalking horse bid, both to be effected within a CCAA proceeding.
22. It is the strong view of the Receiver, with no contrary view expressed by any party, that any other potential bids are expected to be structured in the same way, and similarly be proposed to be effected within a CCAA proceeding.
23. This make sense in the circumstances and given the business of the Respondents since they hold numerous permits and licenses that allow them to operate in a highly regulated energy industry. A reverse vesting structure would reduce, among other things, the uncertainty related to the transfer and transferability of those licenses and permits in any commercially reasonable time frame.

24. The Potential Purchaser has indicated that it is not prepared to pay arrears owing to the CRA in respect of HST remittances owing. I observe as noted by counsel that completion of the contemplated transaction under the CCAA will reverse the priority of the HST obligation.
25. The Receiver submits that any other purchaser will likely also require that the HST obligation be reversed with the result that the super priority status of this obligation, absent a CCAA proceeding, is very likely to be an impediment to any going concern transaction in this case.
26. Here, the HST obligations exceed approximately \$6 million. I note, as submitted by counsel for the Respondents, that there are input tax credits. It is not clear as to the extent to which those input tax credits will reduce the arrears owing, and the CRA has not conducted an HST audit. Court approval of any transaction resulting from a sales process is for another day, but it will be a factor, presumably, in such approval, how the HST obligations are treated so as to not separate those from potential benefits achieved by the application of input tax credits.
27. Granting relief pursuant to the CCAA now will permit the 10 day statutory comeback period to run, while the parties continue to negotiate terms with the Potential Purchaser and also finalize the terms of the proposed SISP.
28. I am also satisfied that there is some urgency to this matter given that the business of the Debtors is electrical power, and if there is to be participation in the IESO's capacity auction market, the bid deadline for participation is November 29, 2023. There is much to be done between now and then, with the result that the process should begin as quickly as possible.
29. I am satisfied that the CCAA applies, as the Companies are "debtor companies" or affiliated "debtor companies" where the total claims exceed \$5 million. The claims of Macquarie alone exceed \$55 million.
30. The Companies have assets in Canada and are insolvent in that they are reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring (See *Stelco, Inc. (Re)*).
31. This Court has jurisdiction to extend the CCAA protection to limited partnerships to ensure that the purposes of the CCAA can be achieved where the operation of such partnerships are tied to the operations of the business (See, for example, *Target Canada Co. (Re)*, *Just Energy Corp. (Re)*, and *Bed Bath & Beyond Canada Limited (Re)*).
32. Kingston LP owns one of the four powerplants. It is also subject to the security held by Macquarie. To adequately market the Property, and thereby maximize recovery for stakeholders, I am satisfied that the CCAA protection granted to the Companies should also be granted in respect of Kingston LP.
33. Indeed, the Companies together with Kingston LP are insolvent and already subject to the receivership order. The Receiver has complied with the requirements set out in s. 10(2) of the CCAA and filed a 13 week projected cash flow together with financial statements to the extent they exist.
34. As noted above, no refinancing appears forthcoming from the Companies. The offer from the Potential Purchaser is conditional upon the issuance of a reverse vesting order in the context of a CCAA proceeding. A stay of proceedings will maintain the status quo while the Receiver develops a plan for the benefit of creditors.
35. I am satisfied that creditors will not be prejudiced by the grant of a stay of proceedings under an initial order. They are already aware of the receivership order and that already includes a stay. Service of the materials for this Application was effected six days in advance of the return today, so this Application is already on notice. In short, the stay sought today, for a period not exceeding 10 days, is proportionate and appropriate. It does not seek to stay the receivership order.

36. KSV has already been appointed Receiver and is an appropriate Monitor.
37. For all of these reasons, the relief is granted. I am satisfied that the form of order is appropriate and includes those provisions, and only those provisions, absolutely necessary for the initial 10 day stay period. Of note, no relief is sought or granted in respect of any charges, such as an administration charge, a directors' charge or a DIP charge.
38. Initial order to go in the form signed by me, which is effective immediately and without the necessity of issuing and entering.
39. The **10 day comeback hearing will take place before me on Friday, September 8, 2023 commencing at 8:30 AM**, given scheduling difficulties presented by the statutory Court conference next week. In the circumstances, counsel are not required to be gowned.
40. As stated above, Receiver in its capacity as Applicant intends to seek approval in respect of the proposed SISP. **That motion will proceed on September 19, 2023 commencing at 10 AM and continuing as necessary for 90 minutes.**

O'Shea, J.

Appendix “F”



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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 4th
)
JUSTICE OSBORNE) DAY OF JANUARY, 2024
)

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 INVOLVING VALIDUS POWER CORP., IROQUOIS
FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP.,
VALIDUS HOSTING INC. AND KINGSTON COGEN GP INC.

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**"), in its capacity as monitor (in such capacity, the "**Monitor**") of Validus Power Corp. ("**Validus Parent**"), Iroquois Falls Power Corp. ("**IFPC**"), Bay Power Corp. ("**Bay Power**"), Kap Power Corp. ("**Kap Power**"), Validus Hosting Inc. ("**Validus Hosting**"), Kingston Cogen Limited Partnership ("**Kingston LP**") and Kingston Cogen GP Inc. ("**Kingston GP**", and collectively with each of the foregoing entities, the "**Vendors**"), for an Order, among other things, at the time and in the manner set out herein:

- (a) approving: (i) the acceptance and execution by the Vendors, each by KSV in its capacity as the Monitor, of the Transaction Agreement (as amended and restated, and as may be further amended from time to time, the "**Transaction Agreement**", and the acceptance and execution by the Vendors thereof, each by KSV in its capacity as the Monitor, the "**Vendors' Acceptance**") that was submitted by Macquarie Equipment Finance Ltd. ("**MEFL**") and Far North Power Corp. (the "**Assignee**") along with the offer letter delivered by MEFL and the Assignee to the Monitor on October 16, 2023 (the "**Offer Letter**"); and (ii) the consummation of the transactions contemplated in the Transaction Agreement (collectively, the

“**Transactions**”), including the Implementation Steps, upon the satisfaction of the Offer Conditions (as defined in the terms and conditions set forth in Schedule “B” to the Offer Letter (as amended and restated, and as may be further amended from time to time, the “**Terms and Conditions**”);

- (b) adding 1000745924 Ontario Inc. (“**Residualco**”) as a Debtor Company (as defined in the Initial Order of this Court dated August 29, 2023 (the “**Initial Order**”)) to these CCAA proceedings and as a Debtor (as defined in the Appointment Order of this Court dated August 10, 2023 (the “**Appointment Order**”) issued in the receivership proceedings in Court File No.: CV-23-00703754-00CL (the “**Receivership Proceedings**”)), effective as of the issuance of this Order;
- (c) vesting in and to Residualco, as and to the extent applicable, absolutely and exclusively, all of the right, title and interest of, and all liabilities and obligations of, IFPC, Bay Power, Kap Power, Validus Hosting, Kingston LP and Kingston GP (collectively, the “**Purchased Entities**”) in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities, as applicable;
- (d) discharging the Claims (as defined herein) and Encumbrances (as defined herein) against the Purchased Entities and the Retained Assets (as defined herein);
- (e) authorizing and directing the Vendors, by KSV in its capacity as the Monitor, to issue the IFPC Interests, and vesting all of the right, title and interest in and to the IFPC Interests absolutely and exclusively in and to the Assignee, as nominee and designated assignee of MEFL, free and clear of any Claims and Encumbrances;
- (f) vesting all of Validus Parent’s right, title and interest in and to the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests and the Kingston GP Interests absolutely and exclusively in and to the Assignee, as nominee and designated assignee of MEFL, free and clear of any Claims and Encumbrances;
- (g) vesting all of Validus Parent’s right, title and interest in and to the Purchased Validus Parent Assets absolutely and exclusively in and to the Assignee, free and clear of any Claims and Encumbrances;

5. **THIS COURT ORDERS** that, subject to the occurrence of the Effective Time, the following shall occur and shall be deemed to have occurred in the sequence and at the effective times set out in this paragraph:

- (a) the transactions regarding Pre-Filing Intercompany Claims (as defined in the Implementation Steps) described in sections 3.2, 4.1 and 4.2 of the Implementation Steps shall, and shall be deemed to, be effected at the times set out therein;
- (b) immediately prior to the Effective Time, all of the right, title and interest in and to the Excluded Assets of IFPC, Bay Power, Kap Power, Validus Hosting, Kingston LP and Kingston GP shall vest absolutely and exclusively in Residualco, and, in each case, all applicable Claims and Encumbrances shall continue to attach to such Excluded Assets with the same nature and priority as they had immediately prior to their transfer; provided that, for certainty, the Excluded Assets transferred hereby shall not include the Administrative Expense Closing Amount, which shall be paid to and held by the Monitor in accordance with paragraph 23 hereof;
- (c) immediately prior to the Effective Time, all of the Excluded Contracts and the Excluded Liabilities (which, for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of IFPC, Bay Power, Kap Power, Validus Hosting, Kingston LP and Kingston GP (in each case, other than the liabilities of the Purchased Entities to be retained or assumed by the Purchased Entities at the Effective Time in accordance with the Transaction Agreement (such liabilities of the Purchased Entities, together with those liabilities of Validus Parent to be assumed by the Assignee in accordance with the Transaction Agreement, collectively, the “**Assumed Liabilities**”) shall be transferred to, assumed by and vest absolutely and exclusively in Residualco, and shall no longer be obligations of any of the Purchased Entities, and the Purchased Entities and all of the Purchased Entities’ remaining assets, permits, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate (collectively,

the “**Retained Assets**”) shall be and are hereby forever released and discharged from all of the Excluded Contracts and the Excluded Liabilities, and all related Claims and Encumbrances, other than the permitted encumbrances, easements and restrictive covenants affecting or relating to the Retained Assets or the Purchased Assets listed on Schedule “B” (the “**Permitted Encumbrances**”), shall be expunged and discharged as against the Retained Assets and the Purchased Assets;

- (d) at the Effective Time, concurrently with the acceptance and execution by the Vendors, each by KSV in its capacity as the Monitor, of the Transaction Agreement, each of the following actions described under this paragraph 5(d) and those in paragraphs 5(e) and 5(f) shall occur concurrently: (i) the IFPC Interests shall be issued as fully paid and non-assessable shares; and (ii) all right, title and interest in and to the IFPC Interests and the IFPC Note 2, and all of Validus Parent’s right, title and interest in and to the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests and the Purchased Validus Parent Assets shall vest absolutely and exclusively in the Assignee, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), pledges, assignments, hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, preferential arrangements of any kind or nature whatsoever or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (x) any encumbrances or charges created by the Appointment Order, the SISP Approval Order, or any other Order of this Court; and (y) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Retained Assets or the Purchased Assets (other than the IFPC Note 3) are hereby expunged and discharged as against the Retained Assets and the

Purchased Assets, as applicable (other than the IFPC Note 1 and the IFPC Note 3, which are dealt with in accordance with paragraph 5(e));

- (e) at the Effective Time, concurrently with the acceptance and execution by the Vendors, each by KSV in its capacity as the Monitor, of the Transaction Agreement, each of the following actions described under this paragraph 5(e) and those in paragraphs 5(d) and 5(f) shall occur concurrently: all right, title and interest in and to the IFPC Note 1 and the IFPC Note 3 shall vest absolutely and exclusively in MEFL free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the IFPC Note 1 and the IFPC Note 3 are hereby expunged and discharged as against the IFPC Note 1 and the IFPC Note 3;
- (f) at the Effective Time, concurrently with the acceptance and execution by the Vendors, each by KSV in its capacity as the Monitor, of the Transaction Agreement, each of the following actions described under this paragraph 5(f) and those in paragraphs 5(d) and 5(e) shall occur concurrently: all right, title and interest in and to the Leased Property shall vest absolutely and exclusively in IFPC, free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Leased Property are hereby expunged and discharged as against the Leased Property;
- (g) upon the assignment and issuance of the Purchased Assets to MEFL and/or the Assignee, the Vendors shall be and are hereby forever released and discharged from all liabilities and obligations flowing from, or in respect of, the Participation Agreement Documents including all amounts and obligations owing by the Vendors in connection therewith, and all related Claims and Encumbrances are hereby expunged and discharged including any rights of subrogation of Validus Parent in respect of any of the payment or transfers under the Transaction Agreement;
- (h) immediately following the Effective Time, all equity interests of the Purchased Entities existing prior to the Effective Time (for greater certainty, including the

IFPC Legacy Shares), but excluding the IFPC Interests, the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests, the general partner unit(s) that Kingston GP holds in the capital of Kingston LP (the “**GP Units**”) and the Validus Hosting Interests, as well as all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (as defined herein) and are convertible or exchangeable for any securities of the Purchased Entities, or that require the issuance, sale or transfer by the Purchased Entities of any shares or other securities of the Purchased Entities, or otherwise evidencing a right to acquire the IFPC Interests, the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests, the Validus Hosting Interests and/or the share or unit capital of the Purchased Entities, as applicable, or otherwise relating thereto (but excluding, for greater certainty, the IFPC Interests, the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests, the GP Units, the Validus Hosting Interests, the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3) (collectively, the “**Subject Interests**”), shall be deemed redeemed, terminated and cancelled; and

- (i) the Purchased Entities shall and shall be deemed to cease to be Debtor Companies in these CCAA proceedings and Debtors in the Receivership Proceedings, and the Purchased Entities shall be deemed to be released from the purview of the Appointment Order, the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings and the Receivership Proceedings, save and except for this Order, the provisions of which (as they relate to the Purchased Entities) shall continue to apply in all respects.

6. **THIS COURT ORDERS** that, for greater certainty: (i) each of the steps provided for in paragraphs 5(b) and (c) are deemed to have occurred contemporaneously with each other and immediately prior to the occurrence of the Effective Time; and (ii) each of the steps provided for in paragraphs 5(d), 5(e), and 5(f) are deemed to have occurred contemporaneously with each other and at the Effective Time.

7. **THIS COURT ORDERS** that, at or after the Effective Time, MEFL is hereby authorized to assign to the Assignee, and the Assignee is hereby authorized to assume, all of MEFL's right, title and interest in and to the Receiver's Certificates that the Receiver has, as of the Effective Time, issued pursuant to the Appointment Order; for greater certainty, upon such assignment and assumption, the Assignee shall enjoy the benefit of the Receiver's Borrowings Charge (as defined in the Appointment Order) as security for the payment of the monies borrowed pursuant to such Receiver's Certificates, together with interest, fees and charges thereon, in accordance with the Appointment Order.

8. **THIS COURT ORDERS AND DIRECTS** that upon the registration in the Land Registry Offices for the Land Titles Divisions of Cochrane (No. 6), Lennox (No. 29) and Nipissing (No. 36) (collectively, the "LRO") of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario), together with the Monitor's Certificate, the LRO is hereby directed to delete and expunge from title to the applicable Property (as defined in the Fourth Report) all of the Claims listed in Schedule "C" hereto pertaining to the applicable Property (as defined in the Fourth Report).

9. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with this Court a copy of the Monitor's Certificate forthwith after delivery to MEFL and the Assignee thereof in connection with the Transactions as well as a copy of the final form of the Transaction Agreement and all related schedules.

10. **THIS COURT ORDERS** that the Monitor may rely on written notice from MEFL and/or the Assignee regarding the satisfaction or waiver of conditions to closing under the Transaction Agreement and shall have no liability with respect to delivery of the Monitor's Certificate.

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, from and after the Effective Time, subject to the retention or assumption of the Priority Payments of the Purchased Entities by the Purchased Entities or the Priority Payments of Validus Parent by the Assignee, as the case may be, and the satisfaction of the Administrative Expense Closing Amount in accordance with the Transaction Agreement and paragraph 23 hereof, all Claims and Encumbrances released, expunged and discharged pursuant to paragraph 5 hereof, including as against the Purchased Entities, the Retained Assets and the Purchased Assets, shall

attach to the Excluded Assets with the same nature and priority as they had immediately prior to the Transactions, as if the Transactions had not occurred.

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Vendors, by KSV in its capacity as the Monitor, are authorized, permitted and directed to, at the Effective Time, disclose to MEFL and/or the Assignee all human resources and payroll information in the Vendors' records pertaining to past and current employees of the Vendors. MEFL and the Assignee shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendors prior to the Effective Time.

13. **THIS COURT ORDERS** that, at the Effective Time and without limiting the provisions of paragraph 5 hereof, MEFL, the Assignee and the Purchased Entities shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes or any part thereof (including penalties and interest thereon) of, or that relate to, the Vendors (provided, as it relates to the Purchased Entities, such release shall not: (a) effect a transfer or assignment to Residualco of Taxes where such transfer or assignment of such particular Taxes is prohibited by statute, but MEFL and the Assignee shall still be released therefrom; (b) apply to Taxes in respect of the business and operations conducted by the Purchased Entities concurrent with or after the Effective Time and, for greater certainty, shall not restrict or affect in any manner any right, title and interest of the Purchased Entities in and to any amounts that may become due and payable thereto from any governmental authority on or after the Effective Time as a result of Taxes paid concurrent with or after the Effective Time, notwithstanding that they relate to supplies arising prior to the Effective Time for which payment was made concurrent with or after the Effective Time and not prior thereto; or (c) apply to Taxes expressly assumed as Assumed Liabilities pursuant to the Transaction Agreement), including, without limiting the generality of the foregoing, all Taxes that could be assessed against MEFL, the Assignee or the Purchased Entities (including their affiliates or any predecessor corporations), or for which they could otherwise have joint or several liability, in respect of Taxes of Validus Parent or the Purchased Entities. For greater certainty, nothing in this paragraph shall: (i) release or discharge any Claims or Encumbrances against Residualco with respect to Taxes that are vested in or

15. **THIS COURT ORDERS**, for greater certainty, that: (a) nothing in paragraph 14 hereof shall waive, compromise or discharge any obligations of the Purchased Entities in respect of any Assumed Liabilities, including, for greater certainty, the Priority Payments of the Purchased Entities; (b) the designation of any Claim as an Assumed Liability is without prejudice to the Purchased Entities' and the Assignee's right to dispute the existence, validity or quantum of any such Assumed Liability; and (c) nothing in this Order or the Transaction Agreement shall affect or waive the Purchased Entities' or the Assignee's rights and defences, both legal and equitable, with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Assumed Liability.

16. **THIS COURT ORDERS** that, from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of any Vendor then existing or previously committed by any Vendor, or caused by any Vendor, directly or indirectly, or noncompliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any Continuing Contract or a Permit and License, existing between such Person and any Purchased Entity directly or indirectly from the appointment of the Receiver as receiver in the Receivership Proceedings, or the commencement of these CCAA proceedings, in respect of the Vendors and the implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 14 hereof, and any and all notices of default, notice of non-compliance or similar notice, and demands for payment or any step or proceeding taken or commenced in connection therewith under a Continuing Contract or a Permit and License shall be deemed to have been rescinded and of no further force or effect; provided that, nothing herein shall be deemed to excuse MEFL, the Assignee or the Vendors from performing their obligations under, or be a waiver of defaults by MEFL, the Assignee or the Vendors under, the Transaction Agreement and the related agreements and documents, or affect the validity of the Implementation Steps.

17. **THIS COURT ORDERS** that, from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessment, commenced, taken or proceeded with or that may be commenced,

taken or proceeded with against MEFL, the Assignee or the Purchased Entities relating in any way to or in respect of any Excluded Assets, Excluded Contracts or Excluded Liabilities and any other claims, obligations and other matters which are waived, released, expunged or discharged pursuant to this Order; provided that, nothing herein shall affect the validity of the Implementation Steps.

18. **THIS COURT ORDERS** that, from and after the Effective Time:

- (a) the nature of the Assumed Liabilities assumed by the Assignee or retained by the Purchased Entities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;
- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residualco;
- (c) any Person that prior to the Effective Time had a valid right or claim against the Purchased Entities under or in respect of any Excluded Contract or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have such right or claim against the Purchased Entities but will have an equivalent Excluded Liability Claim against the Residualco in respect of the Excluded Contract and Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residualco;
- (d) the Excluded Liability Claim of any Person against Residualco following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against the applicable Purchased Entity prior to the Effective Time; and
- (e) the Receiver’s Charge (as defined in the Appointment Order) and the Receiver’s Borrowings Charge shall continue to apply to the Property (as defined in the Fourth Report) of Validus Parent and Residualco in accordance with the provisions of the Appointment Order, the Initial Order and paragraph 7 herein.

CHARGES

24. **THIS COURT ORDERS** that the Monitor shall be entitled to the benefit of and is hereby granted a charge (the “**Priority Payments Indemnity Charge**”) on the Bay Power Interests, the Kap Power Interests and the IFPC Interests (but excluding for greater certainty the Kingston LP Interests and the Kingston GP Interests) as security in respect of the Priority Payments Indemnity (as defined in the Transaction Agreement) in accordance with the terms of the Transaction Agreement.

25. **THIS COURT ORDERS** that the Priority Payments Indemnity Charge shall terminate automatically upon the later of (i) the payment in satisfaction of all of the Priority Payments of Validus Parent in excess of the Priority Payments Closing Amount, as determined by Canada Revenue Agency (if any), or (ii) receipt of confirmation from Canada Revenue Agency by the Assignee, on notice to the Monitor, that no Priority Payments of Validus Parent in excess of the Priority Payment Closing Amount are owing.

POST-CLOSING RESERVE

26. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to establish a cash reserve (the “**Post-Closing Reserve**”) that consists of Administrative Expense Closing Amount, which shall be held in a segregated account and shall be used to pay costs and fees reasonably incurred by the Monitor following the Effective Time in connection with completing these CCAA proceedings, the Receivership Proceedings and any BIA proceedings commenced in respect of Residualco, including payment of the Administrative Expense Costs (collectively, the “**Post-Closing Costs**”).

27. **THIS COURT ORDERS** that the Monitor is hereby authorized to pay any Post-Closing Costs as it, acting reasonably, deems necessary, appropriate or desirable.

28. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to return to the Assignee any balance remaining in the Post-Closing Reserve that is funded by the Assignee pursuant to Section 6.4 of the Transaction Agreement following payment in satisfaction of all reasonably incurred Post-Closing Costs.

Assignee Arrangements. “**Causes of Action**” means any action, claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise.

31. **THIS COURT ORDERS** that all Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all claims or Cause of Actions released pursuant to this Order (including but not limited to the Released Claims), from: (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties; (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their respective property; (c) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties; (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties or their respective property; or (e) taking any actions to interfere with the consummation of the Transactions; and any such proceedings will be deemed to have no further effect against the Released Parties and will be released, discharged or vacated without cost.

32. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these CCAA proceedings or the Receivership Proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of any of the Vendors or Residualco, and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Vendors or Residualco,

the Offer Letter, the Transaction Agreement, the Transaction Documents, the consummation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, the Excluded Contracts and the Excluded Liabilities in and to Residualco, the transfer and vesting of the Purchased Assets in and to the Assignee or MEFL, as applicable, the transfer of title in and to the Leased Property from MEFL to IFPC, the assumption or retention of the Priority Payments of Validus Parent by the Assignee or the Priority Payments of the Purchased Entities by the Purchased Entities, as the case may be, and any payments by or to MEFL, the Assignee, the Receiver, the Monitor or the Vendors authorized herein or pursuant to the Offer Letter, the Transaction Agreement and/or the Transaction Documents) shall be binding on any trustee in bankruptcy that may be appointed in respect of Validus Parent or Residualco, and shall not be void or voidable by creditors of Validus Parent or Residualco, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

33. **THIS COURT ORDERS** that nothing in this Order, including the release and discharge of the Purchased Entities from the purview of these CCAA proceedings or the Receivership Proceedings pursuant to paragraph 5(i) hereof and the addition of Residualco as a Debtor Company in these CCAA proceedings and as a respondent in the Receivership Proceedings, shall affect, vary, derogate from, limit or amend, and KSV shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Receiver and the Monitor at law or pursuant to the BIA, the Appointment Order, the Initial Order, this Order, any other Orders in these CCAA proceedings or the Receivership Proceedings or otherwise, including all approvals, protections and stays of proceedings in favour of KSV in its capacity as Receiver and in its capacity as the Monitor, as applicable, all of which are expressly continued and confirmed.

EMPLOYEES

34. **THIS COURT ORDERS** that Residualco shall be deemed to be the former employer of any former employees of the corresponding Purchased Entities who were terminated between the date of the Appointment Order and the Effective Time, if any, whose claims against the Purchased Entities are transferred to Residualco pursuant to this Order, provided that such deeming: (i) shall be effective immediately after the Effective Time; and (ii) will solely be for the purposes of termination pay and severance pay pursuant to the *Wage Earners Protection Program*.

ADDITIONAL MATTERS

35. **THIS COURT ORDERS** that in addition to the powers and authorities afforded to the Monitor pursuant to the CCAA, the Initial Order and all other orders in these proceedings (the “**CCAA Orders**”), the Monitor is hereby authorized, but not directed, to take any steps reasonably required to rectify the minute books of the Validus Entities including, without limitation, signing directors’ resolutions and/or shareholders’ resolutions on behalf of the Validus Entities and that in doing so, and without limiting the protections afforded to the Monitor pursuant to the CCAA and other CCAA Orders, the Monitor shall not incur any liability, save and except any liability or obligation incurred as a result of gross negligence or wilful misconduct on its part.

36. **THIS COURT ORDERS** that Ryan Chua (the “**First Director**”) is hereby authorized, *nunc pro tunc*, to act as a director and officer of Residualco and, in such capacity, is hereby authorized to take such steps and perform such tasks are necessary or desirable to facilitate the Transactions.

37. **THIS COURT ORDERS** that notwithstanding Section 119 of the *Business Corporations Act* (Ontario), the First Director shall be entitled to tender his resignation as a director and officer upon the appointment of the Receiver in respect of Residualco in the Receivership and the granting and issuance of this Order.

38. **THIS COURT ORDERS** that the First Director shall not incur any liability as a result of becoming a director or officer of Residualco, save and except any liability or obligation incurred as a result of gross negligence or wilful misconduct on his part.

GENERAL

39. **THIS COURT ORDERS** that, following the Effective Time, the Assignee shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances (other than the Permitted Encumbrances) as against the Purchased Interests, the Purchased Entities, the Retained Assets and the remainder of the Purchased Assets.

40. **THIS COURT ORDERS** that the Monitor be and is hereby authorized to distribute the Priority Payments Closing Amount to such parties as may be entitled to payment to satisfy the Priority Payments of Validus Parent known at the Effective Time and, after such obligations are paid in full, such amounts as may be required to satisfy the Priority Payments of the Purchased Entities known at the Effective Time, in accordance with the Transaction Agreement.

41. **THIS COURT ORDERS** that, following the Effective Time, the style of cause of these CCAA proceedings shall be hereby amended by being deleted and replaced in its entirety by the following:

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 INVOLVING VALIDUS POWER CORP. and 1000745924 ONTARIO INC.

42. **THIS COURT ORDERS** that, following the Effective Time, the style of cause of the Receivership Proceedings shall be hereby amended by being deleted and replaced in its entirety by the following:

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

VALIDUS POWER CORP. and 1000745924 ONTARIO 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

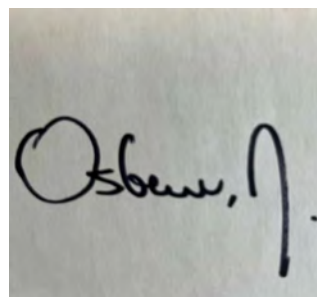
43. **THIS COURT ORDERS** that, following the Effective Time, the Appointment Order is amended by deleting Schedule “A” thereto in its entirety.

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

45. **THIS COURT ORDERS** that the Receiver and the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada or elsewhere, for orders that aid and complement this Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Receiver and/or the Monitor as may be deemed necessary or appropriate for that purpose.

46. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or elsewhere, to give effect to this Order and to assist the Receiver, the Monitor and/or 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 and/or the Monitor, in each case as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver and/or the Monitor in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

47. **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; provided that the transaction steps set out in paragraph 5 hereof shall be deemed to have occurred in the order set out therein.



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**SCHEDULE “A”
FORM OF MONITOR’S CERTIFICATE**

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

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 INVOLVING VALIDUS POWER CORP., IROQUOIS
FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP.,
VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP
AND KINGSTON COGEN GP INC.**

MONITOR’S CERTIFICATE

RECITALS

1. Pursuant to the Appointment Order of Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 10, 2023, KSV Restructuring Inc. (“**KSV**”) was appointed as receiver and manager (in such capacity, the “**Receiver**”) of the assets, property and undertaking 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 “**Vendors**”).
2. Pursuant to the Initial Order of Justice Osborne of the Court dated August 29, 2023, KSV was appointed as monitor (in such capacity, the “**Monitor**”) of the Vendors.
3. Pursuant to a Sale and Investment Solicitation Process Order of the Court dated November 2, 2023 (the “**SISP Order**”), the Monitor was authorized and directed to, among other things, carry out the SISP (as defined the SISP Order).
4. Pursuant to an Approval and Vesting Order of the Court dated [■], 2024 (the “**Order**”), the Court approved the transactions (collectively, the “**Transactions**”) contemplated by the

Transaction Agreement dated [■], 2024 (as may be amended from time to time, the “**Transaction Agreement**”) between the Vendors, by KSV in its capacity as the Monitor, Macquarie Equipment Finance Ltd. (“**MEFL**”) and Far North Power Corp. (the “**Assignee**”), and ordered, among other things that upon the Effective Time: (a) that all of the Purchased Entities’ right, title and interest in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities shall vest absolutely and exclusively in and to Residualco; (b) the Vendors, by KSV in its capacity as the Monitor, shall issue the IFPC Interests, the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3, and the vesting of: (i) all of the right, title and interest in and to the IFPC Interests and the IFPC Note 2; and (ii) all of Validus Parent’s right, title and interest in and to the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests, the Validus Hosting Interests, and the Purchased Validus Parent Assets absolutely and exclusively in and to the Assignee, free and clear of any Encumbrances; (c) the vesting of all right, title and interest in and to the IFPC Note 1 and the IFPC Note 3 absolutely and exclusively in and to MEFL, free and clear of any Encumbrances; and (d) the termination and cancellation or redemption of the Subject Interests for no consideration.

5. Capitalized terms used but not defined herein have the meanings ascribed to them in the Order.

THE MONITOR CERTIFIES the following:

1. The Monitor has received the Administrative Expense Closing Amount.
2. The Monitor has received written confirmation from MEFL, on its own behalf and on behalf of the Assignee, in form and substance satisfactory to the Monitor, that (a) all of the Offer Conditions (as defined in the Terms and Conditions) (including, for clarity, the Vendors’ Acceptance) have been satisfied or waived by MEFL, on its own behalf and on behalf of the Assignee, as applicable, and (b) the Effective Time has occurred.

3. This Monitor's Certificate was delivered by the Monitor at _____ [TIME] on _____, 2024.

**KSV RESTRUCTURING INC., in its
capacity as the Monitor of the Vendors,
and not in its personal capacity**

By: _____

Name:

Title:

SCHEDULE "C"
ENCUMBRANCES TO BE EXPUNGED

KAP POWER CORP. (Kapusksasing)
LRO #6

PIN 65095-0051(LT)

1. CB174196 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 65095-0052(LT)

1. CB174196 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

IROQUOIS FALLS POWER CORP. (Iroquois Falls)
LRO #6

PIN 65337-0369(LT)

1. CB174195 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

2. CB184081 registered March 8, 2023 is a Lien by Her Majesty the Queen in Right of Canada as represented by The Minister of National Revenue in the amount of \$6,002,211.00.

PIN 65337-0372(LT)

1. CB174195 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 65337-0373(LT)

1. CB174195 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 65337-0456(LT)

1. CB174195 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 65337-0458(LT)

1. CB174195 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

2. CB184081 registered March 8, 2023 is a Lien by Her Majesty the Queen in Right of Canada as represented by The Minister of National Revenue in the amount of \$6,002,211.00

**KINGSTON COGEN LIMITED PARTNERSHIP/ KINGSTON COGEN GP INC.
(Kingston)
LRO #29**

PIN 45132-0362(LT)(Leasehold)

1. LX120618 registered June 6, 2023 is an Application re Charge of Sublease.

PIN 45132-0373(LT)

None

PIN 45132-0375(LT)

1. LX118878 registered March 1, 2023 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 45132-0377(LT)(Leasehold)

1. LX118878 registered March 1, 2023 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 45132-0379(LT)

None

**BAY POWER CORP. (North Bay)
LRO #36**

PIN 49127-0021(LT)

1. BS212204 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
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

APPROVAL AND VESTING ORDER

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam LSO#: 46735J

Tel: 416.202.6707

jennifer.stam@nortonrosefulbright.com

James Renihan LSO#: 57553U

Tel: 416.216.1944

james.renihan@nortonrosefulbright.com

Evan Cobb LSO#: 55787N

Tel: 416.216.1929

evan.cobb@nortonrosefulbright.com

Lawyers for the Monitor

Appendix “G”



**Fourth Report to Court of
KSV Restructuring Inc. as
Monitor of
Validus Power Corp.,
Iroquois Falls Power Corp.,
Bay Power Corp.,
Kap Power Corp., Validus Hosting Inc.
and Kingston Cogen GP Inc.**

December 22, 2023

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COURT FILE NO.: CV-23-00705215-00CL

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.

FOURTH REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

DECEMBER 22, 2023

1.0 Introduction

1. Pursuant to an application filed by Macquarie Equipment Finance Limited (“Macquarie”) to appoint KSV Restructuring Inc. (“KSV”) as receiver and manager of the Property (as defined below), 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 as interim receiver (the “Interim Receiver”), under section 47.1 of the *Bankruptcy and Insolvency Act* (Canada) (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 (collectively, the “Property”) until the earlier of:
 - a) the taking possession of the Property by a receiver, within the meaning of subsection 243 of the BIA; and
 - b) August 10, 2023.
2. On August 10, 2023, the Court issued an order (the “Receivership Order”) appointing KSV as receiver and manager of the Property (the “Receiver”). A copy of the Receivership Order is attached as Appendix “A”. On August 18, 2023, the Honourable Justice Osborne issued an endorsement in connection with the Receivership Order (the “August 18th Endorsement”), a copy of which is attached as Appendix “B”.

3. The principal purpose of the receivership proceedings was to create a stabilized environment to enable the Receiver to take possession and control of the Property, including replacing the Validus Entities' executive management team, so that the business of the Validus Entities could continue to operate in the normal course, while steps were being taken by the Receiver and Macquarie to prepare for a sale and investment solicitation process (the "SISP"). In that regard, Macquarie's application materials also indicated that it intended to submit an offer to serve as a stalking horse bid in a SISP and that a condition of that bid would be that the SISP and resulting transaction be implemented within proceedings under the *Companies' Creditors Arrangement Act* (Canada) ("CCAA").
4. On August 11, 2023, Hut 8 Mining Corp. (now known as Hut 8 Corp., "Hut 8"),¹ a public company listed on the Nasdaq and Toronto Stock Exchange, announced that it had entered into a transaction support agreement (the "Transaction Support Agreement") with Macquarie to potentially acquire certain assets of the Validus Entities through a stalking horse bid in the SISP that was intended to be submitted to the Receiver.
5. On August 29, 2023, the Receiver brought a motion seeking authority to bring an application to have the Companies granted protection under the CCAA, and, if granted such authority, a concurrent application to have the Companies granted protection under the CCAA. The Receiver also sought to extend the stay of proceedings in the CCAA proceedings to Kingston LP. The Receiver's rationale for seeking CCAA protection for the Validus Entities was set out in its first report to Court dated August 23, 2023, which was also the pre-filing report of KSV as proposed monitor in the CCAA proceedings (the "Pre-Filing Report"). A copy of the Pre-Filing Report is provided in Appendix "C", without attachments.
6. One of the reasons for the proposed CCAA proceedings is that the stalking horse bid was contemplated to be completed pursuant to a reverse vesting order ("RVO") and that the bid would be conditional on the Court issuing the RVO in a CCAA proceeding. An RVO structure was considered the preferred structure for any potential bid in the circumstances as the Validus Entities hold various licenses and permits required to operate their businesses in the highly regulated Ontario power industry (the "Permits and Licenses"), and the time and cost of transferring them absent an RVO could impair the businesses of the Validus Entities and unduly complicate and/or delay completion of a transaction.
7. On August 29, 2023, the Court granted an initial order under the CCAA in respect of the Validus Entities (the "Initial Order"). Copies of the Initial Order and the endorsement of Mr. Justice Osborne dated August 29, 2023 are provided in Appendices "D" and "E", respectively.
8. On September 8, 2023, the Court granted an extension of the stay of proceedings in the CCAA proceedings from September 8 to December 1, 2023.

¹ On December 1, 2023, Hut 8 issued a press release announcing it had merged with US Bitcoin Corp. The merged entity continues business as "Hut 8 Corp."

9. On November 1, 2023, the Court granted an extension of the stay of proceedings in the CCAA proceedings from December 1 to December 31, 2023 and approved the SISP (the “SISP Approval Order”). Copies of the SISP Approval Order and the endorsement of Mr. Justice Osborne dated November 1, 2023 are provided in Appendices “F” and “G”, respectively.
10. On December 22, 2023, the Court granted an extension of the stay of proceedings in the CCAA proceedings from December 31, 2023 to January 31, 2024.
11. A motion has been scheduled to be heard on January 4, 2024 to seek approval of the Transaction (as defined below).
12. This report (the “Report”) is filed by KSV as Monitor. Capitalized terms used in this Report and not otherwise defined have the meaning given to them in the Transaction Documents (defined below).

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information with respect to the Validus Entities and these proceedings;
 - b) summarize the results of the SISP, which included a stalking horse bid submitted by Macquarie and Far North Power Corp. (“Far North”), an entity incorporated by Hut 8 (jointly, Macquarie and Far North are defined as the “Purchasers”);
 - c) summarize the proposed transaction (the “Transaction”), which is documented in, *inter alia*, an offer letter dated October 16, 2023 from the Purchasers (the “Offer Letter”), a transaction agreement between the Validus Entities, by the Monitor, and the Purchasers (as amended and restated, and as may be further amended from time to time, the “Transaction Agreement”), a document setting out the terms and conditions of the Offer Letter, including with respect to the transaction contemplated by the Transaction Agreement (as amended and restated, and as may be further amended from time to time, the “Terms and Conditions”) (collectively, the Offer Letter, Transaction Agreement and Terms and Conditions are referred to as the “Transaction Documents”);
 - d) summarize the steps to be implemented in connection with the Transaction (the “Implementation Steps”);
 - e) provide the Monitor’s rationale for recommending that the Court approve the Transaction and why, in the Monitor’s view, it is appropriate that the Transaction be completed pursuant to an RVO;
 - f) describe the results of the contract counterparty notification process (the “Unknown Contract Bar Process”) implemented pursuant to the SISP Approval Order in order to notify any known and potentially unknown contract counterparties that an RVO was contemplated to be sought in these proceedings and the contemplated treatment of their contract/s in the Transaction;
 - g) summarize the Validus Entities’ cash flow forecast (the “Cash Flow Forecast”) for the period December 16, 2023 to February 29, 2024 (the “Forecast Period”);

- h) summarize the fees and disbursements of the Monitor/Receiver incurred from the commencement of these CCAA proceedings and the receivership proceedings to November 30, 2023, as well as those of its legal counsel, Norton Rose Fulbright Canada LLP (“NRF”), each as described and detailed further in the Fee Affidavits (as defined below); and
- i) provide the Monitor’s recommendations for orders, among other things:
- approving the Transaction Documents and the Transaction;
 - adding 1000745924 Ontario Inc. (“ResidualCo”) as a debtor company in these CCAA proceedings and the receivership proceedings;
 - approving the transfer to and vesting in ResidualCo of the Validus Entities’ right, title and interest in and to, and liabilities and obligations under, the Excluded Assets, the Excluded Contracts and the Excluded Liabilities;
 - authorizing and directing the Validus Entities, by KSV in its capacity as Monitor, to issue the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3, and vesting: (i) all of the right, title and interest in and to the IFPC Note 1 and the IFPC Note 3 in and to Macquarie; and (ii) all of the right, title and interest in and to the IFPC Note 2 absolutely and exclusively in and to the Assignee, as nominee and designated assignee of Macquarie;
 - redeeming, terminating and cancelling the IFPC Legacy Shares and the other Subject Interests for no consideration;
 - approving the conveyance to the Purchasers of the Purchased Assets, free and clear of and from any and all claims, liabilities, liens and encumbrances, other than the Permitted Encumbrances;
 - discharging KSV as Monitor and Receiver of the Purchased Entities, being IFPC, Bay, Kap, Hosting, Kingston LP and Kingston GP, upon the closing of the Transaction;
 - granting the Priority Payments Indemnity Charge;
 - confirming that all Continuing Contracts and Permits and Licenses to which any of the Validus Entities (other than Validus Parent) are a party at the Effective Time will be and shall remain in full force and effect upon and following the Effective Time;
 - releasing the Released Parties from the Released Claims (as those terms are defined in Section 7 below);
 - authorizing but not obligating the Monitor to take all required steps to rectify the minute books of the Validus Entities, including, without limitation, signing directors’ and/or shareholders’ resolutions on behalf of the Validus Entities;
 - authorizing Ryan Chua to act as the first director of ResidualCo (the “First Director”) and confirming that the First Director shall have no liability as a result of becoming the First Director save and except as may result from his own gross negligence or wilful misconduct;

- approving the fees and disbursements of KSV, in its capacities as Monitor and Receiver, and of NRF, counsel to the Monitor and Receiver, as described in this Report and the Fee Affidavits;
- approving the Monitor’s third report to Court dated December 15, 2023 (the “Third Report”) and this Report, including the activities of the Monitor described therein; and
- extending the Stay Period (as defined in the Initial Order) to February 29, 2024.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions²

1. In preparing this Report, KSV has relied upon unaudited financial information provided by the Validus Entities’ employees and consultants³, the books and records of the Validus Entities⁴ and discussions with representatives of the Validus Entities, Macquarie and its legal counsel. KSV 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, KSV 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. 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.
3. With the exception of the Court, KSV accepts no responsibility for any reliance placed by any third party on the Validus Entities’ financial information presented herein.

2.0 Background

1. The Validus Entities are a group of privately-held companies that own and operate power generation plants and sell capacity and power to the Independent Electricity System Operator (“IESO”) as a participant in its “capacity auction” market. 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, the plants in Kingston and Iroquois Falls are operational; these plants are on standby and can supply power to the IESO. The Kapuskasing and North Bay plants are being maintained and secured but are not otherwise operational at this time.

² In this section, references to KSV refer to its capacity as Receiver, Monitor and in its personal capacity.

³ Certain individuals having executive titles were retained pursuant to consulting agreements.

⁴ As discussed in the Affidavit of Joshua Stevens of Macquarie dated July 31, 2023, the Validus Entities’ books and records were not kept current and otherwise appear to be significantly deficient.

2. VPC acquired the four plants in 2021/2022 in two separate transactions, as set out in the table below.

Plant	Vendor	Date of Acquisition	Amount (\$000s)
North Bay and Kapuskasing	SNS Power Corp.	May 21, 2021	4,695
Iroquois Falls and Kingston	Northland Power	April 7, 2022	40,000
Total			44,695

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 at the plants. Mr. Forget is a former senior employee of the Validus Entities.
4. At the commencement of the receivership, the Receiver terminated substantially all Validus Entities' employees whose work was not involved in plant operations and who had or may have had working arrangements with the Validus Entities. Since that time, the Receiver has engaged Mr. Chua, the former general counsel of the Validus Entities, to assist in certain matters related to the SISF. As set out in Section 9 of this Report, Mr. Chua has also agreed to act as the First Director.
5. The receivership application materials provide additional background information about the Validus Entities, their financial position, the Validus Entities' defaults under their secured lease arrangements with Macquarie and the basis for Macquarie's application for the Receivership Order. Court materials filed in these proceedings, including the prior reports filed by KSV as Interim Receiver, Receiver and Proposed Monitor, are available on KSV's website at: <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

3.0 Creditors and Other Stakeholders

3.1 Secured Creditors

1. The following is a summary of the Validus Entities' known secured creditors:
- a) Macquarie holds security against substantially all Property, excluding VPC's property, assets and undertaking other than the shares of its subsidiaries. As of December 22, 2023, Macquarie calculated that it is owed at least \$59.4 million, including HST and overdue interest to that date, (the "Macquarie Claim Amount"), which amount has continued to increase since that date for costs and interest. The Validus Entities disputed at least \$9 million of the amount demanded by Macquarie. That dispute was the subject of a contested hearing on November 1, 2023. The nature of the dispute was set out in the Monitor's second report to Court dated October 23, 2023 (the "Second Report"), and accordingly, is not repeated herein. A copy of the Second Report is attached as Appendix "H", without attachments. In its decision dated November 1, 2023 (Appendix "G"), the Court accepted Macquarie's calculation of the Macquarie Claim Amount. As of the date of this Report, it is estimated that Macquarie is owed approximately \$61 million, comprising the Macquarie Claim Amount plus an additional \$1.5 million advanced by Macquarie to the Receiver pursuant to Receiver Certificates;

- 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 a sale leaseback transaction between Macquarie and IFPC completed in April 2022. The Validus Entities have advised that there are input tax credits which may reduce the arrears owing to CRA. The Monitor has requested CRA perform a GST/HST examination with respect to the pre-filing amounts. Certain issues related to HST are discussed in greater detail below;
 - c) TD Bank (“TD”), in respect of amounts that it claims relate to six letters of credit issued by TD in the aggregate amount of \$1,506,445 against which TD holds guaranteed investment certificate security. Enbridge has recently drawn approximately \$127,000 against these letters of credit;
 - d) Royal Bank of Canada (“RBC”), which the Monitor understands holds cash collateral as security for obligations of VPC in respect of an outstanding letter of credit issued by RBC in the amount of \$68,561;
 - e) TransCanada Pipelines Limited holds cash collateral of approximately \$600,000 in connection with certain contracts between it and certain Validus Entities; and
 - f) Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation in the amount of \$179,206 against VPC in respect of a motor vehicle (a Mercedes G-63 “G-Wagon” SUV).
2. The Monitor notes that following its review of recent *Personal Property Security Act* (Ontario) searches, Sprung Instant Services Structures Ltd. registered a financing statement on October 5, 2023 in connection with certain amounts claimed to be owed to it by VPC. The Monitor is unaware of any security granted to this party, which appears to have been registered in respect of a pre-filing unsecured claim.
 3. Based on discussions with Shelly Goertz, the Validus Entities’ former Chief Financial Officer, the Monitor understands that VPC⁵ has failed to remit source deductions to CRA since approximately October 2022. Based on a letter from CRA dated December 21, 2023, it appears that the employee portion⁶ of the source deduction obligation is approximately \$1.67.

3.2 Unions

1. The Monitor understands that prior to VPC’s acquisition of IFPC, certain of the employees working at the Iroquois Falls plant were members of The International Union of Operating Engineers Local 865 (the “OE Union”) pursuant to a collective bargaining agreement for the period July 1, 2019 to June 30, 2023 (the “OE CBA”). NRF has corresponded with the OE Union’s counsel regarding an application filed by the OE Union to the Ontario Labour Relations Board (“OLRB”) on July 3, 2023 alleging that IFPC sold its business to VPC and/or that these entities are related parties for the purposes of *Labour Relations Act* of Ontario (the “LRA”). A response was due on August 17, 2023 but has not been filed as a result of the Validus entities’ insolvency proceedings. The OLRB has confirmed that the application is stayed until December 31, 2023 given the stay in the CCAA proceedings. If the stay is further

⁵ It is the Monitor’s understanding that all or substantially all of the Validus Entities’ employees were employed by VPC, including those that worked in plants owned by VPC’s subsidiaries.

⁶ Being the portion for which a deemed trust exists in favour of CRA.

extended on December 22, 2023, the Monitor will instruct NRF to provide a further update to the OLRB as to the further extension of the stay.

2. In addition to the application, at the time of the receivership, the OE Union filed a grievance with respect to certain benefits and past due amounts that had not been paid to employees. Since the filing, such amounts have been paid and it is the Monitor's understanding that IFPC is current in respect of all such amounts. On September 28, 2023, counsel for the OE Union confirmed that the issues in the grievance had been addressed.
3. NRF has corresponded with counsel to Power Workers' Union – CUPE Local 1000 (the "PWU"), Goldblatt Partners LLP ("Goldblatt"), in connection with its client's ongoing OLRB application alleging that Atlantic Power Services Canada LP sold its business to VPC or that these entities are related parties for the purposes of the LRA. Goldblatt, on PWU's behalf, is on the Service List in these proceedings. The Monitor has been engaged with Goldblatt with respect to this motion.

4.0 SISP⁷

1. The SISP was carried out by the Monitor in accordance with the SISP Approval Order. The SISP contemplated the following milestones and timelines:

Milestone	Deadline
Motion to approve SISP	November 1, 2023
Monitor to commence marketing process	November 3, 2023
Qualified Bid Deadline	11:59 p.m. on December 8, 2023
Notification to Qualified Bidders of Auction (if any)	As soon as possible after the Qualified Bid Deadline
Auction (if any)	On or about December 14, 2023
Implementation Order motion	December 22, 2023

2. A summary of the SISP is as follows:
 - a) the Monitor launched the SISP on November 3, 2023 by distributing an interest solicitation letter detailing the acquisition opportunity (the "Teaser") to potential purchasers and investors;
 - b) the Teaser was sent to 146 prospective purchasers, comprised of 127 strategic parties (68 independent power producers and 59 crypto companies) and 19 financial parties (including private equity funds, infrastructure funds, investment banks and advisors). The prospective purchasers approached in the SISP included the parties solicited in a pre-filing sale process for IFPC conducted by Ernst & Young Corporate Finance (Canada) Inc. ("EY") during the period March to July 2023 (the "EY Sale Process"), as summarized in the Second Report;
 - c) attached to the Teaser was a form of confidentiality agreement ("CA"). Parties that executed the CA were provided the opportunity to access a virtual data room (the "VDR") maintained by the Monitor;

⁷ Capitalized terms in this section have the meaning provided to them in the SISP.

- d) the VDR contained historical and projected financial information and certain other relevant diligence information, including a template form of purchase agreement (based on the stalking horse purchase agreement), financial information, employee information, information regarding the Permits and Licenses and material contracts and agreements;
- e) prospective purchasers were given the opportunity to attend the sites and to meet with plant managers; and
- f) pursuant to the SISP, the deadline for interested parties to submit a Qualified Bid was 11:59 p.m. (Eastern Time) on December 8, 2023 (the “Bid Deadline”).

4.1 SISP Results

1. A summary of the results of the SISP is as follows:
 - a) 16 parties executed the CA and were given the opportunity to access the VDR to perform due diligence;
 - b) over the course of the SISP, several parties indicated they would be submitting a bid on or prior to the Bid Deadline. However, in the days immediately preceding the Bid Deadline, all but one⁸ of those parties withdrew from the process and that party (the “Prospective Bidder”) advised on the day of the Bid Deadline that it intended to submit an offer by the Bid Deadline. During the SISP, the Monitor and its legal counsel worked with the Prospective Bidder, its legal counsel and its financial advisor to facilitate its diligence requests, including arranging a site visit on December 5, 2023. However, the Prospective Bidder did not submit a bid by the Bid Deadline;
 - c) on December 9 and 10, 2023, the Monitor and its legal counsel followed up with the Prospective Bidders’ legal and financial advisors to understand the status of its bid and whether an offer would be submitted. In light of assurances provided by the Prospective Bidder concerning its bid, including that a deposit, evidence of committed financing and an unconditional offer would be submitted by 4:00 p.m. on December 11, 2023, the Monitor confirmed by email that it would extend the Bid Deadline to that date and time (the “Extended Bid Deadline”), as permitted by paragraph 10 of the SISP;
 - d) on December 10, 2023, the Prospective Bidder submitted its offer, including a commitment letter from a proposed lender. The offer was largely unconditional. The Monitor and its counsel performed cursory diligence on the prospective lender which uncovered that the lender entity was incorporated on December 6, 2023 and has a residential address listed as its head office located in North York, Ontario. There also appeared to be a number of typos in the “letterhead” of the proposed lender as evidenced by inconsistencies with the corporate profile obtained by NRF. Notwithstanding the additional time granted to the Prospective Bidder, the Prospective Bidder did not submit its deposit by the Extended Bid Deadline and the Monitor has not been contacted by the Prospective Bidder and/or its advisors since the Extended Bid Deadline.

⁸ In addition to the Purchaser.

2. Accordingly, on December 11, 2023, the Monitor advised the Purchasers that their bid was the Successful Bid under the SISP.

5.0 The Transaction⁹

1. The Transaction is contemplated to be completed pursuant to an RVO, which is necessary as, among other things, the Validus Entities hold numerous Permits and Licenses that allow them to operate in a highly regulated industry. The Purchasers require that an RVO be issued due to, among other things, uncertainty related to the transferability of these Permits and Licenses in a commercially reasonable timeframe.
2. The following is a summary description of the Transaction. Readers are encouraged to read the entirety of the Transaction Documents and the Implementation Steps, copies of which are provided in Appendix “I”. A blackline of the Transaction Documents to the original Transaction Documents filed as the Stalking Horse Bid are attached as Appendix “J”.
3. The key terms and conditions of the Transaction are provided below.
 - **Transaction Structure:** The Transaction is structured as a “sign and close” transaction. The Purchasers signed the Offer Letter and have agreed to sign the Transaction Agreement at the Effective Time. Neither Macquarie nor Far North are related to any of the Validus Entities. Macquarie and Far North have advised the Monitor that they are concerned not to be deemed to control any of the Validus Entities for income tax purposes (and be deemed related to the Validus Entities) prior to the time that the applicable Purchaser actually acquires ownership of shares sufficient for it to actually control those entities at the closing, which deeming could happen by virtue of their bid becoming a binding agreement of purchase and sale on the part of the Validus Entities prior to closing. On the Effective Date, among other things, the following steps shall occur in accordance with the proposed RVO:
 - a) the Excluded Assets and Excluded Liabilities will be assigned to, assumed by and vest in ResidualCo;
 - b) the Monitor will sign the Monitor’s Certificate;
 - c) the Monitor will sign the Transaction Agreement on behalf of the Validus Entities;
 - d) concurrently with the step in (c), VPC, by the Monitor, will assign all of the equity securities (and in the case of Kingston LP, limited partnership units) in each of Kap, Bay, Kingston GP and Kingston LP to Far North in consideration for the release of VPC and the Purchased Entities (other than IFPC) from their obligations under the Lease Agreement and related security;
 - e) concurrently with the step in (c), VPC will assign the Purchased Validus Parent Assets to Far North;

⁹ Capitalized terms in this section have the meaning provided to them in the Transaction Documents. The descriptions of these documents in this Report are for informational purposes only. Reference should be made to the relevant documents in order to have a complete understanding of those documents and agreements.

- f) concurrently with the step in (c), Macquarie will assign the Leased Property to IFPC in consideration for the: (i) IFPC Note 1; (ii) IFPC Note 2; (iii) IFPC Note 3; and (iv) IFPC Interests (comprising newly issued common shares of IFPC representing 99.999% of the issued and outstanding IFPC shares), which IFPC shares will, at the direction of Macquarie, be issued to Far North; and
- g) the IFPC Legacy Shares held by VPC will be cancelled without any payment thereon such that the IFPC Interests issued to Far North in step (f) represent 100% of the outstanding Equity Interests in IFPC.
- **Purchased Assets:**
 - a) all of VPC's right, title and interest in the issued and outstanding shares in the capital of Bay, Kap and Kingston GP and the issued and outstanding limited partnership units of Kingston LP;
 - b) all of VPC's right, title and interest in certain assigned employment agreements as set out in the Disclosure Schedule, all of VPC's right, title and interest in the Hut 8 Litigation, all issued and outstanding shares of Hosting¹⁰, all of VPC's right, title and interest in the Firm Transportation Service Contract dated July 25, 2022 between TransCanada Pipelines Limited and VPC, all of VPC's right, title and interest in the Letter Agreement dated September 30, 2023 between VPC and Macquarie Energy Canada Ltd., all of VPC's right, title and interest in the Master Temporary Assignment Notice dated September 28, 2023 between VPC and TransCanada Pipelines Limited and all of VPC's right, title and interest in the Continuous Safety Services (CSS) Agreement between Electrical Safety Authority and VPC (collectively, the "Purchased Validus Parent Assets");
 - c) IFPC Note 1, IFPC Note 2 and IFPC Note 3; and
 - d) the IFPC Interests, being the newly issued common equity of IFPC (or its successor), free and clear of all Encumbrances other than Permitted Encumbrances, which represents 99.999% of the issued and outstanding common equity in IFPC immediately prior to the redemption of the IFPC Legacy Shares in accordance with the Transaction Agreement.
 - **Purchase Price Consideration:** The Credit Bid Consideration is comprised of:
 - a) Far North paying to the Monitor the Priority Payments Closing Amount (being \$1.5 million as a genuine pre-estimate of VPC's Priority Payment obligations) and indemnifying the Monitor and the Receiver for any liability in respect of the Priority Payments of Validus Parent that are in excess of the Priority Payments Closing Amount (the "Priority Payments Indemnity"), which indemnity shall be secured by the proposed Priority Payments Indemnity Charge (as defined and discussed below);

¹⁰ This entity is believed to be inactive and to not have any assets.

- b) Far North also paying to the Monitor the Administrative Expense Closing Amount (to be finally estimated by the Monitor three business days prior to the Effective Date, which amount shall be held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs, including the Monitor and its legal counsel);
- c) Macquarie releasing the Validus Entities from all amounts outstanding and obligations owing by the Validus Entities to Macquarie pursuant to the Participation Agreement Documents; and
- d) Macquarie conveying and delivering to IFPC title to the Leased Property held by Macquarie free and clear of all liens, claims and encumbrances on an “as is, where is” basis, pursuant to the RVO.

Far North shall pay any applicable Transfer Taxes in addition to the Credit Bid Consideration.

- **Disclosure Schedule:** The Disclosure Schedule sets out the Permitted Encumbrances, Excluded Contracts, certain Excluded Assets, letters of credit, employee information and other items which are typically identified in schedules to an agreement of purchase and sale. A redacted version of the employee schedule is being filed with the Court to exclude the identity, compensation or other personal and financial information of the employees listed on that schedule.
- **Permits and Licenses:** All of the permits and licenses of the Purchased Entities are preserved, including permits and licenses issued by Ontario Energy Board, Technical Standards and Safety Authority, Ministry of the Environment and Climate Change, Ministry of the Environment, Conservation and Parks, Environment and Climate Change Canada and Innovation, Science and Economic Development Canada. A listing of the known Permits and Licenses is attached as Appendix “K”.
- **Excluded Assets:** Include, among other things:
 - a) the Tax Records and Tax Returns;
 - b) any cash, deposits or other amounts owned or in the name of VPC (this includes any return of cash as a result of the return of deposits or cancellation of outstanding letters of credit in VPC’s name, which amounts can be used to fund the cost of these proceedings after the Closing Date);
 - c) any other assets of VPC that are not Purchased Validus Parent Assets or contemplated in (b) above;
 - d) the Administrative Expense Closing Amount;
 - e) the Excluded Contracts;
 - f) all communication, information or records that are in any way related to: (i) the transactions contemplated by the Transaction Agreement; (ii) the sale of the Purchased Assets; (iii) any Excluded Asset; or (iv) any Excluded Liability;

- g) the equity interests of Validus Power Services Inc., Validus Digital Inc. and Validus Solutions Inc.¹¹; and
- h) any rights that accrue to ResidualCo under the Transaction Documents.

Pursuant to the RVO, the Monitor will assign, transfer and convey the Excluded Assets of the Purchased Entities to ResidualCo, and the Excluded Assets of the Purchased Entities will be vested in ResidualCo as of the Effective Date.

- **Liabilities Assumed by the Purchasers or Retained by the Purchased Entities:** Include, among other things:
 - a) all Post-Filing Claims;
 - b) all liabilities of IFPC under IFPC Note 1, IFPC Note 2 and IFPC Note 3;
 - c) ordinary course liabilities of the Purchased Entities that arise solely and exclusively from events occurring from and after the Effective Date, and all ordinary course liabilities that arise before or after the Effective Date pursuant to Continuing Contracts;
 - d) tax liabilities of the Purchased Entities for any period beginning on or after the Effective Time (other than Taxes assessed after the Effective Time that are in respect of transactions or events that occurred prior to the Effective Time) and any Transfer Taxes exigible in respect of the transfer and issuance of the Purchased Assets or any refunds of taxes relating thereto, but excluding any Tax Liability of VPC for which any of the Purchased Entities have joint or several liability whether occurring before or after the Effective Time and whether assessed or not;
 - e) all municipal taxes owing with respect to any real property owned by any of the Purchased Entities which have priority over the security interest of Macquarie pursuant to section 349(3) of the *Municipal Act* (Ontario);
 - f) the Priority Payments of the Purchased Entities; and
 - g) any other liabilities set out in the Disclosure Schedule.
- **Priority Payments Indemnity Charge:** To secure the Priority Payments Indemnity, the Monitor will be granted a super-priority charge (the “Priority Payments Indemnity Charge”) on the Purchased Interests (excluding the Kingston GP Interests and the Kingston LP Interests) pursuant to the RVO. The Priority Payments Indemnity Charge shall terminate automatically upon the later of: (i) the payment in satisfaction of all of the Priority Payments of Validus Parent in excess of the Priority Payments Closing Amount, as such amounts are determined by CRA (if any); and (ii) receipt of confirmation from CRA by Far North, on notice to the Monitor, that no Priority Payments of Validus Parent in excess of the Priority Payment Closing Amount are owing.

¹¹ Each of which is believed to be inactive and to have no assets.

- **Excluded Liabilities:** All debts, obligations and liabilities against the Purchased Entities, or any predecessor thereto, other than the Assumed Liabilities, and specifically including:
 - a) all Intercompany Claims that do not constitute Assumed Liabilities, including any Intercompany Claim asserted by VPC against any Purchased Entity;
 - b) any amounts owing under Receiver's Certificates; and
 - c) any other excluded liabilities set out in the Disclosure Schedule.

Pursuant to the RVO, the Excluded Liabilities of the Purchased Entities will be assigned to, vest in and become the sole obligation of ResidualCo.

- **Employee Matters:** The Assignee presently intends to engage an Alternative Operator, NAES Corporation ("NAES")¹², and as such it is contemplated that NAES will offer employment to employees it determines, in its/the Assignee's sole discretion, on terms and conditions of employment that are substantially similar in the aggregate to, and no less favorable in the aggregate than, those in effect for each Employee set out in the Disclosure Schedule.

Nothing in the Transaction Agreement prevents the Purchasers from negotiating agreement(s) with bargaining agents who are party to the applicable Collective Agreement(s) regarding the outsourcing of the operating of the Purchased Assets, including the employment of the employees supporting the Purchased Assets post closing, to any Alternative Operator, including NAES, which has been in discussions with the Purchasers in connection therewith. The Monitor understands that the NAES engagement with employees and the unions is actively underway. If NAES (or another Alternative Operator) is not engaged by the Assignee, the Assignee or a Purchased Entity will offer employment to employees it determines, in its sole discretion, on terms and conditions of employment that are substantially similar in the aggregate to, and no less favourable in the aggregate than, those in effect for each Employee set out in the Disclosure Schedule.

- **Treatment of Letters of Credit:** To the extent required, the Assignee shall have the sole responsibility to have replacement letters of credit (or deposits) issued within 30 days of the Effective Date provided that VPC has no obligation to ensure the existing letters of credit or deposits remain in place after the Effective Date and existing letters of credit or deposits shall not be used as security for obligations after the Effective Date without the consent of the Monitor (who may request security or collateral in connection with providing any such consent). This provision is not intended to impair the rights of any third-party beneficiary under an existing letter of credit or deposit who will require replacement collateral in order for its contract to be continued or assigned.

¹² NAES Corporation is a third-party operator that the Monitor is advised has extensive experience in the operation of power plant assets throughout North America, and which has been working with the Purchasers in respect of the post-closing operations of the Validus Entities.

- **Representations and Warranties:** The Monitor will provide certain limited representations and warranties to the Purchasers, including that the Monitor has the requisite power and authority to enter into the Transaction Agreement and that neither the Receiver nor the Monitor have engaged in any activity resulting in an Encumbrance affecting any of the Purchased Assets, other than a Permitted Encumbrance or any charge created by the Receivership Order, the SISP Approval Order or the RVO. The Disclosure Schedule specifically provides that it was prepared by the Purchasers and that the Monitor/ Receiver makes no representation as to accuracy or completeness of any exhibit therein.

Each of Macquarie and Far North have also provided representations and warranties, including that the completion of the Transaction will not require the consent or approval or other action by any Governmental Authority, other than any order made by the Court in these CCAA proceedings or the Receivership Proceedings.

None of these representations and warranties survive closing and the Purchased Assets shall be sold and delivered to the Purchasers on an “as is, where is” basis.

- **Outside Date:** February 15, 2024.
- **Conditions to Closing:** Include, among other things:
 - a) **Mutual Conditions**
 - i. the Receivership Order, the Initial Order, the SISP Approval Order and the RVO shall have been issued, entered and shall be Final Orders; and
 - ii. the Monitor and the Purchasers shall have agreed upon the Implementation Steps by no later than seven days prior to the Effective Time in accordance with Section 2.3.2 of the Terms and Conditions, and the Validus Entities shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance satisfactory to the Purchasers.
 - b) **Buyer Conditions**
 - i. from the date of the Offer Letter, there shall not have occurred any change effect, event or development that resulted in, or would reasonably be expected to result in, a Material Adverse Effect;
 - ii. each of the counterparties set forth on Part B of Exhibit 3.1(f) of the Terms and Conditions shall have confirmed in writing, to the Vendors, the Assignee and Macquarie that it will not exercise any termination rights under its Continuing Contracts solely as a result of the transactions contemplated by the Transaction Agreement. The Purchasers have not advised that there are any confirmations required in this regard;
 - iii. the Monitor shall have accepted and executed the Transaction Agreement.

- c) Seller Conditions
 - i. as of immediately prior to the Closing, Far North shall have sufficient funds to pay the Administrative Expense Closing Amount and the Priority Payments Closing Amount.
- **Termination:** The Transaction can be terminated by Macquarie under the following circumstances:
 - a) if the Monitor, Macquarie and Far North mutually agree in writing;
 - b) if the Stalking Horse Bid is not selected as the Successful Bid (as determined pursuant to the SISP) or if the Court otherwise approves a transaction other than the Stalking Horse Offer, subject to certain restrictions;
 - c) if the RVO is not granted by January 8, 2024;
 - d) if the Effective Time has not occurred by February 15, 2024 or such later date as agreed to by the Monitor, Macquarie and Far North;
 - e) upon the appointment of a trustee in bankruptcy or similar official by or in respect of any Validus Entity or any of the property of any Validus Entity, other than with the prior written consent of Macquarie;
 - f) upon the termination, dismissal or conversion of the Receivership Proceedings or the CCAA proceedings; or
 - g) upon denial of the SISP Order or the RVO (or if any such order is stayed or varied without the consent of each of Macquarie and Far North).
- **Implementation Steps:** The Implementation Steps are to address the following, among other things:
 - a) the manner in which the Purchased Entities' outstanding HST returns are to be filed;
 - b) the Monitor causing Kingston GP, in its capacity as general partner of Kingston LP, to not make any distribution of income or capital;
 - c) the rectification of certain deficiencies in the Purchased Entities' minute books so that the Monitor can issue shares for Hosting, as contemplated by the Transaction Documents; and
 - d) the manner in which Pre-Filing Intercompany Claims will be treated, setoff and/or assigned among the Validus Entities.

5.1 HST Considerations

1. As set out above, when IFPC sold the Leased Property to Macquarie, Macquarie paid approximately \$6 million to IFPC in respect of HST payable on the Leased Property (the “Purchase Price HST”). IFPC did not remit the Purchase Price HST to CRA.
2. As previously disclosed to the Court, one of the consequences of the commencement of the CCAA proceedings is that the obligation of IFPC to pay the Purchase Price HST will be treated as an unsecured claim and, pursuant to the RVO, vest in ResidualCo.
3. At the hearing for the CCAA application, counsel for the Validus Entities expressed concern about the treatment of certain post filing input tax credits (“ITCs”) which may otherwise serve to reduce the Purchase Price HST, which is presumably a concern given the potential personal liability for directors of IFPC. Although CRA had been served with the CCAA application, it did not appear or make submissions at that hearing.
4. The issue of the HST claim of CRA (the “Pre-Filing HST Claim”) resulting from the failure to remit the Purchase Price HST was also raised at the SISF motion on November 1, 2023. At that motion, the Monitor took the position that the determination of the appropriate time to address the tax treatment and structure under the Transaction was in connection with the motion for approval of the RVO and not at the SISF motion. The Department of Justice (appearing on behalf of CRA) supported that position.
5. Under the Transaction Documents, the treatment of HST and ITCs follows the following principles:
 - a. the Pre-Filing HST Claim is vested into ResidualCo;
 - b. any entitlement to ITCs generated in respect of HST paid pre-filing continues in ResidualCo (the “Pre-Filing ITCs”). In respect of the Pre-Filing ITCs, the Monitor continues to work to assess what has been claimed and what remains outstanding. However, based on preliminary work done, it appears that IFPC filed HST returns through March 2023, with the balance of April through July 2023 remaining outstanding. For the periods already filed by IFPC, it appears to have claimed approximately \$3.4 million in respect of Pre-Filing ITCs. The Monitor understands that there may be further Pre-Filing ITCs available to claim by IFPC; and
 - c. ITCs which are generated in respect of HST being paid to Macquarie pursuant to the transaction on closing will be for the benefit of the “restructured” IFPC.
6. From April 2023 to July 2023, IFPC made no lease payments under the Lease Agreement. Notwithstanding that IFPC did not make any payments, Macquarie remitted HST to CRA out of its own funds during that time.
7. Pursuant to the Transaction Agreement, upon closing of the Transaction, IFPC will purchase back the Leased Property from Macquarie and discharge rental arrears, in part, through its issuance of IFPC Note 1 (\$29 million), IFPC Note 2 (\$10 million) and IFPC Note 3 (\$6,435,000).

8. IFPC Note 3 represents the amount of the HST payable by IFPC in respect of the purchase of the Leased Property by IFPC and payment of arrears rent by IFPC, as contemplated by the Transaction Agreement, and consists of approx. \$5.85 million in respect of the Leased Property plus approx. \$585,000 in respect of lease arrears (collectively, the “HST Amount”). Following Closing, Macquarie will (to the extent it has not already done so) be responsible for remitting the HST Amount to CRA (subject to ITCs to which Macquarie itself is entitled from the conduct of Macquarie’s business), and IFPC will be entitled to claim an ITC in respect of the HST Amount paid by IFPC to Macquarie by way of issuance of IFPC Note 3 (the “Post-Filing ITC Entitlements”). These Post-Filing ITC Entitlements are generated in respect of HST paid as a result of the transactions that take place pursuant to the Transaction Agreement on Closing, and in respect of the payment of HST owing to Macquarie which Macquarie has already reported as HST in its net tax for HST purposes. Accordingly, IFPC will retain the entitlement to the Post-Filing ITC Entitlements. Such amounts will not be available to set off against the Pre-Filing HST Claim, which remains with ResidualCo.
9. In that regard, the Monitor has considered the proposed tax treatment under the Transaction Documents and notes the following:
- a) the treatment of HST and ITCs under the Transaction is consistent with the well-established doctrine of preserving set off but only to the degree of allowing “pre-pre” and “post-post” set offs in that:
 - i. the Pre-Filing ITCs will be vested into ResidualCo along with the Pre-Filing HST Claim;
 - ii. HST paid by IFPC in respect of the purchase of Leased Property would only become payable on the closing of the Transaction and so is a post-filing payment of HST. Correspondingly, any ITCs generated as a result of such payment of HST cannot be set off against the pre-filing Purchase Price HST obligation; and
 - iii. rental arrears and associated HST are being satisfied by IFPC on closing. HST in respect of rental arrears is being paid by IFPC on closing through the issuance of promissory notes and is therefore effectively being funded by Macquarie on the closing of the Transaction. While the entitlement to claim an ITC, as well as the obligation to pay the corresponding HST, arises at the time the consideration for the taxable supply (in this case, the rent) becomes payable, there is no requirement to claim ITCs only in the period in which they arise (provided claims are made within the limitations provided in the HST legislation). As the HST in respect of the rental arrears is being funded by Macquarie, it is appropriate that the related ITC is claimed post-filing and is therefore a post-filing ITC;
 - b) HST is being actually funded and paid for by Macquarie - the equities weigh in favour of the funding party continuing to have the benefit of the offsetting ITCs;
 - c) the parties are free to structure their transaction in a tax efficient manner; and
 - d) any ITCs generated from the payment of HST on obligations of VPC during the Receivership or CCAA period will continue to be assets of VPC or ResidualCo, but also cannot be set off against the pre-filing Purchase Price HST.

10. Based on the foregoing, the Monitor believes that the treatment of any entitlements to ITCs under the Transaction and within the course of these proceedings is appropriate.

5.2 The Purchased Validus Parent Assets

1. As set out above, Macquarie has security over the shares/units of IFPC, Kap, Bay, Kingston GP and Kingston LP. The Macquarie security, as it relates to VPC, does not attach to other assets of VPC, including the Purchased Validus Parent Assets, which are set out in the Disclosure Schedule.
2. As previously reported, the Monitor has received an independent legal opinion from its counsel as to the validity and enforceability of the security held by Macquarie.
3. The Monitor has considered whether sufficient consideration is being paid for the Purchased Validus Parent Assets (and any other assets of VPC that may be added to the Disclosure Schedule, as permitted by the Terms and Conditions).
4. In this regard:
 - a) all assets subject to these proceedings, including the Purchased Validus Parent Assets, were made available for sale under the SISP and no qualified bids were received;
 - b) there is significant consideration and benefit provided under the proposed Transaction Documents over and above the release of the Macquarie debt and security, including, without limitation, the ongoing employment of VPC employees and assumption of associated liabilities, the payment of the Priority Payments Closing Amount, the granting of the Priority Payments Indemnity (and Priority Payments Indemnity Charge) and the funding of the Administrative Expense Closing Amount;
 - c) based on the Monitor's review of the litigation between VPC and Hut 8 by NRF, it appears that there is a lack of evidence to support VPC's claim against Hut 8 and that there is considerable strength in Hut 8's claim against VPC;
 - d) the Monitor is unaware of any material value in Hosting, which, to the Monitor's knowledge, is inactive and has no assets;
 - e) the TransCanada Contract, although held in the name of VPC, is used in the course of Bay's business (and available to Kap and IFPC) and is unlikely to be monetized on a standalone basis. Based on the obligations thereunder, the contract is a cost to VPC's estate (and thus these proceedings), and Far North is required to replace a cash deposit held by TransCanada with respect to the TransCanada Contract that has the potential to result in a return of the existing deposit to VPC; and
 - f) the Transaction Agreement requires an allocation of the consideration payable among the Purchased Assets and provides that the consideration payable for the Purchased Validus Parent Assets shall be paid and satisfied by the assumption by the Purchasers of certain of the Priority Payments of Validus Parent.

6.0 Recommendation

1. The Monitor recommends that the Court approve the Transaction and grant the RVO for the following reasons:
 - a) in the Monitor's view, the SISP was commercially reasonable and conducted in accordance with the SISP Approval Order, including its timelines, which allowed the opportunity for the market to be broadly canvassed and provided an opportunity for parties to perform due diligence. The Monitor notes that the intention to use a stalking horse bid in this process was initially disclosed in Macquarie's receivership materials filed in August, 2023, and in Hut 8's press release dated August 11, 2023, and accordingly, the acquisition opportunity was in the public domain for approximately three months prior to the commencement of the SISP;
 - b) the SISP provided interested parties an opportunity to submit bids for certain of the plants/assets, and for those bids to be aggregated with the Purchaser's Stalking Horse Bid;
 - c) the Transaction provides for the greatest recovery available in the circumstances as there were no Qualified Bids other than the Stalking Horse Bid submitted in the SISP;
 - d) Macquarie, being the Validus Entities' principal secured creditor, was consulted in the development and negotiation of the Transaction and the SISP and has consented to all of the relief sought;
 - e) the Transaction provides a going-concern solution for the Validus Entities (other than VPC, which has no active business other than holding the shares of the Purchased Entities). It contemplates the continuation of operations and preserves employment for all, or substantially all, of the existing employees on terms and conditions of employment that are substantially similar in the aggregate to, and no less favourable in the aggregate than, those in effect for each Employee set out in the Disclosure Schedule. This is particularly beneficial in these circumstances as certain of the plants operate in rural communities where the Validus Entities are a significant employer;
 - f) the Monitor does not believe that further time spent marketing the Validus Entities' businesses and assets will result in a superior transaction. Moreover, the Validus Entities do not have the funding required to continue operating in the normal course, nor this CCAA proceeding, during any further marketing process;
 - g) the purchase price under the Transaction significantly exceeds the price VPC paid for the four plants (\$44.7 million) in the last 2 years and represents the greatest recovery available in the circumstances. It is also structured as a share deal that provides for the retention by the Purchased Entities of certain of their liabilities, other than the Excluded Liabilities, which further enhances the value of the Transaction as well as the assumption of certain liabilities by Assignee from VPC. The value is also supported by the results of the EY Sale Process, which failed to generate any unconditional offers for the IFPC plant. The Kap

and Bay plants are not presently operating and are in need of significant repair and are believed to have less value than IFPC;

- h) absent the Transaction, Macquarie is not prepared to continue to fund the Validus Entities. Funding available at this time is projected to be exhausted on or around February 15, 2024;
- i) certainty is required for the Validus Entities and their employees, as has been communicated by the Monitor throughout these proceedings. It is critical and urgent that the Transaction be completed expeditiously. By using an RVO structure to complete the Transaction, the Validus Entities' Permits and Licenses will be preserved. The Transaction as contemplated could not be completed if the Purchasers do not have certainty that they can acquire the Permits and Licenses on a timely basis;
- j) in the Monitor's view, the terms and conditions of the Transaction Agreement are commercially reasonable; and
- k) the Monitor and its counsel worked with the Purchasers and their counsel to settle the Implementation Steps. The Monitor does not believe any party is prejudiced by the Implementation Steps, which are required to complete the Transaction in accordance with the Transaction Documents.

6.1 RVO Considerations

1. The Monitor believes it is necessary and appropriate for the Transaction to be completed pursuant to an RVO. In forming its view, the Monitor considered the issues raised by Canadian Courts in CCAA proceedings when considering granting an RVO, including the considerations in the *Harte Gold* case set out below.

- a) *Why is the RVO necessary in this case?*

Preserving the Validus Entities' Permits and Licenses required to operate in the highly regulated Ontario power industry is the principal factor driving the requirement that the Transaction be completed through an RVO. An RVO provides for the seamless preservation of the Permits and Licenses required to operate the Validus Entities' businesses - the time and cost of transferring them absent an RVO, if even possible, could impair the businesses of the Validus Entities and unduly complicate and/or delay completion of a transaction. The Purchasers are not prepared to acquire the businesses under an alternative structure and there is no funding available to continue to operate the business while steps are taken to have the Permits and Licenses transferred to the Purchasers.

Completing the Transaction through a CCAA plan of arrangement ("Plan") is not a viable alternative as no party has been identified to sponsor a Plan given there is no value for any stakeholder in these proceedings other than Macquarie. Additionally, the cost of drafting a Plan, convening a meeting of creditors to vote on the Plan and conducting a claims process would be wasteful in the circumstances as Macquarie is the only creditor with an economic interest based on the results of the SISF. The Monitor understands that Macquarie would not fund such a process. The delay and uncertainty on the businesses resulting

from a Plan process would impair value as employees would likely seek alternative employment. Employee flight risk has been highlighted to the Court since the commencement of these proceedings. The RVO effectively provides all the benefits of a Plan, while providing more certainty, with less cost, risk and instability.

- b) *Does the RVO structure produce an economic result at least as favourable as any other viable alternative?*

The RVO allows for the expedient conveyance of the Purchased Entities to the Purchasers. Without an RVO, there would be substantial delay transferring the Permits and Licenses, and the ability to transfer some or all of them at all may be at risk. Macquarie has advised the Monitor that it is not prepared to continue to provide funding absent the certainty of a transaction, meaning the operations of the Validus Entities would need to be discontinued, resulting in a loss of employment in rural communities, as well as a cascading number of issues and problems which may arise as a result of the power plants not being maintained. The issuance of an RVO is a material condition of the Transaction and is integral to completing the Transaction. Accordingly, there does not appear to be any viable alternative to an RVO.

There is no other viable alternative as the Purchasers have insisted on the RVO as the proposed structure and there were no other Qualified Bids submitted in the SISP. The only alternative would be a liquidation of the plant assets, which would result in a significantly worse outcome for many stakeholders including counterparties, whose contracts are continuing (and whose pre-filing liabilities are being assumed) and employees who would be terminated in such circumstances.

- c) *Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?*

In the Monitor's view, no stakeholders are prejudiced by the issuance of an RVO relative to their treatment and outcome, particularly given the Monitor's views as to the lack of any other viable option noted above. In particular, the claims/liabilities being transferred to ResidualCo are unsecured and/or would receive no distribution or consideration under any transaction structure. Given the value of Macquarie's secured claim, there would be no funds available for distribution to any of the Validus Entities' creditors subordinate to Macquarie under any other realization scenario. The Monitor is of the view that many stakeholders will have an improved outcome as a result of the RVO given the treatment of pre-filing liabilities related to Continuing Contracts and the ongoing employment opportunities for employees. Further, the proposed Transaction accounts for payment of priority payables in respect of outstanding source deduction liabilities and the ongoing assumption of outstanding property taxes owing to the municipalities on the plants.

- d) *Does the consideration being paid for the debtor's business reflect the importance and value of the licenses and permits (or other intangible assets) being preserved under the RVO structure?*

For the reasons noted in 1(a) above, in the Monitor's view, the value of the Validus Entities' Permits and Licenses preserved under the RVO structure is the critical consideration in structuring the Transaction. These assets were extensively marketed for sale in the SISP and, in the case of IFPC, in a pre-filing EY Sale Process. The consideration being paid by the Purchasers is directly attributable to their importance and value, which provides significant benefit for additional for other stakeholders, including contract counterparties and the Validus Entities' employees.

2. Based on the foregoing, the Monitor recommends that this Court approve the Transaction and grant the proposed RVO.

7.0 Releases

1. The RVO provides for: (i) KSV, in its personal capacity and its capacities as Receiver and Monitor, and its legal counsel, and (ii) Macquarie, Far North and their respective current and former directors, officers, employees, legal counsel and representatives; and (iii) Ryan Chua, in his capacity as the First Director (collectively, the "Released Parties") to be released from the Released Claims (as defined in the proposed RVO).
2. The claims to be released include any claims arising out of the Validus Entities' business, assets, operations and affairs or the Transaction Documents.
3. The proposed release does not release:
 - a) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA;
 - b) any obligations of any of the Released Parties under or in connection with the Offer Letter, the Transaction Agreement, the Transaction Documents and/or any agreement, document, instrument, matter or transaction involving the Validus Entities arising in connection with or pursuant to any of the foregoing;
 - c) any claims related to the pre-closing arrangements between Macquarie and Far North or any claims arising from the arrangements entered into between any of Macquarie, Far North or the Purchased Entities on or after the Effective Time.
4. In the Monitor's view:
 - a) during these proceedings, the Released Parties have been integral to the conduct of the SISP and the negotiation of the Transaction;
 - b) other than Mr. Chua, the Released Parties do not include any present or former director or officer of the Validus Entities given they have not been involved in these proceedings, the SISP and/or the negotiation and execution of the Transaction; and
 - c) the exclusions noted above are in accordance with the CCAA.

5. Additionally, the Monitor is of the view that the scope of the Released Claims is reasonable in the circumstances as, among other things: (i) there has been significant opposition by the Validus Entities and Mr. Shortt at times in these proceedings; and (ii) the records and information that the parties have had to rely upon in structuring the Transaction and in the course of the business operations has been unreliable or non-existent. The release of such claims in favour of the proposed Released Parties will assist in completing the administration of the estate for which reserves or charges might otherwise be required.
6. Based on the foregoing, the Monitor is of the view that the scope of the proposed releases in favour of the Released Parties is fair and reasonable in the circumstances.

8.0 Service and Notice

1. In preparing for this motion, the Monitor, Purchasers and their respective legal counsel were cognizant of the service and notice requirements related to parties which may be affected by the granting of an RVO, as well as the state of the Validus Entities' books and records. It was for this reason that the Monitor sought approval of the Unknown Contract Bar Process, which process, as previously noted, was approved on November 1, 2023 pursuant to the SISP Approval Order. In this regard, the Monitor:
 - a) posted a list of known contracts (the "Known Contract List") on the Monitor's website; and
 - b) arranged for a notice, a copy of which is attached as Appendix "L", to be published in the following national and local publications:

Publication	Publication Date
The Globe & Mail (National Edition)	November 13, 2023
North Bay Nugget	November 13, 2023
Kingston Whig Standard	November 13, 2023
Timmins Daily	November 14, 2023
Iroquois Falls News	November 16, 2023

2. The Monitor was not contacted by any unknown contract counterparties prior to November 28, 2023, being the bar date under the Unknown Contract Bar Process.
3. The Monitor will be serving its Motion Record to all known contract counterparties appearing on the Known Contract List (other than those with a pure right in land evidenced by an easement), as well as the regulators that have issued all of the Permits and Licenses.
4. In the Monitor's view, the service considerations related to an RVO motion have been adequately addressed, including the efforts undertaken to identify unknown contract counterparties pursuant to the Unknown Contract Bar Process and the length of notice provided to parties on the Known Contract List to understand how their rights are being affected, to engage in discussions with the Monitor regarding same and to raise objections.
5. Based on the foregoing, the Monitor believes that service of this motion is adequate.

9.0 ResidualCo

1. It is contemplated that, pursuant to the terms of the RVO, the liabilities of the Purchased Entities excluded from the Transaction will vest in ResidualCo and that ResidualCo would become a debtor company subject to the receivership and CCAA proceedings upon the issuance of the order sought.
2. All liabilities being transferred to ResidualCo pursuant to the Transaction and proposed RVO are unsecured. In other words, there would be no funds available for distribution to these creditors under any circumstance based on the economics of the Transaction and lack of viable alternatives, as outlined above. The Monitor is not aware of any environmental, priority or deemed trust claims being transferred to ResidualCo. Accordingly, as Macquarie is the only creditor with an economic interest in the Transaction, there does not appear to be any prejudice to the parties that will become creditors of ResidualCo should the relief sought be granted.
3. The Monitor is aware that a creditor trust is an alternative structure to establishing a separate legal entity for the purposes of vesting the excluded liabilities in an RVO transaction. The use of ResidualCo has no practical difference to the stakeholders than a creditor trust as the claims would be administered by the court officer in the same manner and there would be no funds available to creditors in either structure. In this case, the Purchasers have agreed to fund the nominal incremental costs associated with the incorporation of ResidualCo, and Mr. Chua has agreed to serve as ResidualCo's sole director if authorized to do so by the Court in accordance with the RVO. Mr. Chua has agreed to serve in this role to facilitate the Transaction and on the understanding the ResidualCo is an entity that is to become subject to these and the receivership proceedings as a result of the structure of the RVO and not because of any operational or other decisions that he will make or made as a director of ResidualCo.
4. The Monitor believes that the proposed protections to be afforded to Mr. Chua, in his capacity as ResidualCo's sole director, are reasonable and appropriate in the circumstances. Mr. Chua is serving as a director of ResidualCo for the sole purpose of implementing the Transaction. It is contemplated that ResidualCo will make an assignment in bankruptcy shortly following closing of the Transaction.

10.0 Cash Flow Forecast

1. The Receivership Order authorized the Receiver to borrow monies up to the principal amount of \$1 million, which borrowings (plus interest and fees) were secured by a Receiver's Borrowing Charge, subordinate only to the Receiver's Charge. Both of these Court-ordered charges were recognized and preserved in these CCAA proceedings pursuant to paragraph 3 of the Initial Order.
2. On November 1, 2023, the Court authorized an increase in the Receiver's Borrowings Charge from \$1 million to \$1.5 million. As at the date of this Report, Macquarie has advanced \$1.5 million to the Receiver to fund these proceedings. On November 17, 2023, the Receiver issued a Receiver's Certificate evidencing this advance.

3. The Cash Flow Forecast provides a projection through the Forecast Period and reflects that no additional borrowings are required to that date. Based on the Monitor's review of the Cash Flow Forecast, the probable and hypothetical assumptions appear reasonably supported. As stated in the scope and terms of reference to this Report, the Cash Flow Forecast is based on assumptions regarding future events. Actual events are likely to vary from forecasted results and such variances may be material. The Cash Flow Forecast has been prepared solely for the purpose of this Report and is not appropriate for any other purpose. The Cash Flow Forecast and the Validus Entities' and the Monitor's statutory reports on the Cash Flow Forecast are collectively attached as Appendix "M".

11.0 Extension of the Stay of Proceedings

1. The Monitor recommends that the Court issue an order granting an extension of the stay of proceedings to February 29, 2024 for the following reasons:
 - a) as the Monitor is providing the overall supervision for the business during these proceedings, and the Company does not have any executive level management, it is its view that the good faith and due diligence standard should be based on its conduct during these proceedings. The Monitor (and Receiver) are of the view that they have advanced these proceedings in good faith and with due diligence and that they are causing the Validus Entities to carry out their obligations in accordance with the orders issued in these proceedings;
 - b) an extension will provide sufficient time for the Monitor to complete the SISF and to work with the Purchasers to complete the Transaction, should it be approved by this Court;
 - c) based on the Cash Flow Forecast, no additional borrowing is required during the Forecast Period and the Validus Entities are projected to have sufficient liquidity to fund their operations in the normal course; and
 - d) terminating the stay of proceedings on January 31, 2024 could result in the loss of the Transaction, and the resultant benefits, including the inability to maximize value for stakeholders and the loss of employment opportunities for the Validus Entities' employees, which is of vital importance given the remoteness of the communities in which some of the Validus Entities operate.

12.0 Professional Fees

1. The fees (excluding disbursements and HST) of the Monitor, Receiver and NRF from the commencement of the CCAA and receivership proceedings to November 30, 2023 are approximately \$171,000, \$478,000 and \$524,000, respectively.
2. The average hourly rates for KSV and NRF for the referenced billing periods were \$524.68 and \$737.61, respectively.
3. Detailed invoices in respect of the fees and disbursements of the Monitor, Receiver and NRF are provided in appendices to the affidavits (the "Fee Affidavits") filed by KSV and NRF attached as Appendices "N" and "O", respectively.

4. The Monitor is of the view that the hourly rates charged by NRF are consistent with the rates charged by large corporate law firms practicing in the area of corporate insolvency and restructuring in the Toronto market, that NRF's billings reflect work performed consistent with the Monitor's instructions, and that the overall fees charged by NRF, the Monitor and the Receiver are reasonable and appropriate in the circumstances.

13.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the relief sought by the Monitor in Section 1.1.1(i) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS MONITOR IN THE CCAA PROCEEDINGS OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP.,
KAP POWER CORP., VALIDUS HOSTING INC.,
AND KINGSTON COGEN GP INC.
AND NOT IN ITS PERSONAL CAPACITY**

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING
VALIDUS POWER CORP. and 1000745924 ONTARIO INC.

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

Proceeding commenced at Toronto

FIFTH REPORT OF THE MONITOR

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam, LSO#: 46735J

Tel: 416.202.6707

jennifer.stam@nortonrosefulbright.com

Evan Cobb, LSO#: 55787N

Tel: 416.216.1929

evan.cobb@nortonrosefulbright.com

Lawyers for the Monitor

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	WEDNESDAY, THE 28 th
)	
JUSTICE OSBORNE)	DAY OF FEBRUARY, 2024

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
INVOLVING VALIDUS POWER CORP. and
1000745924 ONTARIO INC.**

ORDER

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”), in its capacity as monitor (the “**Monitor**”) of Validus Power Corp. and 1000745924 Ontario Inc., for an order: (i) approving the extension of the Stay Period (as defined in the Initial Order dated August 29, 2023 in this proceeding, the “**Initial Order**”) up to and including April 15, 2024; (ii) directing the Land Registry Offices for the Land Titles Divisions of Cochrane (No. 6), Lennox (No. 29) and Nipissing (No. 36) to delete and expunge from title to the applicable Property (as defined in the Fifth Report) certain encumbrances pertaining to the applicable Property; and (iii) declaring that the Priority Payments Indemnity Charge (as defined in the Fifth Report) has been terminated, released and discharged, was heard this day via videoconference.

ON READING the Fifth Report of the Monitor dated February 1, 2024 (the “**Fifth Report**”), and on hearing the submissions of counsel to KSV in its capacity as Receiver and Monitor, Macquarie Equipment Finance Limited, [**Far North Power Corp.,**] and those other parties present, no one else on the Service List appearing although duly served as appears from the affidavit of service of Katie Parent sworn February 1, 2024,

SERVICE

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

STAY EXTENSION

2. THIS COURT ORDERS that the Stay Period, as defined in the Initial Order, be and is hereby extended up to and including April 15, 2024.

VESTING RECEIVERSHIP ORDER FROM TITLE

3. THIS COURT ORDERS AND DIRECTS that the Land Registry Offices for the Land Titles Divisions of Cochrane (No. 6) is hereby directed to delete and expunge the court order registered on September 12, 2023 as Instrument Number CB188690 from the title parcel registers identified as Property Identification Numbers (“**PIN(s)**”) 65337-0369 (LT), 65337-0456 (LT), 65337-0458 (LT), 65337-0372 (LT), 65337-0373 (LT), 65095-0051 (LT) and 65095-0052 (LT).

4. THIS COURT ORDERS AND DIRECTS that the Land Registry Offices for the Land Titles Divisions of Lennox (No. 29) is hereby directed to delete and expunge the court order registered on September 12, 2023 as Instrument Number LX122689 from the title parcel registers identified as PINs 45132-0375 (LT), 45132-0377 (LT) and 45132-0362 (LT).

5. THIS COURT ORDERS AND DIRECTS that the Land Registry Offices for the Land Titles Divisions of Nipissing (No. 36) is hereby directed to delete and expunge the court order registered on September 12, 2023 as Instrument Number BS230452 from the title parcel register identified as PIN 49127-0021 (LT).

PRIORITY PAYMENTS INDEMNITY CHARGE

6. THIS COURT ORDERS AND DECLARES that the Priority Payments Indemnity Charge (as defined in Approval and Vesting Order of this Court made on January 4, 2024) has been terminated, released and discharged.

GENERAL

7. 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 or the Monitor 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 or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver or the Monitor and its agents in carrying out the terms of this Order.

8. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date hereof 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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING VALIDUS
POWER CORP. and 1000745924 ONTARIO INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7
Fax: 416.216.3930

Jennifer Stam LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Evan Cobb LSO#: 55787N
Tel: 416.216.1929
evan.cobb@nortonrosefulbright.com

Lawyers for the Monitor

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING
VALIDUS POWER CORP. and 1000745924 ONTARIO INC.

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

Proceeding commenced at Toronto

**MOTION RECORD
returnable February 28, 2024
(Stay Extension and Other Relief)**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam, LSO#: 46735J

Tel: 416.202.6707

jennifer.stam@nortonrosefulbright.com

Evan Cobb, LSO#: 55787N

Tel: 416.216.1929

evan.cobb@nortonrosefulbright.com

Lawyers for the Monitor