

**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

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

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Proceeding commenced at Toronto

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