



**Third 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 15, 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.

THIRD REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

DECEMBER 15, 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 (in such capacity, the “Interim Receivership Order”) adjourning Macquarie’s application until August 10, 2023 and appointing KSV Restructuring Inc. (“KSV”) as interim receiver (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 (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 businesses of the Validus Entities could continue to operate in the normal course. Macquarie's application materials also indicated that it intended to submit an offer to serve as a stalking horse bid in a sale and investment solicitation process (the "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* ("CCAA").
4. On August 11, 2023, Hut 8 Mining Corp. ("Hut 8"), 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 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 (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 likely preferred structure in the circumstances as the Validus Entities hold various licenses and permits required to operate their businesses, and the time and cost of transferring them absent an RVO could impair the businesses of the Validus Entities and unduly complicate 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.
9. On November 2, 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 are provided in Appendices "F" and "G", respectively.
10. This report (the "Report") is filed by KSV as Monitor.

1.1 Purposes of this Report

1. The purposes of this Report are to provide:
 - a) background information with respect to the Validus Entities and these proceedings;
 - b) provide an update on these proceedings, including the status of the SISP;
 - c) summarize the Validus Entities' cash flow forecast (the "Cash Flow Forecast") for the period December 9, 2023 to February 2, 2024 (the "Forecast Period"); and
 - d) provide the Monitor's recommendation that the Court issue an order, among other things, extending the stay of proceedings from December 31, 2023 to January 31, 2024.

1.2 Currency

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

1.3 Restrictions¹

1. In preparing this Report, KSV has relied upon unaudited financial information provided by the Validus Entities' employees and consultants², the books and records of the Validus Entities³ 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. KSV expresses no opinion or other form of assurance on whether the Cash Flow Forecast will be achieved.
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.

¹ In this section, references to KSV refer to its capacity as Receiver, Monitor and in its personal capacity.

² Certain individuals having executive titles were retained pursuant to consulting agreements.

³ As discussed in the Affidavit of Joshua Stevens of Macquarie dated July 31, 2023 and the Monitor's prior reports, the Validus Entities' books and records were not kept current and otherwise appear to be significantly deficient.

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 if called upon. The Kapuskasing and North Bay plants are being maintained and secured but are not otherwise operational at this time.
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	SHS 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. Mr. Forget is a former senior employee of the Validus Entities.
4. At the commencement of the receivership, the Receiver terminated substantially all of the individuals who did not work at the plants and who had or may have had working arrangements with the Validus Entities.
5. Macquarie holds security against substantially all Property, excluding VPC’s property, assets and undertaking other than the shares of its subsidiaries. As of November 20, 2023, Macquarie calculated that it is owed approximately \$58.6 million, including overdue interest to that date and HST, but excluding costs and overdue interest following that date, each of which continues to accrue (the “Macquarie Claim Amount”). 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.
6. The Second Report also provides a summary of the Validus Entities’ other secured creditors and stakeholders, including The International Union of Operating Engineers Local 865 and The Power Workers’ Union – CUPE Local 1000, and accordingly, that information is not repeated in this Report.
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 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 SISP⁴

1. The Monitor has carried out the SISP in accordance with the SISP Approval Order. The SISP provided for 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 Bid Deadline
Auction (if any)	On or about December 14, 2023
Implementation Order motion	December 22, 2023

2. As noted above, the original Qualified Bid Deadline under the SISP was 11:59 pm on Friday, December 8, 2023. The ultimate Qualified Bid Deadline was extended to 4 pm on Monday, December 11, 2023. Despite significant interest from various parties leading up to the Qualified Bid Deadline and broad solicitation of the market by the Monitor in accordance with the SISP, there were no Qualified Bids submitted under the SISP other than the stalking horse bid submitted by Macquarie and Far North Power Corp., an entity incorporated by Hut 8 (jointly, the “Stalking Horse Purchasers”).
3. On December 11, 2023, the Monitor advised the Stalking Horse Purchasers that their bid was the Successful Bid under the SISP.
4. Pursuant to paragraph 10 of the SISP, which allows dates under the SISP to be extended up to 14 days, the Monitor has scheduled a motion returnable January 4, 2024 to seek approval of the transaction with the Stalking Horse Purchasers pursuant to an RVO (the “Proposed Transaction”). The Monitor will be filing a report to Court prior to that motion which will provide a summary of the SISP and the basis for its support of the Proposed Transaction.

4.0 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.

⁴ Capitalized terms in this section have the meaning provided to them in the SISP Approval Order.

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 "I".

5.0 Extension of the Stay of Proceedings

1. The Monitor recommends that the Court issue an order granting an extension of the stay of proceedings from December 31, 2023 to January 31, 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 SISP, including to bring the motion returnable January 4, 2024 to seek approval of the Proposed Transaction and to work with the Stalking Horse Purchasers to complete the Proposed Transaction (currently estimated to be on or around January 15, 2024), 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 December 31, 2023 could result in the loss of the Proposed 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.

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

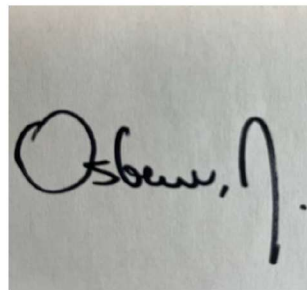
33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

A rectangular box containing a handwritten signature in black ink. The signature appears to be "Osburn, J." with a stylized flourish at the end.

2023.08.1

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SCHEDULE "A"

DESCRIPTION OF REAL PROPERTY

Iroquois Falls Power Corp.

Firstly:

PIN 65337-0369 (LT)

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

Secondly:

PIN 65337-0456 (LT)

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

Thirdly:

PIN 65337-0458 (LT)

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

Fourthly:

PIN 65337-0372 (LT)

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

Fifthly:

PIN 65337-0373 (LT)

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

Kap Power Corp.

Firstly:

PIN 65095-0051 (LT)

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

Secondly:

PIN 65095-0052 (LT)

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

Bay Power Corp.

PIN 49127-0021 (LT)

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

Kingston Cogen GP Inc.

Firstly:

PIN 45132-0375 (LT)

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

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

Secondly:

PIN 45132-0377 (LT)

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

Thirdly:

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

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

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

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

DATED the ____ day of _____, 2023.

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

Per: _____
Name:
Title:

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(Appointing Receiver)**

Torys LLP

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

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Mike Noel (LSO#: 80130F)
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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.

Oleau, 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 SISP.
5. Based on the Receivership Application Materials, the following creditors have security interests against the Property:
 - a) Macquarie demanded \$55,598,575 as of July 24, 2023 and holds senior security against substantially all Property. The responding materials filed by the Validus Entities in the receivership proceedings made claims disputing approximately \$9 million of the amount demanded by Macquarie. The Receiver is reviewing this issue;

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

3.0 The CCAA Application

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

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

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

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

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

4.0 Validus Entities' Refinancing Efforts

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

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

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

5.0 Proposed Initial Order

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

6.0 Cash Flow Forecast

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

7.0 Anticipated Next Steps

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

8.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER AND PROPOSED MONITOR OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP.,
KAP POWER CORP., VALIDUS HOSTING INC.,
KINGSTON COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN GP INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “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.

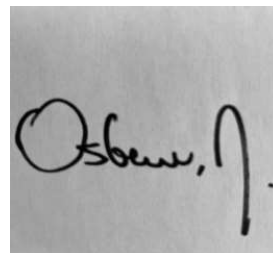
32. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Validus Entities, the Business or the Property.

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

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.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

INITIAL ORDER

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Lawyers for the Applicants, each by the Receiver

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”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 1ST
)
JUSTICE OSBORNE) DAY OF NOVEMBER, 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.**

SISP APPROVAL ORDER

THIS MOTION, made by **KSV Restructuring Inc. ("KSV")**, in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of Validus Power Corp. ("**VPI**"), Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. ("**Hosting**"), Kingston Cogen GP Inc. ("**Kingston GP**", and collectively with each of the foregoing entities, the "**Companies**") and Kingston Cogen Limited Partnership ("**Kingston LP**", and together with the Companies, the "**Validus Entities**"), for an Order, among other things, approving a sale and investment solicitation process for the Validus Entities was heard this day at 330 University Ave, Toronto, Ontario.

ON READING the Motion Record in respect of this motion, filed, the Second Report of the Monitor dated October 19, 2023 (the "**Second Report**"), filed, the Reply Record of Macquarie Equipment Finance Limited, filed, and the Responding Record and Supplementary Responding Record of the Validus Entities, filed in the receivership proceedings, bearing Court File No.: CV-23-00703754-00CL;

AND UPON hearing the submissions of counsel for the Monitor, counsel for Macquarie Equipment Finance Ltd. (the "**Stalking Horse Bidder**"), counsel for Far North Power Corp. (the "**Assignee**"), counsel for the Validus Entities, and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of Katie Parent sworn October 26, 2023, filed.

SERVICE AND DEFINITIONS

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.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale and Investment Solicitation Process attached as Schedule "A" (the "**SISP**"), the Order of this Court dated August 10, 2023 (the "**Receivership Order**") issued in the receivership proceedings bearing Court File No. CV-23-00703754-00CL (the "**Receivership Proceedings**") or the Initial Order of this Court dated August 29, 2023 (the "**Initial Order**"), as applicable.

SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the SISP is hereby approved and the Monitor is hereby authorized to implement the SISP pursuant to the terms thereof. The Monitor is hereby authorized to perform all things reasonably necessary to carry out the SISP.
4. **THIS COURT ORDERS** that the Monitor shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or

result from the gross negligence or willful misconduct of the Monitor in performing its obligations under the SISP, as determined by this Court.

STALKING HORSE BID

5. **THIS COURT ORDERS** that the transaction agreement (the "**Transaction Agreement**") appended as Schedule "A" to the offer letter delivered by the Stalking Horse Bidder and the Assignee to the Monitor (the "**Offer Letter**", and the Stalking Horse Bidder and the Assignee's offer for the Receiver's entry into the Transaction Agreement set out therein, the "**Stalking Horse Bid**") is hereby approved solely as the stalking horse bid in the SISP, provided that, nothing herein approves: (i) the acceptance and/or execution of the Transaction Agreement by the Vendors (as defined in the Stalking Horse Bid); or (ii) the sale and the vesting of any Property to the Stalking Horse Bidder, the Assignee or any of their respective designees, if applicable, pursuant to the Transaction Agreement and that the approval of the Vendors' acceptance and execution of the Transaction Agreement and/or any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Bid is the Successful Bid pursuant to the SISP.

6. **THIS COURT ORDERS** that, as soon as reasonably practicable following the Vendors agreeing upon the final Implementation Steps (as defined in the Offer Letter and the Transaction Agreement), the Monitor shall, in each such case: (i) file a copy thereof with this Court; (ii) serve a copy thereof on the Service List; and (iii) provide a copy thereof to each SISP Participant (as hereinafter defined), excluding from the public record any confidential information that the Monitor, the Stalking Horse Bidder and the Assignee agree should be redacted.

BID PROTECTIONS

7. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered to enter into the break fee agreement (the "**Break Fee Agreement**") dated as of October 16, 2023,

between the Monitor and the Stalking Horse Bidder and attached as Appendix "I" to the Second Report, *nunc pro tunc*, and the Break-Up Fee (as defined in the Break Fee Agreement) and the Expense Reimbursement (as defined in the Break Fee Agreement) are hereby approved and the Vendors are hereby authorized and directed to pay the Break-Up Fee and the Expense Reimbursement to the Stalking Horse Bidder (or as it may direct) in the manner and circumstances described in the Break Fee Agreement out of the proceeds from and upon completion of any Successful Bid with any party other than the Stalking Horse Bidder.

8. **THIS COURT ORDERS** that the Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the "**Bid Protections Charge**") on the Property, which charge shall not exceed \$2,260,000, as security for payment of the Break-Up Fee and the Expense Reimbursement in the manner and circumstances described in the Break Fee Agreement.

9. **THIS COURT ORDERS** that the filing, registration or perfection of the Bid Protections Charge shall not be required, and that the Bid Protections Charge shall be valid and enforceable for all purposes, including against any right, title or interest filed, registered, recorded or perfected subsequent to the Bid Protections Charge, notwithstanding any such failure to file, register, record or perfect.

10. **THIS COURT ORDERS** that the Bid Protections Charge shall constitute a charge on the Property and the Bid Protections Charge shall rank in priority to all other Encumbrances in favour of any Person notwithstanding the order of perfection or attachment, other than (i) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable legislation; and (ii) the Receiver's Borrowing Charge (as defined in the Receivership Order).

11. **THIS COURT ORDERS** that, except for the Charges or as may be approved by this Court on notice to parties in interest, the Applicant shall not grant any Encumbrances over any Property

that rank in priority to, or *pari passu* with, the Bid Protections Charge, unless the Applicant also obtains the prior written consent of the Monitor and the Stalking Horse Bidder, or further Order of this Court.

12. **THIS COURT ORDERS** that the Bid Protections Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Bidder shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Bid Protections Charge nor the execution, delivery, perfection, registration or performance of the Transaction Agreement shall create, cause or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Stalking Horse Bidder shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Bid Protections Charge or the execution, delivery or performance of the Transaction Agreement; and

- (c) the payments made by the Applicant pursuant to this Order, the Transaction Agreement and the granting of the Bid Protections Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

PIPEDA

13. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor and its respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants (each, a "**SISP Participant**") and their advisors personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a "**Transaction**"). Each SISP Participant 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 for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor. Any Successful Party shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the CCAA Parties, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor.

UNKNOWN CONTRACT BAR PROCESS

14. **THIS COURT ORDERS** that capitalized terms used in this section of the Order shall have the following meanings:

- (a) **"Excluded Contract Counterparties"** means any contracts for employment with any of the employees of the Companies;
- (b) **"Known Contract Counterparties"** means a counterparty with a contract with one or more of the Companies who is known to the Monitor based on the books and records of the Companies or who is otherwise known by the Monitor as having a contract with the Companies but, for greater certainty, excluding Excluded Contract Counterparties;
- (c) **"Known Contracts"** means all contracts with the Companies listed on the Known Contract Counterparty List;
- (d) **"Monitor's Website"** means <https://www.ksvadvisory.com/experience/case/validus-power-corp;>
- (e) **"Publication Notice"** means the notice to be published by the Monitor requesting parties to confirm on the Monitor's Website that they are a Known Contract Counterparty and that all of their contracts with the Companies are listed on the Known Contract Counterparty List; and
- (f) **"Unknown Contract Counterparty"** means any Person who has a contract with one or more of the Companies who is not a Known Contract Counterparty.

15. **THIS COURT ORDERS** that within 3 business days from the date of this Order, the Monitor shall post on the Monitor's Website a list of all Known Contract Counterparties and Known Contracts (the **"Known Contract Counterparty List"**).

16. **THIS COURT ORDERS** that as soon as reasonably practicable after the date of this Order, the Monitor shall cause to be published the Publication Notice in the Globe and Mail (National Edition) and such other publications as the Monitor may consider appropriate.

17. **THIS COURT ORDERS** that any person who believes it may have one or more contracts with one or more of the Companies whose identity and/or contract is not listed on the Known Contract Counterparty List shall contact the Monitor by no later than November 28, 2023 (the “**Unknown Contract Bar Date**”) and provide the Monitor with a copy or copies of any or all outstanding contracts.

18. **THIS COURT ORDERS** that any Unknown Contract Counterparty who complies with paragraph 17 above, shall be treated as a Known Contract Counterparty in connection with any motions whereby Known Contract Counterparties are provided with notice.

19. **THIS COURT ORDERS** that upon expiration of the Unknown Contract Bar Date, all other Unknown Contract Counterparties shall be forever barred from asserting that it did not receive adequate notice of any treatment of any contractual right or claim in the connection with these proceedings including, without limitation, any motion or motions for approval of a sale approval order, vesting order, reverse vesting order, distribution order or otherwise, provided that nothing herein prevents any such Unknown Contract Counterparty from asserting a claim against any residual proceeds of sale, Residualco or in the bankruptcy of the Companies.

APPROVAL OF KSV’S ACTIVITIES AND REPORTS

20. **THIS COURT ORDERS** that the activities and conduct of KSV, in its capacities as the Monitor and as the Receiver, prior to the date hereof in relation to the CCAA Parties or the Validus Entities, as the case may be, in these CCAA proceedings and the Receivership Proceedings, as the case may be, are hereby ratified and approved.

21. **THIS COURT ORDERS** that the pre-filing report of the Monitor dated August 23, 2023, the first report of the Monitor dated September 1, 2023 and Second Report be and are hereby approved.

22. **THIS COURT ORDERS** that only KSV in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraphs 20 and 21 of this Order.

EXTENSION OF THE STAY PERIOD

23. **THIS COURT ORDERS** that the Stay Period, as defined in the Initial Order dated August 29, 2023 in this proceeding, be and is hereby extended up to and including December 31, 2023.

GENERAL

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

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

26. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and/or filing.

SCHEDULE "A"
SALE AND INVESTMENT SOLICITATION PROCESS

See attached.

Sale and Investment Solicitation Process

1. On August 10, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order, among other things, appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of the property and undertakings of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Kingston Cogen Limited Partnership, Kingston Cogen GP Inc. and Validus Hosting Inc. (collectively, the “**Validus Entities**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101(1) of the *Courts of Justice Act* (Ontario).
2. On application by the Receiver, on August 29, 2023, the Court granted an order (the “**Initial Order**”), among other things, granting the Validus Entities relief pursuant to the *Companies’ Creditors Arrangement Act* (Canada) and appointing KSV as monitor (in such capacity, the “**Monitor**”) of the Validus Entities.
3. On November 1, 2023, the Court granted a further order (the “**SISP Order**”), among other things: (a) authorizing the Monitor to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof; (b) approving, for purposes of acting as the stalking horse bid in the SISP, the transaction agreement (the “**Stalking Horse Transaction Agreement**”) appended as Schedule “A” to the offer letter delivered by Macquarie Equipment Finance Limited (the “**Proponent**”) and Far North Power Corp. (the “**Assignee**”) to the Monitor on October 16, 2023 (the Proponent and the Assignee’s offer for the entry by the Validus Entities into the Stalking Horse Transaction Agreement set out therein, the “**Stalking Horse Bid**”); (c) approving the Monitor’s entry into the Break-Up Fee Agreement and the Break-Up Fee and the Expense Reimbursement; and (d) granting the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Initial Order or the SISP Order, as applicable.
4. This SISP sets out the manner in which: (a) binding bids for executable transaction alternatives that are superior to the Stalking Horse Bid involving the shares and/or the business and assets of the Validus Entities will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) Court approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of the Validus Entities’ shares, assets and/or business and/or an investment in the Validus Entities, each of which shall be subject to all terms set forth in this SISP.
5. The SISP shall be conducted by the Monitor.
6. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by the Monitor.
7. The SISP will be conducted such that the Monitor will:
 - (a) prepare marketing materials and a process letter;

- (b) prepare and provide applicable parties with access to a virtual data room containing diligence information;
 - (c) prepare and include in the data room one or more template forms of purchase agreements to be used by interested parties when submitting a proposed bid (“**Form of Agreement**”);
 - (d) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to the Monitor); and
 - (e) request that such parties (other than the Proponent and the Assignee) submit a binding offer meeting at least the requirements set forth in Section 9, as determined by the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).
8. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- (a) Court approval of SISP and the Stalking Horse Bid to serve as stalking horse bid in the SISP – November 1, 2023;
 - (b) The Monitor to commence solicitation process – November 2, 2023;
 - (c) Deadline to submit a Qualified Bid – 11:59 p.m. (Toronto time) on December 7, 2023 (the “**Qualified Bid Deadline**”);
 - (d) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – As soon as possible after the Qualified Bid Deadline
 - (e) The Monitor to hold the Auction (if applicable) – on or about December 13, 2023; and
 - (f) Implementation Order (as defined below) hearing by no later than December 21, 2023, subject to Court availability.

The Monitor may, in its discretion, seek court approval for the termination of the SISP and for approval of implementation of the Stalking Horse Bid if no potentially interested parties have executed non-disclosure agreements and commenced due diligence on or prior to November 22, 2023, or if thereafter all parties who executed non-disclosure agreements and conducted due diligence have advised the Monitor that they no longer intend to participate in the SISP.

9. In order to constitute a Qualified Bid, a bid (including an Aggregated Bid (as defined below)) must comply with the following:
- (a) it provides for: (i) the payment in full in cash on closing of the Claim Amount (as defined in the Stalking Horse Transaction Agreement); (ii) the purchase of all of the Proponent's interest in the Receiver's Certificates (as defined in the Appointment Order), if any; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) and (ii) of this Subsection 9(a), including any claims secured by Court-ordered charges (other than the Receiver's Borrowings Charge (as defined in the Appointment Order)), unless otherwise agreed to by the applicable holders thereof in their sole discretion, and the Break-Up Fee and the maximum amount of the Expense Reimbursement (as such terms are defined in the Stalking Horse Transaction Agreement); and (iv) a minimum overbid increment of \$750,000 (the "**Overbid Increment**");
 - (b) An allocation of the purchase price under such bid among the purchased assets of Validus Power Corp. and all other property to be acquired.
 - (c) it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the "**Cash Consideration Value**") and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus the Validus Entities' aggregate cash on hand must be sufficient for payment in full of the items contemplated in subparagraphs (i) to (iii) of Subsection 9(a), including the Break-Up Fee and the maximum amount of the Expense Reimbursement, plus the Overbid Increment, on closing, which Cash Consideration Value is estimated to be \$60,228,822 as of September 22, 2023;
 - (d) it provides details of any assumption of liabilities;
 - (e) it is reasonably capable of being consummated by 30 days after issuance of the Implementation Order if selected as a Successful Bid;
 - (f) it contains:
 - (i) duly executed binding transaction document(s);
 - (ii) the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
 - (iii) a redline to the applicable Form of Agreement provided by the Monitor as described in Subsection 7(c);
 - (iv) evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);

- (v) disclosure of any connections or agreements with any of the Validus Entities or any of their affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of any Validus Entity or any of their affiliates; and
- (vi) such other information as may be reasonably requested by the Monitor, in its discretion;
- (g) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the earlier of (i) completion of a Successful Bid or (ii) December 29, 2023; *provided*, however, that if such bid is selected as a Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- (h) it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees (i.e., bank guarantees) covering the full value of all cash consideration;
- (i) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (j) it is not conditional upon:
 - (i) approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
 - (ii) the outcome of any due diligence by the bidder; or
 - (iii) the bidder obtaining financing;
- (k) it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (l) it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the Canadian energy sector, including an electricity generator, electric utility, retail service provider, or a registered participant with the Ontario Independent Electricity System Operator;
- (m) it includes full details of the bidder's intended treatment of the Validus Entities' employees under the proposed bid;
- (n) it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with Section 18;

- (o) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis;
 - (p) it contains a written acknowledgment that the transaction will proceed on an “as is, where is” basis, without representations or warranties by the sellers except as expressly set out therein; and
 - (q) it is received by the Qualified Bid Deadline.
10. The Qualified Bid Deadline may be extended: (i) by the Monitor for no longer than 7 days in the Monitor’s discretion; or (ii) by further order of the Court. In such circumstances, the milestones contained in Subsections 8(d) through 8(f) shall be extended by the same amount of time. Any other milestone dates in Section 8 may be extended in the Monitor’s discretion; *provided* that the aggregate of all such discretionary extensions shall not exceed 14 days.
 11. The Monitor may combine bids received for individual assets of the Validus Entities for the purpose of determining if such bids, collectively, will be treated as a Qualified Bid (such bid being an “**Aggregated Bid**”); *provided* that any Aggregated Bid must comply with each of the requirements set out in Section 9 (as may be modified in accordance with Section 12) in order to be a Qualified Bid.
 12. The Monitor may waive compliance with any one or more of the requirements specified in Section 9 above and deem a non-compliant bid to be a Qualified Bid; *provided* that the Monitor shall not waive compliance with the requirements specified in Subsections 9(a), (c), (f), (g), (h), (i), (j), (k), (l) or (n) without the prior written consent of the Proponent and the Assignee, each acting reasonably, or further order of the Court. If a bid received is not a Qualified Bid, the Monitor may provide the bidder with an opportunity to remedy any deficiencies and render such bid a Qualified Bid; *provided* that such defects are remedied on or before the deadline set out in Subsection 8(d).
 13. Notwithstanding the requirements specified in Section 9, the transactions contemplated by the Stalking Horse Bid (collectively, the “**Stalking Horse Transaction**”), are deemed to be a Qualified Bid; *provided* that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
 14. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by the Monitor on or before the Qualified Bid Deadline, the Monitor shall proceed with an auction to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto, subject to such additional procedural rules as may be determined by the Monitor to be necessary or desirable in the conduct of the Auction. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, the Monitor shall provide written notice to each party that submitted a Qualified Bid (including the

Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by the Monitor specifying which Qualified Bid is the leading bid.

15. Following selection of a Successful Bid, the Validus Entities shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 8. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Monitor, the Monitor shall apply to the Court for an order or orders, among other things, approving such Successful Bid and/or the mechanics to authorize the Validus Entities and the Monitor, as the case may be, to complete the transactions contemplated thereby, as applicable, and authorizing the Validus Entities or the Monitor, as the case may be, to: (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (ii) undertake such other actions as may be necessary to give effect to such Successful Bid; and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
16. If a selected Successful Bid is not completed within 30 days following issuance of the Implementation Order, the Implementation Order is not granted, or the Monitor otherwise determines a selected Successful Bid will not be completed, the Monitor shall be permitted to designate one or more alternative Successful Bids from the Qualified Bids received prior to or during the Auction, and such alternative Successful Bid shall be deemed the Successful Bid for all purposes hereunder. The foregoing shall not limit the Monitor’s right in the foregoing circumstances to terminate these SISP procedures and pursue any alternative process and any alternative transactions determined by the Monitor to be appropriate, in consultation with the Proponent, as secured creditor.
17. The Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, shall be permitted to modify the Stalking Horse Transaction to exclude any asset for which an alternative bid (an “**Alternative Bid**”, and the assets subject to such Alternative Bid, the “**Excluded SHB Assets**”) is received if:
 - (a) the Proponent and the Assignee agree in writing, in their respective sole discretion, to modify the Stalking Horse Transaction in order to accommodate such proposed Alternative Bid;
 - (b) the Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, agree on the adjustment of the purchase price under the Stalking Horse Transaction to account for the removal of the Excluded SHB Assets and the value of the Alternative Bid;
 - (c) the Monitor determines that the aggregate consideration to be offered by (i) the Stalking Horse Transaction, as so modified (the “**Modified SHB**”) and (ii) the proposed Alternative Bid for the Excluded SHB Assets, would exceed the value of the Stalking Horse Transaction (the “**Excluded Assets Sale**”);
 - (d) the Alternative Bid combined with the Modified SHB meet all of the requirements of a Qualified Bid;

- (e) the Monitor determines that the Modified SHB and the Excluded Assets Sale, collectively, are a Qualified Bid; and
- (f) the Proponent and the Assignee agree that the original Stalking Horse Transaction shall remain open for acceptance notwithstanding the Modified SHB, such that the Stalking Horse Transaction can be completed if for any reason the Modified SHB and the Excluded Assets Sale are not completed.

For greater certainty, if the Modified SHB and Excluded Assets Sale are each designated as a Successful Bid, then the Proponent and the Assignee shall not be entitled to receive any Break Fee or Expense Reimbursement Amount as a result of the completion of such transaction. If the Modified SHB and the Excluded Asset Sale are not selected as a Successful Bid, then the Proponent and the Assignee shall continue to be entitled to receive any Break Fee and Expense Reimbursement (in accordance with the Stalking Horse Transaction Agreement) upon completion of an alternative Successful Bid to which the Proponent and the Assignee are not parties.

- 18. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. In the event that the Successful Bid is not completed due to a breach or default of the bidder's obligations thereunder, the Deposit shall be forfeited to the Validus Entities as damages and such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Validus Entities have in respect of such breach or default. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the earliest of (i) completion of a Successful Bid; (ii) December 29, 2023; or (iii) the date of the Monitor's determination that such bid will not be pursued further.
- 19. Except as expressly set out herein, the Monitor may not modify the SISP without court approval; *provided*, however, that the Monitor may implement additional procedural rules that the Monitor determines will better promote the goals of the SISP; *provided* that any additional procedural rules shall not be inconsistent with the Stalking Horse Agreement unless agreed by the Proponent and the Assignee or otherwise ordered by the Court.

SCHEDULE “A”
AUCTION PROCEDURES

1. **Auction.** If the Monitor receives at least one Qualified Bid (other than the Stalking Horse Transaction) including any Aggregated Bid, the Monitor shall conduct and administer the Auction in accordance with the terms of the SISP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.
2. **Participation.** Only parties that submit a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction and, collectively, the parties submitting any Aggregated Bid (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. (Toronto time) on the day prior to the Auction, each Qualified Party (other than the Proponent and the Assignee, in respect of the Stalking Horse Transaction) must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party indicates such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.
3. **Auction Procedures.**
 - (a) **Procedures.** The Auction shall be governed by the following procedures:
 - (i) **Attendance.** Only the Monitor, representatives of the Qualified Parties and each of their respective advisors, and any other person admitted with the consent of the Monitor will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
 - (ii) **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process (excluding, for greater certainty, any discussions among those parties who are bidders in an Aggregated Bid); and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
 - (iii) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Monitor’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments as determined by the Monitor and announced to the Auction participants prior to each round of bidding (the “**Required Bid Increment**”). At the end of

each round of bidding, the Monitor will identify the highest or otherwise best Overbid as the leading bid for the subsequent round (the “**Lead Bid**”);

- (iv) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party (including parties to an Aggregated Bid) has had the opportunity to submit an additional bid or refused to submit an additional bid with full knowledge and written confirmation of the then-existing Lead Bid for that round. If at the commencement of the Auction, no party submits a bid that exceeds the Initial Bid by the Required Bid Increment, then the Initial Bid will be the Successful Bid. If in any round, a Qualified Party (other than the party who submitted the Lead Bid in such round) does not submit an Overbid satisfying the Required Bid Increment, then such Qualified Party (including the parties to any Aggregated Bid if no Aggregated Bid is submitted in a particular round) will no longer be permitted to participate in any subsequent round of the Auction; and
 - (v) **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.
- (b) **Additional Procedures.** The Monitor may announce prior to or during the Auction additional procedural rules, including the process for submission and review of bids, that are reasonable under the circumstances for conducting the Auction; *provided* that those rules are not inconsistent in any material respects with the SISP or the Stalking Horse Agreement.

Selection of Successful Bid

4. **Selection.** Before the conclusion of the Auction, the Monitor will: (a) review each Qualified Bid and Overbid, considering the factors set out in Section 9 of the SISP and, among other things: (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same; (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party’s ability to close a transaction by 30 days after issuance of the Implementation Order and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals); (iv) the likelihood of the Court’s approval of such Overbid; (v) the net benefit to the estate of the Validus Entities of such Overbid; and (vi) any other factors the Monitor may, consistent with its duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the

Successful Bid being selected as such, unless extended by the Monitor, subject to the milestones set forth in Section 8 of the SISP.

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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 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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

SISP APPROVAL ORDER

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Appendix “G”



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: CV-23-0070521500CL and
CV-2300703754-00CL

DATE: November 1, 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: IN THE MATTER OF VALIDUS POWER CORP. et al

And

MACQUARIE EQUIPMENT FINANCE LIMITED, Applicant

v.

VALIDUS POWER CORP.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Applicant:

Name of Person Appearing	Name of Party	Contact Info
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JAMES RENIHAN	MONITOR	James.renihan@nortonrosefulbright.com

For Respondent:

Name of Person Appearing	Name of Party	Contact Info
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Other:

Name of Person Appearing	Name of Party	Contact Info
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JESSE MIGHTON	HUT 8 MINING CORP. / FAR NORTH	mightonJ@bennettjones.com

ENDORSEMENT OF JUSTICE OSBORNE:

The Motions

[1] KSV Restructuring Inc. brings motions in each of these two companion proceedings. I heard both of these motions yesterday, and this Endorsement applies to both motions in both proceedings.

- [2] KSV, as Court-appointed Monitor of the Validus Entities in the CCAA Proceeding, seeks an order:
- a. approving a SISP for the Validus Entities;
 - b. authorizing the Monitor to implement the SISP;
 - c. approving the Transaction Agreement between the Validus Entities by KSV as Monitor, and Kingston LP, and Macquarie Equipment Finance Ltd. (“Macquarie”) and Far North Power Corp. (“Far North”) as Assignee (Macquarie and Far North together referred to as the “Stalking Horse Bidder”), solely for the purpose of constituting the Stalking Horse Bid in the SISP;
 - d. authorizing the Monitor to enter into the Break Fee Agreement and approving the Break Fee and the Expense Reimbursement;
 - e. granting the Bid Protections Charge on the Property in favour of Macquarie as security for the Break Fee and the Expense Reimbursement;
 - f. approving the Unknown Contract Bar Process;
 - g. approving the Pre-Filing report of the Monitor dated August 23, 2023, the First Report dated September 1, 2023, and the Second Report dated October 19, 2023; and
 - h. extending the Stay Period to December 31, 2023.

[3] KSV, as court-appointed Receiver of the Validus Entities in the Receivership Proceeding seeks an order amending paragraph 23 of the Receivership Order to increase the Receiver’s borrowing limit under the Receiver’s Borrowing Charge by \$500,000 from \$1 million to \$1.5 million.

[4] Defined terms in this Endorsement have the meaning given to them in the motion materials, the Reports of the Monitor/Receiver or earlier Endorsements made in these proceedings, unless otherwise stated.

[5] All of the relief sought in both proceedings is unopposed by any party, except for the Validus Entities, who do not oppose approval of a SISP but oppose certain terms of this proposed SISP, and who oppose approval of the Stalking Horse Offer. The relief sought by the Monitor/Receiver is strongly supported by Macquarie, the largest secured creditor of the Validus Entities, and Hut 8 Mining Corp., now known as Far North Power Corp.

[6] The Validus Entities do not agree with the calculation of the quantum of the obligations owing to Macquarie. Since the proposed Stalking Horse Offer is essentially a credit bid by Macquarie based on the amounts owing to it, the Validus Entities oppose approval of that Stalking Horse Offer.

[7] In the alternative, and if the calculation is correct, the Validus Entities submit that the amount owing to Macquarie is unconscionable and violates the anti-deprivation rule.

[8] Finally, the Validus entities oppose, although the points were not pressed vigourously in argument, other terms of the SISP including the quantum of the break fee and the tight timing for the receipt of bids.

BACKGROUND, the MACQUARIE AGREEMENTS and the DEFAULTS

[9] A more detailed background to, and context for, these motions is set out in earlier Endorsements.

[10] The Validus Entities are a group of privately held companies that own and operate power generation plants located in North Bay, Kapuskasing, Iroquois Falls and Kingston, Ontario. They sell capacity and power to the Independent Electricity System Operator (“IESO”) as a participant in the IESO’s capacity auction market.

[11] Macquarie is the senior secured lender of the Validus Entities. In April, 2022, Iroquois Falls Power Corp. (“IFPC”), one of the Validus Entities, entered into a sale-leaseback transaction with Macquarie pursuant to several transaction agreements which work together and are all part of the relationship between Macquarie and the Validus Entities.

[12] Those transaction agreements include an Amended and Restated Lease Agreement (the “Lease Agreement”), an Amended and Restated Participation Agreement (the “Participation Agreement”) and certain guarantees and security provided by the Validus Entities (collectively the “Lease Transaction Documents”).

[13] In summary, and as part of that transaction, IFPC sold certain Leased Property to Macquarie pursuant to the Participation Agreement, and that Leased Property was then leased back to IFPC pursuant to a Lease Agreement. Macquarie was granted security for the amounts owing to it.

[14] The first ranking security held by Macquarie includes a pledge of the interests of the Validus Parent in certain of the power generation plants, general security and mortgages on substantially all real and personal property of the Validus Entities in respect of the four power plants except for turbines, plant and equipment that is owned by Macquarie and leased to IFPC under the Lease Agreement, and a pledge of various material agreements.

[15] As is further explained below, it is important to understand that the Macquarie transaction was a sale lease-back transaction, and not simply a loan.

[16] Macquarie calculates its claim as at September 22, 2023 to be \$57,218,822, to which amount it adds costs and overdue interest accruing after that date.

THE PROPOSED SISP, STALKING HORSE AGREEMENT and RELATED RELIEF

[17] A SISP was contemplated from virtually the outset of the CCAA Proceeding. The particulars and full terms of the proposed SISP are set out in the Second Report and I have not summarized all of them here unless they are contested or centrally relevant to the disposition of the motions.

[18] In summary, the SISP contemplates a relatively tight timeframe for the commencement of a marketing process by the Monitor, the receipt and evaluation of Bids and Qualified Bids, the conduct of an Auction (if any), followed by a motion for approval of the transaction reflected in the Successful Bid (whatever Bid that may be), which approval will likely include a reverse vesting order structure.

[19] A reverse vesting order structure is contemplated since the Validus Entities hold numerous permits and licences that allow them to operate in a highly regulated industry. The Stalking Horse Bidder requires such a structure to minimize uncertainty related to the transferability of those licences and permits in any commercially reasonable time frame. The Monitor anticipates that other bidders would require the same terms.

[20] It is also important to note that approval of any transaction, including but not limited to the transaction reflected in the Stalking Horse Offer, and approval of any reverse vesting order structure, is not being sought

today (and to be very clear, nor is it being granted). Rather, and as discussed below, approval of the Stalking Horse Offer is sought as just that: a stalking horse bid as a term of the proposed SISP to provide a “floor” or minimum initial bid only.

[21] The proposed SISP include some significant flexibility to give the Monitor the latitude and discretion to conduct the process in a manner that is likely to maximize recovery for stakeholders, but to do so pursuant to a process that is transparent, fair and efficient.

[22] For example, interested parties may submit Bids for individual assets or plants, and multiple Bids may be aggregated to form together a Qualified Bid, including in conjunction with the Stalking Horse Offer to form an Alternative Bid.

[23] In order to be considered a “Qualified Bid” under the SISP, a Bid must meet the criteria clearly set out in the SISP. Those criteria include a minimum aggregate consideration of \$60,228,822. That figure represents the sum of:

- a. the Macquarie Claim Amount referred to above of \$57,218,822 (as of September 22, 2023);
- b. the Priority Payments Closing amount of \$1.5 million;
- c. the Bid Protections of \$2.26 million; and
- d. a \$750,000 minimum overbid.

[24] In addition, Qualified Bids must also provide for the purchase of the interest of Macquarie in the Receiver’s Certificates which are projected to be approximately \$1.3 million - \$1.5 million plus fees and interest: see the Second Report of the Monitor, Cash Flow Forecast Appendix.

[25] The Stalking Horse Offer has been structured to be what is referred to colloquially as a “sign and close” transaction with the intention that Macquarie and Far North are not deemed to control IFPC for income tax purposes prior to the time that the applicable Stalking Horse Bidder actually acquires control at closing (if in fact that occurs).

[26] Macquarie and Far North has advised the Monitor that there is a risk that such deeming for income tax purposes would occur if the bid provided for a closing date that did not occur contemporaneously with the execution by the parties of the Transaction Agreement.

[27] Importantly, however, the Stalking Horse Offer is irrevocable subject to its Terms and Conditions. It contemplates a transaction pursuant to which Macquarie and Far North would acquire (in summary):

- a. the shares/units of Validus Parent held in the Validus Entities except for IFPC;
- b. newly issued shares of IFPC; and
- c. certain assets of Validus Parent that are not subject to the Macquarie Security, as fully described in the motion materials and the Second Report.

[28] The Stalking Horse Offer is effectively a credit bid. The consideration payable would be comprised of:

- a. payment by the Assignee of \$1.5 million in respect of certain estimated “priority payments” owing by Validus Parent in respect of unremitted employee source deductions (and an indemnity with a corresponding charge to secure those priority amounts);

- b. payment by the Assignee of an amount to be determined by the Monitor prior to closing in respect of administrative expenses;
- c. Macquarie releasing the Validus Entities from all outstanding obligations under the Lease Transaction Documents and security; and
- d. Macquarie transferring to IFPC the Leased Property (pursuant to a contemplated reverse vesting order structure).

[29] The Stalking Horse Offer also contemplates the opportunity for ongoing employment opportunities for employees of the Validus Entities as well as the assumption of all pre-and post-filing liabilities relating to Continuing Contracts and liabilities for municipal taxes.

[30] It contemplates an Outside Date of December 29, 2023. If it is Terminated (i.e., not selected as the Successful Bid or not approved by the Court, among other things), a break fee would be payable. Pursuant to the proposed Break Fee Agreement, the Monitor has agreed to a Break Fee of \$1.25 million plus an expense reimbursement of up to \$1 million (collectively, the (Bid Protections”) together with a Bid Protections Charge on the Property as security for the payment of the Bid Protections, which would be payable only out of the proceeds of sale on the closing of another Qualified Bid.

[31] As observed above, no party opposes the approval of a SISP. I am satisfied that the particular SISP proposed here should be approved.

[32] Courts have recognized that the broad, remedial nature of the CCAA, and the discretion in s.11 in particular, conferred the power to approve a SISP in respect of CCAA debtors and their property: *Nortel Networks Corporation (Re)*, [2009] O.J. No. 3169, 2009 CanLII 39492 (ONSC) (“*Nortel*”) at para. 36.

[33] This Court has held that when considering a sales solicitation process, including the use of a stalking horse bid, the Court should assess the following factors (See: *CCM Master Qualified Fund v. Bluetip Power Technologies*, 2012 ONSC 1750 at para. 6):

- a. the fairness, transparency and integrity of the proposed process;
- b. the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
- c. whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

[34] The British Columbia Supreme Court recently surveyed the Canadian authorities relevant to consideration of stalking horse bids, including those referred to above, and expressed the relevant factors as follows (See: *Re Freshlocal Solutions Inc.*, 2022 BCSC 1616 at paras. 24-32):

- a. how did the stalking horse agreement arise?
- b. what are the stability benefits?
- c. does the timing support approval?
- d. who supports or objects to the stalking horse agreement?
- e. what is the true cost of the stalking horse agreement? and
- f. is there an alternative?

[35] In my view, these authorities are entirely consistent with one another and, while articulating the factors in a slightly different manner, each approaches the analysis in the same way and with the same objectives. The

slightly more detailed list of factors set out by Justice Fitzpatrick in *Freshlocal* are in my view all subsumed, or they should be, in the three factors set out by Justice Brown in *CCM*.

[36] Moreover, both of those authorities are also consistent with the approach of the Québec Superior Court which set out a list of non-exhaustive factors relevant to the approval of stalking horse bids in *Boutique Euphoria Inc. (Re)*, 2007 QCCS 7129 at para. 37 (as well as with the approach taken in *DCL Corporation, (Re)*, 2023 ONSC 3686 (CanLII), at para. 19).

[37] These analyses distill, essentially, to this question: taking into account the support for and opposition to the terms of the proposed SISP and stalking horse agreement, while recognizing whether and how those parties supporting or opposing it are economically affected by the outcome, will the proposed process (including its stalking horse bid component and all other material terms), if approved and approved at this time, likely result in the best recovery on the assets being sold pursuant to a fair and transparent process?

[38] These factors are to be considered in light of the well-known *Soundair* Principles, which, while applicable to the test for approving a transaction following a sales process, not surprisingly track the same principles applicable to that process itself. (See *Royal Bank of Canada v. Soundair Corp.*, (1991), 4 O.R. (3d) 1 (Ont. C.A.) at para. 16):

- a. whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- b. the interests of all parties;
- c. the efficacy and integrity of the process by which the party obtained offers; and
- d. whether the working out of the process was unfair.

[39] In *Nortel*, Morawetz, J. (now Chief Justice Morawetz) described several factors to be considered in a determination of whether to approve a proposed sales process, including:

- a. is a sale transaction warranted at this time?
- b. will it benefit the whole economic community?
- c. do any of the debtor's creditors have a *bona fide* reason to object to a sale? and
- d. is there a better viable alternative?

[40] Subsequent to that decision, the *CCAA* was amended in 2009 to clarify the jurisdiction of this Court to authorize a sale of assets of the debtor outside a plan of arrangement according to the non-exhaustive list of factors set out in section 36 of the *CCAA*. The section 36 factors apply to approval of a sale rather than a sale process, but Chief Justice Morawetz' *Nortel* factors continue to apply post-2009 amendments: *Brainhunter Inc.*, 2009 62 CBR (5th) 41.

[41] Notwithstanding that the section 36 factors are not directly applicable to the relief sought on this motion, in my view they should be kept in mind since they will be considered when this Court is asked to approve a sale resulting from the very process now under consideration.

[42] The use of stalking horse bids to set a baseline for a sales process can be a reasonable and useful approach. As observed by Justice Penny of this Court, they can maximize value of a business for the benefit of stakeholders and enhance the fairness of the sales process as they establish a baseline price and transactional structure for any superior bids. (See *Danier Leather Inc., Re*, 2016 ONSC 1044 at para. 20).

[43] The challenge in this particular proceeding, as is often the case, is one of stability and time: the former is required and the latter is lacking.

[44] If recovery here is to be maximized, the business must be stabilized, and stabilized in a manner that is apparent to those inside such as employees, and to those outside the business such as potential bidders, future debt lenders or equity investors, and regulators.

[45] This means, among other things, that the preservation of value in the Validus Entities depends in large part on the ability of those entities or their successors to participate in the upcoming IESO capacity auction. The bid deadline for participating in the IESO capacity auction is November 29, 2023 (just over two weeks from now) and there are corresponding milestones to be met in advance of that bid deadline towards the achievement of which the Monitor, on behalf of the Validus Entities, is already working.

[46] It is therefore critical for the SISP (any SISP) to start as soon as possible to permit participation in the IESO's capacity auction and also continue the work streams that require the development of a comprehensive business plan for the Validus Entities more broadly. It follows that the timing is necessarily extremely limited.

[47] The SISP has been developed and will be conducted by the Court-appointed Monitor. To state the obvious, that Court Officer has, and I am certain will fulfil, the obligation to conduct that process in a fair and transparent manner.

[48] The proposed SISP contemplates and facilitates possible transactions with greater value than the Stalking Horse Offer if one is identified. The Monitor is of the view that the 35 day bid period is sufficient in the circumstances to allow interested parties to perform due diligence (there will be a virtual data room).

[49] I observe that the Monitor has been mindful of the sale process conducted by Ernst & Young Corporate Finance earlier this year (discussed in the Monitor's Reports and my earlier Endorsements in this proceeding), which did not yield any material unconditional offer for IFPC, and it is considered to be one of the two most valuable powerplants. In addition, the Validus Entities attempted without success to arrange alternative financing transactions at or about the time the Receivership Order was made (which they had opposed).

[50] Moreover, I am satisfied that the opportunity presented by the SISP is unlikely to take the market of potential bidders, (which is limited and highly sophisticated, given the nature of the business of the Validus Entities), by surprise. Hut 8 issued a press release on August 11, 2023 announcing the execution of the Transaction Support Agreement which effectively telegraphed to the market the very process for which approval is now being sought.

[51] I also note that the consideration contemplated by the Stalking Horse Offer exceeds materially the aggregate value that Validus Power Corp. paid when it acquired plants in 2021/2022, of approximately \$45 million.

[52] I am also satisfied that the inclusion in the SISP of the Stalking Horse Offer is appropriate in the particular circumstances of this proceeding. The Monitor considered one of the obvious questions; namely, whether a stalking horse bid was required at all or whether the process might be just as effective if those parties simply participated in the sales process by submitting whatever offer they might consider appropriate.

[53] I accept and agree with the recommendation of the Monitor that the Stalking Horse Offer provides an important degree of certainty to the employees of the Validus Entities and other stakeholders who may take some comfort that there is a possible going-concern solution for the business.

[54] As reflected in the Second Report, employees of the Validus Entities have communicated to the Monitor that they are encouraged by the steps taken to date in these proceedings and were further encouraged to learn that a stalking horse bid was being prepared and would likely be submitted by a prospective purchaser who is substantive and reputable. The Pre-Filing Report referenced the risk of significant employee resignations, and the

consequent effect on the continued operation of the Validus Entities and the preservation of their value. That risk is further mitigated by the Stalking Horse Offer.

[55] This is contrasted with the risks of conducting a SISP without a stalking horse, which risks include the absence of support from Macquarie as the senior secured creditor, the possible resignation of the employees and consequent shutdown of all plants, and the virtual certain detrimental, yet material, impact on value.

[56] As stated at the beginning of this Endorsement, the Validus Entities oppose certain terms of the Stalking Horse Offer.

[57] Leaving aside the issue raised by Macquarie as to what interests the Validus Entities are in fact advancing and for whose benefit, given that those Entities are currently being operated by the Receiver, I have considered the objections they have raised.

[58] First, as stated above and as was confirmed repeatedly in both written and oral submissions by the Receiver, the Monitor and the Stalking Horse Bidders (Macquarie and Far North), this Court is not being asked to approve today, and nor is it approving, the Stalking Horse Offer other than for the limited and exclusive purpose of having it serve as a stalking horse in the SISP.

[59] If, and only if, the Stalking Horse Offer is the Successful Bid in the SISP, further approval of the Court will be sought and required for the approval of such Successful Bid and the transaction contemplated thereby. This includes approval of its terms, the proposed reverse vesting order structure and the proposed tax treatment, including HST issues, and the inclusion or exclusion of assets.

[60] This Court has previously held that it is not in all cases necessary for the full terms of the stalking horse bid to be considered at the time of approval of an SISP: *Kingsett Mortgage Corporation et al v. Stateview Homes (Minu Towns) Inc., et al*, July 19, 2023, Ontario Superior Court of Justice (Commercial List) at paras. 7, 12 and 17; and *Fire & Flower Holdings Corp. et al*, 2023 ONSC 4048 (CanLII) at para. 23.

[61] I agree with that approach. That is not to say, however, that the terms of a stalking horse bid, including its overall economic value or the consideration payable if the transaction is approved, are irrelevant at the time of approval of a SISP. They are not. In my view, there is no purpose served by approving a stalking horse bid even if for the limited purpose of acting as such in a sales process, if it is clear from the outset that it would not be approved at the conclusion of the sales process even if no other bid, or no superior bid, were made. That sets up the process for failure and would likely result in a waste of time and financial resources all to the detriment of stakeholders and to the ultimate outcome achieved.

[62] To be clear, the value of the consideration to be paid in a stalking horse bid is a relevant consideration at the time of SISP approval. It is by no means determinative and is not the exclusive factor, but it is a relevant factor. This is particularly so, where, as here, the Stalking Horse Offer is a credit bid. That in turn means that the value of that credit (or really, debt) that is being bid, is a relevant consideration at the SISP approval stage.

[63] What all of this means is that the economically affected stakeholders, including in this case Macquarie who is the senior secured creditor and also the Stalking Horse Offer sponsor (with Far North), and also including the Court-appointed Officers (being the Receiver and the Monitor in making their recommendations to this Court), must go into the SISP process fully armed with the knowledge that even if the Stalking Horse Offer turns out to be the Successful Bid, there is a risk that it may not be approved by the Court. That determination is for another day, but the parties need to understand and recognize now the risk that a SISP with the Stalking Horse Offer has the possibility of not succeeding just as does a SISP without any stalking horse bid.

[64] I am satisfied that all parties understand this here; indeed, it is expressly recognized by the Receiver, the Monitor and the Stalking Horse Bidders as stated above. Appropriate parties will have the opportunity to oppose approval of the transaction contemplated by the Stalking Horse Offer, including the reverse vesting order structure, on the approval motion if it is the Successful Bid.

[65] Having considered all of the factors, I am satisfied that in the circumstances of this case, the SISP with the Stalking Horse Offer is the far preferable alternative to a SISP without a stalking horse.

The Objections Raised

[66] I have not set out in this Endorsement every particular of the objections raised by the Validus Entities, nor every particular of the points raised in answer to the objections by the Monitor and by Macquarie.

[67] In summary, the principal objections of the Validus Entities to approval of the Stalking Horse Offer, even for the limited purposes of the SISP as stated above, are three-fold:

- a. it overstates the quantum of the amounts owing to Macquarie which forms the basis of the credit bid, with the result that the consideration that must be offered by any alternative bidder to be deemed to be a Superior Bid is artificially inflated;
- b. in the alternative, if it does not overstate the quantum owing pursuant to the Lease Transaction Documents, that quantum is unconscionable and violates the anti-deprivation rule, with the result that the effect on the SISP and alternative bids is the same as above; and
- c. it contemplates a structure which should never be approved even if it is the Superior Bid since it would mean that the Validus Entities, through the Monitor, pay to Macquarie material amounts in respect of HST for remittance to the CRA, but the input tax credits generated by the HST payments are unavailable to offset outstanding HST liabilities to the CRA, all of which is to the detriment of the CRA and all other creditors of the Validus Entities.

[68] I am satisfied that the Stalking Horse Offer should be approved notwithstanding these objections, whether considered separately or in the aggregate.

The Quantum Owing to Macquarie

[69] First, I am satisfied that the amount owing to Macquarie is correct for the purposes of this motion, and accords with the Lease Transaction Documents and the calculation of that amount in the event of a default, as has occurred here.

[70] I draw significant comfort from the very strong support of the Court-appointed Monitor, having conducted its own extensive analysis and calculations, that the quantum is correct.

[71] In my view, much of the disagreement results from the issue foreshadowed at the outset of this Endorsement: the Lease Transaction Documents set out the terms not of a simple loan from Macquarie secured by equipment, but rather of a much more nuanced sale and lease-back transaction.

[72] The Validus Entities argue that the quantum that Macquarie says is outstanding and on which the credit bid is based materially exceeds the aggregate of all amounts advanced by Macquarie, net of repayments, as a result of double-counting of certain components of that quantum.

[73] I am satisfied for the purposes of this motion that it does not do so. Without question, the quantum sought by Macquarie is greater than the net amount advanced plus accrued interest. But that is not the end of the analysis

given the conceptual structure of the transaction in the first place and the application of the specific provisions of the Lease Transaction Agreements in particular.

[74] Counsel to the Monitor has provided an opinion that, subject to the standard assumptions and qualifications, the security granted by each of the Validus Entities to Macquarie is valid and enforceable.

[75] Pursuant to the terms of the Participation Agreement, the purchase price for the Leased Property was \$45 million plus \$5.85 million in HST. Of that \$45 million purchase price, the amount of \$9 million was agreed by the parties to be paid to IFPC upon it and other Validus Entities meeting a certain condition, failing which such amount was to be used to prepay rent under the Lease Agreement.

[76] Ultimately, the condition was not met, with the result that as contemplated by the parties and provided for in the Participation Agreement, that \$9 million was applied to pre-pay rent under the Lease Agreement.

[77] Pursuant to the Lease Agreement, IFPC agreed to make monthly rent payments to Macquarie in the amount of \$1.25 million (the “Base Rent”) plus HST during the 36 month base term of the Lease. IFPC also agreed to pay all other amounts and obligations it was required to pay under the Lease Transaction Documents.

[78] In the event of default, Macquarie had various contractual remedies provided, including the right to demand from IFPC liquidated damages in an amount equal to the sum of three components:

- a. any unpaid Base Rent in arrears;
- b. the Stipulated Loss Value (“SLV”) for the Leased Property; and
- c. interest on both of those amounts.

[79] The SLV is not a fixed value but rather, according to the terms of the Lease Transaction Documents, is determined as provided for in Schedule 3 to the Lease Agreement. Initially, the SLV was \$54 million, but was reduced with each rent payment made by IFPC. As provided for in the Lease Transaction Documents however, the relationship between the quantum of each rent payment, and the reduction in the-then amount of the SLV, is not linear (i.e., the two amounts do not reduce on a dollar for dollar basis at the same time).

[80] The amount of the SLV payable by IFPC in the event of a default was the SLV as of the date of written notice that Macquarie was exercising its remedies. Upon payment of these amounts, pursuant to section 13.1(f) of the Lease Agreement, IFPC would become the owner of the Leased Property.

[81] IFPC failed to make required payments under the Lease Agreement as due on each of May 31, 2023, June 7, 2023 and July 7, 2023. Pursuant to amendments made to the Lease Agreement on February 24, 2023, Macquarie provided IFPC a four-month “rent holiday” by amending the rent payment schedule (Schedule 3).

[82] As a result, IFPC was relieved of the obligation to pay rent from February through April, but was instead required to make a single, larger, rent payment in May (the “balloon payment”), followed by regular monthly payments in June and beyond. The total rent payable during that period was increased by \$1 million as is clear from a plain reading of the terms of the Lease Agreement.

[83] In other words, the parties agreed that a premium was to be paid for the rent holiday. In my view, therefore, it is not a fair characterization of the operation of the provisions of the relevant agreements to say that the aggregate rent payments due and owing exceed the sum of the original rent payments due monthly that were forgiven in exchange for the four-month rent holiday and the balloon payment thereafter. There has been no overstatement of rent arrears.

[84] Similarly, I am satisfied that there has not been a double-counting, as alleged by the Validus Entities, of \$8.5 million in the calculation of the SLV.

[85] The Lease Agreement specifies that the quantum of the SLV is determined upon reference to the “number of Base Rents paid ... at the relevant time”. The basis for the SLV is described above. I recognize that the operation of the Lease Transaction Documents results, given the default, in a contractual entitlement of Macquarie to collect both the rental arrears and an SLV that is not calculated in a manner that accounts for those rental payments. The Monitor is satisfied, however, that it is calculated exactly in accordance with the language of section 13.1(f) of the Lease Agreement.

[86] Finally, I am also satisfied that there has been no failure to credit the \$9 million in prepaid rent. Pursuant to the Lease Agreement, the Pre-Paid Rent is to be applied to the last payments of the Base Term. Macquarie submits, and the Monitor agrees, that the quantum sought gives credit for these payments when determining the quantum of the SLV.

[87] Macquarie gave notice that it was exercising its right to terminate the Lease Agreement on July 24, 2023. It demanded payment pursuant to section 13.1(f) of the Lease Agreement of \$55,598,575, comprised of:

- a. \$8.5 million of unpaid Base Rent;
- b. \$40.5 million in respect of the SLV;
- c. \$6,370,000 in respect of HST payable on the above amounts; and
- d. \$228,575 in respect of interest on the Base Rent.

[88] That quantum has increased, and continues to increase, as interest accrues (see paragraph 16 above).

[89] For all of these reasons, I am satisfied that the amount claimed is appropriate for the purposes of this motion and flows from the operation of the bargain made by the parties as reflected in the Lease Transaction Documents.

The Anti-Deprivation Rule

[90] Even if I am right in accepting the recommendation of the Monitor that the calculation is correct, the Validus Entities submit that such a calculation violates the anti-deprivation rule and would result in the unjust enrichment of Macquarie, to the detriment of other creditors and the Validus Entities.

[91] The anti-deprivation rule has its origins in the common law. It is intended to prohibit contracts that frustrate statutory insolvency schemes and was originally directed against fraudulent conduct.

[92] The Supreme Court of Canada considered the anti-deprivation rule in *Chandos Construction Ltd. v Deloitte Restructuring Inc.*, [2020] 3 S.C.R. 3, 2020 SCC 25 (“*Chandos*”), and shifted the focus from the nature of the conduct to the nature of the result, and rejected an intention-based test in favour of a result-based test.

[93] The Validus Entities argue that Macquarie invoked the SLV provision after issuing demands for repayment and serving a Notice pursuant to section 244 of the *BIA*, with the result that the anti-deprivation rule is engaged and should operate here to prohibit the operation of that contractual provision.

[94] The Supreme Court stated in *Chandos* that the rule renders void any provision in an agreement which provides that upon an insolvency (or bankruptcy), value is removed from the reach of the insolvent person’s creditors which would otherwise have been available to them, and places that value in the hands of others.

[95] In *Chandos*, that is exactly what happened. A general construction contractor entered into a construction subcontract which provided, in relevant part, that the subcontractor would pay the general contractor 10% of the subcontract price as a fee for the inconvenience or for monitoring the work in the event of a bankruptcy of the subcontractor.

[96] The fee was triggered and indeed was expressly conditional upon the event of bankruptcy. It was not payable otherwise in the event of a default or indeed in any circumstance absent a bankruptcy. It was a clear example of a provision that was triggered by an event of insolvency or bankruptcy. In fact, it could not have been clearer, as it stated that: “in the event that [subcontractor] commits any act of bankruptcy, [subcontractor] shall forfeit 10% of the subcontract price”.

[97] The present case is distinguishable. In my view, the anti-deprivation rule is not engaged in the circumstances of this case so as to prevent operation of the agreements according to their terms. The entitlements pursuant to the SLV provision (and the related provisions discussed above) did not arise as a result of the insolvency of the Validus Entities (and there has been no bankruptcy). They arose, as intended by the parties in making their bargain, on the default by the Validus Entities of their contractual obligation to make the rent payments when due.

[98] It is irrelevant whether those entities were insolvent, at the time of the defaults, or now when the amounts calculated by operation of the contractual provisions are being claimed. Those amounts did not arise, and were not triggered, by the insolvency. Macquarie would have been no less entitled to the amounts it is now claiming if the Validus Entities were not insolvent at all (then or now) but rather had simply breached the Lease Transaction Agreements in the absence of an insolvency.

[99] Moreover, Macquarie will not have been unjustly enriched if it is found to be entitled to the amounts it is claiming. The Validus Entities cannot meet the requirement of demonstrating that there was no juristic reason for the benefit and the loss, in circumstances where the Lease Transaction Documents, representing the bargain freely made by highly sophisticated parties engaged in an extremely complex transaction and represented by counsel throughout, specifically and expressly contemplated exactly this result.

[100] As observed by the Supreme Court, the anti-deprivation rule is based on the common law public policy against agreements entered into for the unlawful purpose of defrauding or otherwise injuring third parties. The Supreme Court concluded that Parliament intended to prohibit a debtor from contracting with creditors for a different distribution of the debtor’s assets in bankruptcy than that provided in the *BIA*. That is not what is happening here. In my view, it was neither the intent of the parties, nor the effect of the agreements, to circumvent the statutory regime that provides that all claims proved in a bankruptcy shall be paid rateably.

Unfairness Regarding HST Treatment

[101] With respect to the payment of HST, I am also satisfied that if an issue exists at all, it is an issue properly argued on the motion for approval of the transaction resulting from the Successful Bid, whether or not that is the Stalking Horse Offer.

[102] The Validus Entities submit, and in fairness to them submitted earlier on the motion to appoint a receiver, that they had concerns about the treatment of certain post-filing input tax credits (“ITCs”) which may otherwise serve to reduce the Purchase Price HST.

[103] First, counsel for the Canada Revenue Agency was present in Court on these motions and took no position on the issue. The CRA agrees that the issue is properly addressed at the time of the transaction approval motion, and moreover, the CRA is still in the process of completing its HST audit, with the result that it was not in a

position at the hearing to make any submissions with respect to what amounts were owing, what ITCs may be available, or to any other particulars of the HST issue.

[104] The Monitor/Receiver and Macquarie also submit that this issue is properly addressed on a transaction approval motion, since any Successful Bidder will be responsible for HST obligations arising on the transaction, and can and should take its own advice as to whether and the extent to which ITCs may be available to it, to subsequently set-off HST remittance obligations otherwise owing.

[105] Moreover, the Monitor has considered the proposed tax treatment under the Stalking Horse Offer, and is unaware as to whether any ITC applications were previously filed by the Validus Entities (largely due to the poor state of the books and records of the business, which has presented a continuing challenge for both the Receiver and the Monitor).

[106] Nonetheless, it is of the view that to the extent that IFPC is entitled to any ITCs in respect of HST on pre-filing base rent payments that were actually made by IFPC to Macquarie pursuant to the Lease Agreement, any such entitlements are Excluded Assets pursuant to the Transaction Agreement which would be vested, if the transaction is approved, in ResidualCo.

[107] In addition, the Monitor has concluded that any HST paid by IFPC in respect of the transaction contemplated by the Stalking Horse Offer is considered to be a post-filing payment of HST, and correspondingly, any ITCs generated as a result of such payment of HST cannot be set off against the pre-filing Purchase Price HST obligation in any event. Finally, any ITCs generated from the payment of HST on obligations of Validus Power Corp. during the receivership or CCAA period will continue to be assets of that entity or of ResidualCo, but also cannot be set off against the pre-filing Purchase Price HST.

[108] For all of those reasons, the Monitor is of the view that the treatment of any entitlements to ITCs under the transaction and within the course of these proceedings, is appropriately allocated. Even if it is not, the issue can be argued and determined as part of a sale approval motion.

[109] For all of these reasons, I am satisfied that the HST issues have been appropriately allocated to the extent they can be at present, and will in any event be the subject of the sale approval motion such that they need not be finally determined today. As stated above, and given the position of the CRA, they could not be determined today in any event.

Bid Protections

[110] The Break Fee Agreement includes a Break Fee of \$1.26 million and an Expense Reimbursement of up to \$1 million for reasonable out-of-pocket third-party expenses incurred by Macquarie.

[111] The Monitor has considered the range of acceptable bid protections in the context of stalking horse bids (see: Comparative Summary of Break Fees, Appendix 'J' to the Second Report). This Court has previously noted that bid protections within the range of 1.8% - 5% may be reasonable: *CCM*, at para. 13. Here, the maximum amount of the Bid Protections represent approximately 3.85% of the proposed consideration.

[112] The Monitor is of the view that the Bid Protections properly recognize the benefit being conveyed to the estate by the Stalking Horse Offer setting the floor for a sales process, as well as the time, effort and resources spent by the stalking horse buyer who may ultimately be outbid in the SISP.

[113] In the particular circumstances of this matter, I am prepared to accept the strong recommendations of the Monitor and Receiver, and approve the Bid Protections. I am doing so given my conclusions about the stability that the Stalking Horse Offer brings to the process which is particularly critical giving the upcoming IESO auction.

[114] That should not be taken as any statement as to the appropriateness generally of a break fee in the context of a credit bid, or at least a break fee that goes beyond the reasonable costs and expenses incurred in preparing a bid. It may be that a break fee over and above an expense reimbursement, which is effectively a premium, could be appropriate in some circumstances. However, the onus will be on the proposed stalking horse bidder seeking that break fee to demonstrate why it is appropriate in the circumstances and what additional value it brings to the particular situation, given that there is no new capital or funding being exposed or made available as part of the bid.

[115] In the circumstances here, and as I have concluded that the Bid Protections should be approved, I am also satisfied that the Bid Protections Charge, which I note is a condition of the Stalking Horse Offer, should be approved as this Court has done in other cases: see, for example, *In the Matter of LoyaltyOne Co.*, (March 20, 2023), Toronto, Superior Court of Justice (Commercial List), CV-23-0069601700CL.

[116] Although the Bid Protections Charge encumbers the Property, the Bid Protections themselves are payable only out of closing proceeds from a different successful transaction. The Monitor believes that such a charge is reasonable in the circumstances.

Unknown Contract Bar Process

[117] I am also satisfied that the Unknown Contract Bar Process should be approved. It is perhaps somewhat atypical, but I am satisfied that it is appropriate here. Part of the challenge faced by the Receiver and by the Monitor has been the fact that the books and records of the Validus Entities are incomplete and in disarray. The Monitor in particular has struggled to identify even material contracts to which the Validus Entities are parties, and therefore in some cases the counterparties are unknown.

[118] In other cases, the existence of a contractual arrangement and the identity of a counterparty may be known, but the material terms of the contractual arrangement are unknown or unclear. The Monitor has retained the services of a former senior officer of the Validus Entities to assist with its efforts in this regard.

[119] Courts have expressed concern in other cases, and properly so, regarding the notice to contractual counterparties as to the potential effects of a proposed reverse vesting order on the treatment of their contracts with the debtors: see, for example, *Re PaySlate Inc.* 2023 BCSC 608 at paras. 64, 71 and 75, where Justice Walker of the British Columbia Supreme Court declined to approve a proposed reverse vesting order transaction on the basis that, among other things, the debtor had not provided notice of the hearing for approval of the proposed transaction to counterparties in contracts that were proposed to be retained.

[120] In that case, the reverse vesting order transaction was subsequently approved, but only after notice had been given to those counterparties (2023 BCSC 977).

[121] The proposed Unknown Contract Bar Process here will provide for publication of the notice in both national and local publications. In addition, the Monitor is making best efforts to ensure that those known counterparties or possible counterparties are also advised. The Process contemplates that the Monitor will post on its website a list of known contracts, with the exception of employee agreements. Counterparties on that Known Contract List will receive notice of the anticipated reverse vesting order transaction, including notice as to how their contracts will be treated in the context of the Successful Bid.

[122] To identify whether there are any unknown excluded contracts or liabilities that would be affected by a reverse vesting order, the Monitor will post the notices as described above and require any contract counterparty to contact the Monitor by the Unknown Contract Bar Date to advise of the contract and provide an executed copy.

[123] The proposed Process does not bar any party from ultimately submitting unsecured claims, although those claims will be made in ResidualCo, if the anticipated reverse vesting order transaction (or any other reverse vesting order transaction) is approved, with the result that in my view it is very appropriate now that those contractual counterparties be given notice of what is afoot. The Monitor believes that the Proposed Unknown Contract Bar Process provides a fair and reasonable process to identify any unknown contract counterparties.

Activities of the Monitor

[124] The activities of the Monitor are set out in detail in the three reports: the Pre-Filing Report, the First Report and the Second Report. Approval of those activities is not opposed by any party and I am satisfied that the activities are both appropriate and consistent with the exercise of the mandate given to the Monitor pursuant to the Initial Order.

Stay Extension

[125] The stay of proceedings currently in effect expires on December 1, 2023. An extension is clearly appropriate to afford the Monitor sufficient time to conduct the proposed SISP. It makes good practical sense to seek that extension now, albeit approximately three weeks before the current stay expires, to avoid the expense incurred with bringing a separate motion for a stay extension in the very near future.

[126] I am satisfied that the Receiver and Monitor, respectively on behalf of the Validus Entities, have acted and continue to act in good faith and with due diligence.

Receiver's Borrowing Charge

[127] Concurrent with the stay extension, the Receiver seeks in the Receivership Proceeding the approval of an increase in the borrowing amount available pursuant to the Receiver's Borrowing Charge of \$500,000, from \$1 million to \$1.5 million. This, too, is unopposed.

[128] The revised cash flow forecast reflects that, provided that the increase in the Borrowing Charge is granted, the Validus Entities are projected to have sufficient liquidity to fund operations through the proposed stay extension period.

[129] The increase is approved.

Disposition

[130] For all of these reasons, the motions are granted. I have signed two orders, the first approving the increase in the Receiver's Borrowing Limit in the Receivership Proceeding, and the second approving the SISP, including the Stalking Horse Offer, approving the reports of the Monitor and the activities described therein, and extending the stay, all in the CCAA Proceeding.

[131] Both orders have immediate effect without the necessity of issuing and entering.

A handwritten signature in black ink that reads "Owen, J." The signature is written in a cursive, slightly slanted style.

Appendix “H”



**Second 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.**

October 19, 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.

SECOND REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

OCTOBER 19, 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 Validus Entities (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 Restructuring Inc. (“KSV”) as interim receiver (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 (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. Macquarie's application materials also indicated that it intended to submit an offer to serve as a stalking horse bid in a sale and investment solicitation process (the "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* ("CCAA").
4. On August 11, 2023, Hut 8 Mining Corp. ("Hut 8"), a public company listed on the Nasdaq and Toronto Stock Exchange, announced that it had entered into a transaction support agreement with Macquarie in support of an opportunity to potentially acquire certain assets of the Validus Entities through a stalking horse bid that was intended to be submitted to the Receiver (the "Transaction Support Agreement"). VPC had previously contracted to supply energy to Hut 8's digital currency mining facility in North Bay, Ontario, however the Monitor has been advised by Hut 8 that this supply contract was never fulfilled by VPC in accordance with its terms.
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 (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 likely preferred structure in the circumstances as the Validus Entities hold various licenses and permits required to operate their businesses, and the time and cost of transferring them absent an RVO could impair the businesses of the Validus Entities and unduly complicate 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.
9. This report (the "Report") is filed by KSV as Monitor.

1.1 Purposes of this Report`

1. The purposes of this Report are to provide:
 - a) background information with respect to the Validus Entities and these proceedings;
 - b) information regarding the amount of the Validus Entities' debt owing to Macquarie;
 - c) a summary of the proposed SISP and the proposed stalking horse offer (the "Stalking Horse Offer") submitted by Macquarie and Far North Power Corp. ("Far North"), an entity incorporated by Hut 8 for the purpose of this transaction (together with Macquarie, the "Stalking Horse Bidders") pursuant to:
 - an offer letter dated October 16, 2023 from the Stalking Horse Bidders (the "Offer Letter");
 - a form of transaction agreement between the Validus Entities, by the Monitor, and the Stalking Horse Bidders (the "Transaction Agreement");
 - a form of document setting out the terms and conditions of the Offer Letter, including with respect to the transaction contemplated by the Transaction Agreement (the "Terms and Conditions"); and
 - a break fee agreement dated October 16, 2023 between the Validus Entities, the Monitor, and Macquarie (the "Break Fee Agreement");
 - d) describe the proposed contract counterparty notification process (the "Unknown Contract Bar Process") to be implemented contemporaneously with the SISP in order for any known and potentially unknown contract counterparties to have notice that an RVO will be sought at the conclusion of the SISP;
 - e) summarize the Validus Entities' revised cash flow forecast for the period ending December 31, 2023 (the "Revised Cash Flow Forecast") and the need to increase the Maximum Borrowing Amount (defined below) that is secured by the Receiver's Borrowings Charge (as defined in the Receivership Order and recognized in the Initial Order) from \$1 million to \$1.5 million; and
 - f) provide the basis for the Monitor's recommendation that the Court issue an order (the "SISP Approval Order"), among other things:
 - approving the SISP in the form attached as Schedule "A" to the proposed SISP Approval Order, which is to be conducted by the Monitor;
 - authorizing and empowering the Validus Entities, by the Monitor, to accept the Offer Letter, the Terms and Conditions and the Transaction Agreement solely as a stalking horse offer in the SISP;

- approving the Break-Up Fee and Expense Reimbursement, each as defined in the Break Fee Agreement, in favour of Macquarie (together, the “Bid Protections”) and granting a charge in favour of Macquarie on the Property in the amount of \$2.26 million as security for payment of the Bid Protections (the “Bid Protections Charge”), provided that such amount is only payable from the proceeds of a superior offer on closing;
- approving the proposed Unknown Contract Bar Process;
- increasing the quantum of the Maximum Borrowing Amount (defined below) from \$1 million to \$1.5 million;
- approving the Pre-Filing Report, the first report of the Monitor dated September 1, 2023 and this Report, including the activities of the Monitor described therein; and
- extending the stay of proceedings from December 1 to December 31, 2023.

1.2 Currency

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

1.3 Restrictions¹

1. In preparing this Report, KSV has relied upon unaudited financial information provided by the Validus Entities’ employees and consultants², the books and records of the Validus Entities³ 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 Revised 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. KSV expresses no opinion or other form of assurance on whether the Revised Cash Flow Forecast will be achieved.
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.

¹ In this section, references to KSV refer to its capacity as Receiver, Monitor and in its personal capacity.

² Certain individuals having executive titles were retained pursuant to consulting agreements.

³ 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.

2.0 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 if called upon as a participant in the capacity auction market. The Kapuskasing and North Bay plants are being maintained and secured but are not otherwise operational at this time.
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	SHS 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. Mr. Forget is a former senior employee of the Validus Entities.
4. At the commencement of the receivership, the Receiver terminated substantially all of the individuals who did not work at the plants and who had or may have had working arrangements with the Validus Entities. It is unclear to the Monitor as to whether these individuals were employees of any of the Validus Entities. Shelley Goertz, the Validus Entities’ former CFO, continues to be retained by the Monitor, primarily to provide historical financial information. Ryan Chua, the Validus Entities’ former General Counsel, was recently engaged as a consultant to the Monitor to provide information related to the SISP, including the Validus Entities’ contracts and other legal diligence matters.
5. 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 these proceedings, including the prior reports filed by KSV as Interim Receiver, Receiver and Proposed Monitor (the “Prior Reports”), 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 made demand against the Validus Entities, as discussed below, in the amount of \$55,598,575 as of July 24, 2023 (the "Macquarie Demand Amount"). Macquarie holds security against substantially all Property, excluding VPC's property other than the shares of its subsidiaries. As of September 22, 2023, Macquarie calculated that it is owed at least \$57,218,822, including overdue interest to that date and HST, but excluding costs and overdue interest following that date, each of which continues to accrue (the "Macquarie Claim Amount"). As set out in responding materials filed by the Validus Entities in the receivership proceedings, the Validus Entities dispute at least \$9 million of the amount demanded by Macquarie. A description of this dispute and the Monitor's view on the quantification of the Macquarie debt is provided in Section 3.2 of this Report;
 - 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 (i.e. HST paid to vendors) which may reduce the arrears owing to CRA. The Monitor has requested CRA perform an examination with respect to pre-filing GST/HST amounts. Certain issues related to HST are discussed in greater detail below;
 - 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 in the aggregate amount of \$1,506,445 against which TD holds guaranteed investment certificate security. The Monitor has requested that its counsel, Norton Rose Fulbright Canada LLP ("Norton Rose"), conduct a review of TD's security;
 - 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; and
 - e) 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. Based on discussions with Ms. Goertz, the Monitor understands that VPC⁴ has failed to remit source deductions to CRA since approximately October 2022. Based on VPC's payroll records and CRA's statements/assessments, the Monitor's estimate of the employee portion⁵ of the source deduction obligation is approximately \$1.5 million. The Monitor has requested that CRA also perform an examination with respect to the Validus Entities' pre-filing source deduction obligations, including the amount which may be subject to a deemed trust.

⁴ 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.

⁵ Being the portion for which a deemed trust exists in favour of CRA.

3.2 Macquarie Secured Debt Amount

1. In April 2022, IFPC entered into a sale leaseback transaction (the “Lease Transaction”) with Macquarie pursuant to several transaction agreements (the “Lease Transaction Documents”), including:
 - a) a participation agreement dated April 7, 2022, as amended and restated on February 24, 2023, between Macquarie, as purchaser and lessor, IFPC, as vendor and lessee, and each of the other Validus Entities, as guarantors, pursuant to which Macquarie purchased certain property, plant and equipment located on and related to the Iroquois Falls plant (the “Leased Property”) from IFPC for an aggregate purchase price of \$45 million plus HST (the “Participation Agreement”);
 - b) a secured lease agreement dated April 7, 2022, as amended and restated on February 24, 2023, between Macquarie, as lessor, and IFPC, as lessee, pursuant to which IFPC leased the Leased Property from Macquarie for a base term of 36 months, followed by month-to-month renewal terms (the “Lease Agreement”);
 - c) guarantees provided by each of the other Validus Entities to Macquarie which were secured by substantially all of their real and personal property, assets and undertaking with the exception of VPC, which provided a pledge of its shares and limited partner units, as applicable, in IFPC, Bay, Kap, Kingston GP and Kingston LP (the “VPC Security”) and Hosting, which provided security and recourse over certain material contracts and documents (the “Hosting Security”).

A copy of the Participation Agreement and the Lease Agreement are provided as Appendices “F” and “G”, respectively.

2. Norton Rose has provided the Monitor with an opinion that, subject to the standard assumptions and qualifications contained therein, the security granted by each of the Validus Entities to Macquarie is valid and enforceable. A copy of the opinion can be provided to Court upon request.

3.2.1 The Participation Agreement and Lease Agreement

1. A detailed discussion of the Participation Agreement and the Lease Agreement is set out in the affidavit of Joshua Stevens sworn July 31, 2023 (the “Stevens Affidavit”) and is therefore not repeated herein. Certain provisions of the Participation Agreement and the Lease Agreement which are pertinent to the consideration of the quantum of the Macquarie Claim are set out below.
2. Under the Participation Agreement, the purchase price for the Leased Property was \$45 million (plus HST). On the initial closing, the Monitor understands that Macquarie paid to IFPC \$36 million of the purchase price in accordance with the agreed terms, plus \$5.85 million in respect of HST. The remaining \$9 million was agreed between the parties to be paid to IFPC in certain circumstances, failing which such amount was to be used to prepay rent under the Lease Agreement. The \$9 million was ultimately used to prepay rent under the Lease Agreement (the “Pre-Paid Rent”).
3. Under the Lease Agreement, IFPC agreed to, among other things: (i) make monthly rent payments to Macquarie of \$1.25 million (the “Base Rent”) plus HST; and (ii) pay all other amounts, liabilities and obligations that IFPC is from time to time obligated to pay under the Lease Transaction Documents.

4. The Lease Agreement also sets out various remedies to which Macquarie was entitled in the event of a default on the part of IFPC.
5. Among the remedies available to Macquarie under the Lease Agreement is the remedy provided under section 13.1(f) of the Lease Agreement, which permits Macquarie to demand payment from IFPC of liquidated damages in an amount equal to the sum of: (i) any unpaid Base Rent in arrears; (ii) the “Stipulated Loss Value” (the “SLV”) for the Leased Property; and (iii) interest on the foregoing amounts. The SLV is determined by way of Schedule 3 to the Lease Agreement. It was initially \$54 million but reduced every time IFPC made a rent payment. The SLV payable by IFPC in the event of a default was to be the SLV as of the date of written notice that Macquarie was exercising its remedies. Upon payment of these amounts, pursuant to the remedy provided in section 13.1(f) of the Lease Agreement, IFPC becomes the owner of all of the Leased Property.
6. IFPC failed to make payments under the lease that came due on May 31, 2023, June 7, 2023 and July 7, 2023.
7. On July 24, 2023, Macquarie gave notice to IFPC that it was exercising its right to terminate the Lease Agreement and demanded payment under section 13.1(f) of the Lease Agreement, which amount, as of that date was calculated to be \$55,598,575, which amount was comprised of:
 - a) \$8.5 million in respect of unpaid base rent;
 - b) \$40.5 million in respect of the SLV;
 - c) \$6,370,000 in respect of HST payable on the above amounts; and
 - d) \$228,575 in respect of interest on the base rent.

3.2.2 The Validus Entities’ Dispute and the Monitor’s Analysis

1. As noted above, at the August 10 receivership application hearing, the Validus Entities disputed the amount of the Macquarie Demand Amount and asserted that the Macquarie Demand Amount is overstated by at least \$9 million. In support of their position, the Validus Entities filed an affidavit of Todd Shortt, the Validus Entities’ former Chief Executive Officer, sworn August 10, 2023 (the “Shortt Affidavit”). The Shortt Affidavit appears to make various arguments in support of the Validus Entities’ position, including that:
 - a) Macquarie only advanced \$36 million;
 - b) Macquarie overstates the base rent arrears by \$1 million;
 - c) Macquarie double counts the arrears by demanding them but not crediting them against the SLV; and
 - d) Macquarie did not credit the Pre-Paid Rent in calculating the SLV.

2. The Monitor's counsel has independently considered the Macquarie Claim Amount, particularly in light of the objections outlined above, and in that regard makes the following observations:
 - a) **Macquarie only advanced \$36 million.** As noted above, Macquarie agreed to purchase the Leased Property for a purchase price of \$45 million plus HST under the Participation Agreement, with the proceeds of such purchase price to be applied in an agreed manner. As noted, \$9 million of that purchase price was applied as a prepayment of rent in accordance with the terms of the Lease Agreement that were agreed between the parties. The suggestion that Macquarie is only entitled to recover what it advanced is not in any event supportable on the terms of the Lease Agreement itself. The Participation Agreement and Lease Agreement were not structured as a loan, but as a sale leaseback transaction. The provisions of the Lease Agreement plainly envision Macquarie ultimately receiving more than \$36 million.
 - b) **Overstatement of Rent Arrears.** Pursuant to the amendments made to the Lease Agreement on February 24, 2023, Macquarie provided IFPC a four-month "rent holiday" by amending the rent payment schedule under the Lease Agreement. As a result of those amendments, IFPC was relieved of paying any rent from February through April, and was instead required to make a single larger rent payment in May, followed by regular monthly rent payments in June onwards. The total rent payable during this period was increased by \$1 million. This is clearly set out on the face of the Lease Agreement.
 - c) **Macquarie does not count the \$8.5 million in the calculation of the SLV.** The Lease Agreement specifies that the quantum of the SLV is determined by reference to the "Number of Base Rents paid... at the relevant time". Upon default, IFPC is required to pay the SLV "as of the date of written notice". As of the date of written notice, the arrears had not been paid, and thus were not accounted for in Macquarie's calculation of the SLV. While this means that Macquarie both collects the rental arrears and receives an SLV that does not account for those rental payments, that result is consistent with the plain language of section 13.1(f) of the Lease Agreement.
 - d) **Failure to credit the \$9 million in prepaid rent.** Pursuant to the Lease Agreement, the Pre-Paid Rent is to be applied to the last payments of the base term. The Monitor notes that the Macquarie Claim Amount gives credit for these payments when determining the quantum of the SLV.
3. Based on the legal advice it received, the Monitor believes the Macquarie Demand Amount (which has increased since the filing date as a result of further interest and costs that have been added to the Macquarie Demand Amount) complies with the language of the Lease Agreement and is supportable.
4. The Monitor's counsel and counsel for Macquarie have held various conversations with counsel for the Validus Entities since the August 10 hearing. The Monitor understands that the Validus Entities are likely to oppose the inclusion of the calculated Macquarie Claim Amount at the SISP hearing. As of the date of this Report, the Monitor is continuing to discuss a schedule for delivery of materials with counsel for the Validus Entities and counsel for Macquarie.

3.3 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"). Norton Rose 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 1, 2023.
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 amounts that had not been paid to employees. Since the filing, such amounts have been paid. On September 28, 2023, counsel for the OE Union confirmed that the issues in the grievance had been addressed.
3. The Monitor also understands that, prior to VPC's acquisition of Bay and Kap, the employees working at the North Bay and Kapuskasing plants were members of the Power Workers' Union – CUPE Local 1000 (the "PWU") pursuant to the most recent collective bargaining agreement for the period December 20, 2020 to December 19, 2021 (the "PW CBA"). Norton Rose has corresponded with PWU's counsel, Goldblatt Partners LLP ("Goldblatt"), regarding an application filed by the PWU to OLRB on December 3, 2021 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. The Monitor understands the PWU intends to remain active in following these CCAA proceedings and the SISF.

3.4 Hut 8 Litigation

1. Hut 8 is a crypto-miner who, prior to the receivership and CCAA proceedings, had been engaged in litigation with VPC and Bay relating to three agreements between Validus and Hut 8: a power purchase agreement ("PPA"), a construction agreement and a commercial lease (collectively, the "Hut 8 Agreements").
2. As set out above, the Monitor understands that Hut 8 has entered into the Transaction Support Agreement with Macquarie, which governs the basis on which the Stalking Horse Offer has been made.
3. Pursuant to the Hut 8 Agreements, VPC agreed to design, construct and install a natural-gas generating facility and an adjacent data centre in North Bay. The facility was intended to generate and deliver power to the data centre, which Hut 8 would lease from VPC and Bay. While VPC was responsible for building the data centre, Hut 8 had certain commissioning responsibilities that had to be completed for the data centre to be operational. Hut 8 intended to use the data centre to further its business as a miner of cryptocurrencies.

4. Based on the pleadings, the Monitor understands that VPC and Hut 8 agree that the facility never delivered the required levels of power to the data centre, but disagree on the reasons for that failure. In this regard:
 - a) Hut 8's claim alleges that VPC is solely responsible for the failure, and seeks mandatory orders and damages in an unspecified amount to reflect the alleged breach of the PPA; and
 - b) VPC's counterclaim alleges that the failure to deliver the required power was solely due to delays to Hut 8's commissioning obligations. VPC seeks approximately \$39.6 million for alleged breaches of the PPA and approximately \$800,000 for alleged failures to pay rent under the data centre lease.
5. The Monitor understands that the litigation is at an early stage, and document production has not occurred. However, given the inclusion of the Hut 8 litigation claim as a purchased asset in the Stalking Horse Offer (as detailed below), Norton Rose has reviewed the pleadings and spoken with counsel for the parties. Based on this review, and as summarized below, based on its independent legal advice, the Monitor believes that the better view is that the Hut 8 claim has significantly more merit than the VPC counterclaim and thus is unlikely to be considered a valuable asset of VPC.
6. While VPC's defence and counterclaim alleges that Hut 8 was delayed in completing certain commissioning tasks, the pleading indicates that all of those tasks were ultimately completed by September 2022 at the latest. As the PPA contemplated deliveries of power at the initial required levels within approximately 2.5 months of execution of the agreement, the pleadings fail to identify any justification for VPC's continued failure to supply the required power. VPC has not provided any further evidence to show there were remaining outstanding tasks on the part of Hut 8.
7. Given the content of the pleadings, it appears that VPC's counterclaim, at its highest, could only reduce the damages claimed by Hut 8, rather than serve as a full defence or the basis for a meaningful counterclaim.
8. The Monitor has considered whether it is appropriate for this litigation claim to be included in the Stalking Horse Offer. Given the lack of evidence supporting the VPC claim, and apparent strength of Hut 8's claim, the Monitor believes it is reasonable for the litigation claim to be sold as part of the Stalking Horse Offer (or other sale transaction, if one results from the SISP).

4.0 SISP and Stalking Horse Offer⁶

4.1 SISP

1. The purpose of the SISP is to market for sale, or identify investment proposals for, the Validus Entities' businesses and assets, including certain assets of VPC that are not subject to Macquarie's security, such as the Hut 8 litigation and the shares of Hosting. The Stalking Horse Offer enhances the prospect of a going-concern transaction, while also enabling the Monitor to test the market and pursue a superior transaction.

⁶ Capitalized terms in this section have the meaning provided to them in the SISP, the Transaction Agreement, the Terms and Conditions and/or the Break Fee Agreement, unless otherwise defined herein. The descriptions of these documents in this Report are for informational purposes only. Reference should be made to the relevant documents themselves in order to have a complete understanding of those documents and agreements.

2. The Monitor worked with the proposed Stalking Horse Bidders to settle the terms and conditions of the proposed SISP. Subject to Court approval, the Monitor is to carry out the SISP.
3. The key aspects of the proposed SISP are summarized below; however, interested parties are strongly encouraged to review the entirety of the SISP, which is attached as Schedule “A” to the proposed SISP Approval Order.
4. In the event that the SISP is approved on October 26, 2023, a summary of the SISP timeline is as follows:

Milestone	Deadline ⁷
Motion to approve SISP	October 26, 2023
Monitor to commence marketing process	October 27 2023
Bid Deadline	11:59 p.m. on December 1, 2023
Notification to Qualified Bidders of Auction (if any)	As soon as possible after the Bid Deadline
Auction (if any)	On or about December 7, 2023
Approval and RVO motion ⁸	December 15, 2023

5. The SISP provides that the Monitor may, in its discretion, seek Court approval for the termination of the SISP and for approval of implementation of the Stalking Horse Bid if no potentially interested parties have executed non-disclosure agreements and commenced due diligence on or prior to November 16, 2023, or if thereafter, all parties who executed non-disclosure agreements and conducted due diligence have advised the Monitor that they no longer intend to participate in the SISP.
6. The Qualified Bid Deadline may be extended by the Monitor for no longer than seven days in the Monitor’s discretion, or by further Order of the Court and, in such circumstances, the subsequent milestones listed in 4.1.4 above shall be extended by the same amount of time. The Monitor also has the discretion to extend any other milestone dates provided that the aggregate of all such discretionary extensions shall not exceed 14 days.

4.2 Solicitation of Interest

1. The Monitor has prepared marketing materials and will solicit interest from parties potentially interested in pursuing a transaction (each, a “Potential Bidder”). Potential Bidders will include:
 - a) strategic and financial prospective purchasers identified by the Monitor;
 - b) parties that participated 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”); and
 - c) parties that have contacted the Monitor on an unsolicited basis since the commencement of the interim receivership proceedings on August 2, 2023.

⁷ To the extent any dates would fall on a non-business day, they shall be deemed to be the first business day thereafter.

⁸ The Court dates are subject to Court availability.

2. In particular, if the SISP Approval Order is issued by the Court, the Monitor will:
 - a) prepare and disseminate marketing materials (the “Teaser”) and a process letter (the “Process Letter”) to Potential Bidders, including a form of non-disclosure agreement (an “NDA”);
 - b) provide Potential Bidders with access to a virtual data room (“VDR”) containing diligence information. Potential Bidders will be required to execute the NDA to obtain access to the data room; and
 - c) request that such parties submit a binding offer meeting at least the requirements for a Qualified Bid (as described below) by the Qualified Bid Deadline.
3. The Monitor is working with Norton Rose to prepare a vendor’s form of purchase and sale agreement (the “Template PSA”), based on the terms of the Stalking Horse Bid with certain necessary modifications for template purposes, which will be made available in the VDR. Although the Monitor is of the view that most, if not all, prospective purchasers would require the transaction be completed pursuant to an RVO because of the licenses and permits held by the Validus Entities, the SISP does not prohibit alternative transaction structures, including a more traditional Asset Purchase Agreement / Approval and Vesting Order.
4. A Potential Bidder that wishes to make a bid must deliver a written copy of its bid and other materials required by the SISP by no later than 11:59 p.m. p.m. (Eastern Time) on the Qualified Bid Deadline.

4.3 Qualified Bids

1. To be a “Qualified Bid”, a bid must, among other things, meet the following requirements:
 - a) provide aggregate consideration, payable in full on closing, in an amount that is estimated to be at least \$60,228,822, being the sum of:
 - i. the Macquarie Claim Amount (\$57,218,822 as of September 22, 2023);
 - ii. the Cash Purchase Price (being the Priority Payments Closing Amount of \$1.5 million). Potential Bidders will be provided with guidance as to the estimated total of these items over the course of the SISP;
 - iii. the Bid Protections under the Stalking Horse Offer (\$2.26 million); and
 - iv. a \$750,000 minimum bid increment (collectively, the “Consideration Value”).
 - b) provide for the purchase of Macquarie’s interest in the Receiver’s Certificates (as defined in the Receivership Order) for cash equal to the aggregate amount of all indebtedness owing under the Receiver’s Certificates, if any;
 - c) include a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration and any assumptions that could reduce the net consideration payable;
 - d) provide details of any assumption of liabilities;

- e) be reasonably capable of being consummated within 30 days of the Implementation Order if selected as a Successful Bid;
 - f) include, among other things:
 - i. duly executed and binding transaction documents, including a redline of the submitted transaction document against the Template PSA;
 - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
 - iii. evidence of authorization and approval from the bidder's board of directors and, if necessary, the bidder's equityholders; and
 - iv. disclosure of any connections or agreements with any of the Validus Entities or their affiliates, officer, manager, director or known equity security holder of any of the Validus Entities;
 - g) include a letter stating that the bid submitted is binding and irrevocable until the earlier of (i) completion of a Successful Bid; or (ii) December 29, 2023; provided, however, that if such bid is selected as a Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
 - h) provide written evidence of a bidder's ability to fully fund and consummate the transaction, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration;
 - i) not be conditional upon i) approval from the bidder's board of directors or equityholders; ii) the outcome of any due diligence by the bidder; and iii) the bidder obtaining financing;
 - j) include full details of the bidder's intended treatment of the Validus Entities' employees under the proposed bid; and
 - k) be accompanied by a cash deposit equal to at least 10% of the Consideration Value provided for in the bid (the "Deposit"), which Deposit shall be retained by the Monitor in an interest-bearing trust account in accordance with the terms of the SISP.
2. The Monitor may combine bids received for individual assets of the Validus Entities for the purpose of determining if such bids, collectively, will be treated as a Qualified Bid ("Aggregated Bid"), provided that any Aggregated Bid must comply with each of the requirements of a Qualified Bid set out in the SISP (as may be modified in accordance with the SISP). The purpose of the Aggregated Bid concept is to provide flexibility under the SISP for Potential Bidders to submit offers for one or more (but less than all) of the four power plants, which the Monitor understands may be of interest to certain Potential Bidders who have contacted the Monitor to-date.
 3. In respect of paragraph 4.3.2 above, the Stalking Horse Bidders, with the consent of the Monitor, shall be permitted to modify the Stalking Horse Bid (the "Modified SHB") to exclude any asset for which an alternative bid (the "Alternative Bid" and the assets subject to such Alternative Bid, the "Excluded SHB Assets") is received if, among other things, i) the Stalking Horse Bidders each agree in writing to modify the Stalking Horse

Bid in order to accommodate such proposed Alternative Bid; ii) the Validus Entities, Macquarie and Far North, with the consent of the Monitor, agree on the adjustment of the purchase price under the Stalking Horse Bid to account for the removal of the Excluded SHB Assets and the value of the Alternative Bid; iii) the Monitor determines that the aggregate consideration of the Modified SHB and the proposed Alternative Bid exceeds the value of the Stalking Horse Bid and collectively is a Qualified Bid; and iv) the Alternative Bid meets all of the requirements of a Qualified Bid. However, the Stalking Horse Bidders agree that the Stalking Horse Bid shall remain open for acceptance notwithstanding the Modified SHB such that the original Stalking Horse Bid can be completed if the Modified SHB and the Alternative Bid are not completed.

If a selected Successful Bid is not completed within 30 days following the issuance of the Implementation Order, the Implementation Order is not granted or the Monitor otherwise determines the selected Successful Bid will not be completed, the Monitor shall be permitted to designate one or more alternative Successful Bids from the Qualified Bids received prior to or during the Auction, and such alternative Successful Bid shall be deemed the Successful Bid. The foregoing shall not limit the Monitor's right in these circumstances to terminate the SISP and pursue any alternative process and any alternative transactions determined by the Monitor to be appropriate, in consultation with Macquarie.

4.4 Auction

1. If no Qualified Bids are submitted by the Qualified Bid Deadline, the Stalking Horse Bidders shall be the Successful Bidder.
2. If one or more Qualified Bids are received by the Qualified Bid Deadline, each Qualified Party must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party indicates such expression of intent, the Stalking Horse Offer shall be the Successful Bid.
3. If required, the Monitor will proceed with an auction process (the "Auction") in accordance with the SISP, including as follows:
 - a) bidding at the Auction (which will take place by video conference) shall be conducted in rounds. The Qualified Bid that represents the highest or otherwise best Qualified Bid, as determined by the Monitor, shall constitute the "Initial Bid" for the first round, and any bid made at the Auction by a Qualified Party subsequent to the Monitor's announcement of the Initial Bid (each, an "Overbid") must be made in minimum cash purchase price increments as determined by the Monitor and announced to the Auction participants prior to each round of bidding;
 - b) the Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit an Overbid with full knowledge and confirmation of the then-existing highest or otherwise best bid and no Qualified Party submits an Overbid;

- c) if in any round, a Qualified Party (other than the party who submitted the Lead Bid in such round) does not submit an Overbid, then such Qualified Party will no longer be permitted to participate in any subsequent round of the Auction; and
- d) during the Auction, the Monitor will review each subsequent Qualified Bid, considering the factors for a Qualified Bid as set out in the SISP, and identify the highest or otherwise best bid received at the Auction as the “Successful Bid”.

4.5 The Stalking Horse Offer

1. The Stalking Horse Offer contemplates a transaction whereby Macquarie and Far North, if selected as the Successful Bidder in the SISP, will acquire all or substantially all of the assets of the Validus Entities.
2. The Stalking Horse Offer is contemplated to be completed pursuant to an RVO as the Validus Entities hold numerous permits and licenses that allow it to operate in a highly regulated industry and the Stalking Horse Bidders require that an RVO be issued due to, among other things, uncertainty related to the transferability of these licenses and permits in a commercially reasonable timeframe. The Monitor anticipates that any other purchaser would also require the preservation of permits and licenses pursuant to an RVO. A draft of the proposed RVO is provided as a schedule to the Stalking Horse Offer.
3. The following is a summary description of the Stalking Horse Offer only. Readers are encouraged to read the entirety of the Stalking Horse Offer for its terms and conditions, a copy of which is provided in Appendix “H”.
4. The key terms and conditions of the Stalking Horse Offer are provided below.
 - **Transaction Structure:** The Stalking Horse Offer is structured as a “sign and close” transaction. The Stalking Horse Bidders signed the Offer Letter and have agreed to sign the Transaction Agreement at the Effective Time (as defined therein). Subject to the terms and conditions set out in the Offer Letter (including Schedule “B” thereto), the offer is irrevocable by Macquarie and Far North, but the Monitor will not sign or accept the Transaction Agreement unless and until: i) the Stalking Horse Bid is confirmed as the Successful Bid; and ii) the conditions precedent to Closing in the Transaction Agreement have been satisfied. At this time, the Monitor has only signed the Break Fee Agreement, a copy of which is attached as Appendix “I”, which has been signed subject to Court approval. Macquarie is not related to any of the Validus Entities. Macquarie and Far North have advised the Monitor that they do not want to be deemed to control IFPC for income tax purposes (and be deemed related to the Validus Entities) prior to the time that the applicable Stalking Horse Bidder actually acquires control at the closing by virtue of a bid that provides for a closing that is not coincident with execution of the Transaction Agreement. If the Stalking Horse Offer is selected as the Successful Bid, then on the Effective Date, among other things, the following steps shall occur in accordance with the proposed RVO in the manner and sequence provided for in the Implementation Steps:
 - 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) concurrently with the step in (b), the Monitor will sign the Transaction Agreement, on behalf of the Validus Entities;
 - d) 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) VPC will assign the Purchase Validus Parent Assets to Far North;
 - f) 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 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 Hosting⁹, 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. 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.

⁹ This entity is believed to be inactive and to not have any assets.

- **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 Priority Payments Indemnity Charge (defined below);
 - 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);
 - c) Macquarie releasing the Validus Entities from all amounts outstanding and obligations owing by the Validus Entities to Macquarie pursuant to the Lease Transaction 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, 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 information of the employees listed on that schedule.
- **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 will be used to fund the cost of these proceedings);
 - 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.¹⁰; and
- h) any rights that accrue to Residualco under the transaction documents.

Pursuant to the RVO, and in accordance with the Implementation Steps, 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.

- **Assumed Liabilities:** 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;
 - 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, including, for greater certainty, HST arrears;
 - 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) Intercompany Claims against a Purchased Entity that may be asserted by or on behalf of another Purchased Entity (but excluding any Intercompany Claims set forth in the Disclosure Schedule);
 - g) the Priority Payments of the Purchased Entities; and
 - h) any other liabilities set out in the Disclosure Schedule.
- **Priority Payments Indemnity Charge:** To secure the Priority Payments Indemnity Charge, 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.

¹⁰ Each of which is believed to be inactive and to have no assets.

- **Excluded Liabilities:** All debts, obligations and liabilities of the Validus 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 and become the sole obligation of Residualco.

- **Employee Matters:** The Assignee shall offer employment to employees it determines, in its sole discretion, on terms and conditions of employment that are substantially similar to and no less favorable than those in effect for each Employee set out in the Disclosure Schedule.

Nothing in the Transaction Agreement prevents the Stalking Horse Bidders 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 Corporation¹¹, which has been in discussions with the Stalking Horse Bidders in connection therewith.

- **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).
- **Representations and Warranties:** The Monitor will provide certain limited representations and warranties to the Stalking Horse Bidders, 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 SISF Approval Order or the RVO. The Disclosure Schedule specifically provides that it was prepared by the Stalking Horse Bidders and the Monitor/ Receiver makes no representation as to accuracy or completeness of any exhibit therein.

¹¹ The Monitor understands that NAES Corporation is a third-party operator that has been in discussions with the Stalking Horse Bidder about potentially overseeing the post-closing operations of the Validus Entities, should the Stalking Horse Bidder be the Successful Bidder.

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

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

- **Outside Date:** December 29, 2023.
- **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;
 - ii. the Monitor and the Stalking Horse Bidders 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 each Stalking Horse Bidder.
 - 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;
 - iii. such number of Employees that is determined by the Assignee, shall have accepted offers of employment from the Assignee or a Purchased Entity (at the Assignee's election) or, if the Assignee is successful in negotiating agreements with the bargaining agents who are parties to Collective Agreements under which the required contracting out is permitted, NAES Corporation (or an alternative third-party power plant operator, as determined by the Assignee), such offers (conditional upon the Stalking Horse Bid being selected as the Successful Bid) to have been accepted no later than seven Business Days following the Qualified Bid Deadline; and
 - iv. 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 Stalking Horse Offer can be terminated by Macquarie:
 - a) if the Monitor, Macquarie and Far North mutually agree in writing;
 - b) if the Stalking Horse Offer 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 December 15, 2023;
 - d) if the Effective Time has not occurred by December 29, 2023 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).

4.6 HST Considerations

1. As set out above and in the Stevens Affidavit, 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 proceeding 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. In that regard, the Monitor has considered the proposed tax treatment under the Stalking Horse Offer and notes the following:
 - a) although the Monitor is unaware whether any such applications for ITCs were ever filed by the Validus Entities' management, to the extent that IFPC is entitled to ITCs in respect of HST on pre-filing base rent payments that were actually made by IFPC to Macquarie under the Lease Agreement, any such entitlements are treated as an Excluded Asset under the Transaction Agreement and will be vested in ResidualCo;
 - b) any HST paid by IFPC in respect of the transaction contemplated by the Stalking Horse Offer (the payment of which will be satisfied through the delivery of IFPC Note 3) is considered to be a post-filing payment of HST and, 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
 - c) 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.
5. 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 appropriately allocated. Based on conversations with counsel for the Validus Entities, the Monitor understands that the Validus Entities (or their former management) may object to the tax treatment under the Stalking Horse Offer. In the Monitor's view, it is premature for this issue to be addressed in connection with the SISP hearing and is appropriately heard in connection with any motion for an RVO, in the event that the Stalking Horse Offer is the ultimate successful bid under the SISP.

4.7 The Purchased Validus Parent Assets

1. As set out above, the security given to Macquarie by VPC is limited to the pledge of 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. The Monitor has considered whether sufficient consideration is being provided for such assets (or any other assets of VPC that may be added to the Disclosure Schedule in accordance with the Terms and Conditions).
2. In this regard:
 - a) the Monitor is of the view that it is appropriate for all assets subject to these proceedings, including the Purchased Validus Parent Assets, be made available for sale under the SISP;
 - b) there is considerable consideration and benefit being provided for under the proposed Stalking Horse Offer 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) the Monitor's counsel has observed there is unlikely to be material value to VPC in respect of the counterclaim of VPC in the Hut 8 Litigation;

- d) the Monitor is unaware of any material value in Hosting, which is inactive and has no assets, to the Monitor's knowledge;
- e) the TransCanada Contract, although held in the name of VPC, is used in the course of the business of Bay at that plant (and available to Kap and IFPC) and is unlikely to be monetized on a standalone basis and, based on the obligations thereunder, is a cost to the 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 of certain of the Priority Payments of Validus Parent.

4.8 Bid Protections

1. The Break Fee Agreement includes an Expense Reimbursement of up to \$1 million in cash for reasonable out-of-pocket third-party expenses incurred by Macquarie in connection with the Transaction Agreement and/or the transactions contemplated thereby, and a Break-Up Fee of \$1.26 million in cash.
2. The Expense Reimbursement and Break-Up Fee are intended to compensate Macquarie and Far North for their significant expenditures of time and money and their agreement to act as the stalking horse bidders, including the preparation of the Stalking Horse Offer and in performing due diligence which will be made available in the VDR for the benefit of all Potential Bidders.
3. The Monitor is of the view that the benefits of a Stalking Horse Offer, including the certainty it provides to stakeholders, such as employees and the IESO, that the Validus Entities' business will continue on a going concern basis warrants payment of the Bid Protections.
4. The Bid Protections are to be payable out of the sale proceeds of the Successful Bid, if it is not the Stalking Horse Offer, concurrently with the consummation of that transaction. The Break Fee Agreement provides that the Monitor will obtain, in the SISP Approval Order, a Court-ordered charge in favor of Macquarie in the full amount of the Bid Protections to secure the payment of the Bid Protections, which charge will crystallize in the event that the Court approves an alternative transaction as the Successful Bid.
5. The maximum amount of the Bid Protections (\$2.26 million) represents approximately 3.85% of the Credit Bid Consideration before taking into account certain amounts of the Credit Bid Consideration being provided for under the Stalking Horse Offer such as the payment of the Administrative Expense Closing Amount. The Monitor compared the Bid Protections to other bid protection amounts approved by Canadian courts in insolvency proceedings commenced between 2020 to 2023. The comparison is provided in Appendix "J". Based on this analysis, the Monitor is of the view that the Bid Protections are within the range of reasonableness when compared to the bid protections approved in other restructuring proceedings, particularly given the fees and costs incurred by Macquarie and Far North in connection with this transaction.

4.9 Considerations Regarding the Stalking Horse Offer

1. The Monitor considered whether the Stalking Horse Bidders' offer warrants it being a stalking horse bid, as opposed to the Stalking Horse Bidders simply participating as bidders in the SISP. The Monitor's considerations included that the Stalking Horse Offer provides a degree of certainty to the Validus Entities' employees and other stakeholders that there is a going-concern solution for the business. It is principally for this reason that the Monitor pursued negotiations of the Stalking Horse Offer notwithstanding that those negotiations took longer than anticipated.
2. 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. The Interim Receiver advised that stability was required among the workforce so that employees do not look for new employment. Since the start of these proceedings, the Validus Entities have lost a small number of employees. The remaining employees have communicated to the Monitor that they are encouraged by the steps taken in these proceedings to date and were encouraged to learn that a stalking horse bid was being prepared by a reputable prospective purchaser.
3. Given the highly specialized and regulated nature of the Validus Entities' business, the employees are integral to facilitating the continued operation of the power plants and to address regulatory reporting and IESO requirements. Preserving the employee base is also important given the small size of the communities in which the plants operate, and therefore the challenges finding replacement staff. The Monitor understands that the IESO may levy significant penalties if certain standards are not met at the plants, including, for example, if the Iroquois Falls and/or the Kingston plants are unable to provide energy capacity to the system if called upon by IESO. The employees are also able to assist with due diligence requests from Potential Bidders and Potential Bidders may not participate in the SISP if they are of the view that there are currently insufficient employees to maintain and operate the plants.
4. The Stalking Horse Bidders have invested significant resources and undertaken extensive diligence preparing the Stalking Horse Offer and negotiating the transaction with the Monitor. Macquarie and Hut 8 are both sophisticated parties that are familiar with the Validus Entities' business, or have affiliates that operate in the energy sector.
5. As noted in the Pre-Filing Report, the Validus Entities need to participate in an annual capacity auction conducted by IESO, which will enable it to participate in IESO's capacity market and generate standby revenues. These standby revenues are currently the sole source of revenue for the Validus Entities. The Monitor is currently taking steps on behalf of the Validus Entities, in consultation with the IESO, to participate in the upcoming auction, which has a bid deadline of November 29, 2023. In the Monitor's opinion, the Validus Entities are more likely to be successful in the capacity auction process if there is a stalking horse bidder as it provides a degree of certainty to IESO that there will be a going concern solution for the business. There are milestones that the Monitor, on behalf of the Validus Entities, must achieve to preserve the ability of the Validus Entities or their successors to participate in the auction. Identifying a buyer in accordance with the timeline of the auction schedule is important to provide certainty and continuity for the IESO. The Monitor understands that missing this annual auction would preclude the Validus Entities from continuing to act as a participant in the IESO capacity auction market starting in the spring of 2024, which could significantly impair the value of the Property to the detriment of all stakeholders as the next IESO annual capacity auction will not take place until late 2024.

6. In respect of the Kingston plant, the deadline to apply for a long term IESO contract referred to as a “LT1 RFP Proposal” is December 12, 2023. The Monitor has been advised that being awarded this contract by IESO can generate a significant revenue stream from 2027 to 2040 relative to the current annual contract with the IESO. Given that the proposal is a substantial workstream that will require any purchaser to prepare a comprehensive business plan, it is critical for the SISP to commence at this time so that purchasers can plan for and prepare this IESO submission contemporaneously with performing diligence to submit a bid for the Kingston plant. Mr. Forget and employees at the Kingston plant are advancing the application process contemporaneously with the SISP so that a purchaser has the ability to pursue this opportunity.
7. Most importantly, in accepting the Stalking Horse Offer, the Monitor was mindful of the results of the EY Sale Process and that the Stalking Horse Offer is for an amount well in excess of the purchase price paid by VPC for each plant. In that regard, prior to the appointment of the Receiver, the Validus Entities took the position that the Receivership Order should not be granted and that the Validus Entities’ business could be stabilized during the interim receivership proceedings. The Validus Entities advised that Macquarie’s position was well secured, the power plants are extremely valuable, VPC was able to purchase the power plants at very low prices in comparison to their potential value and that the value of the plants have increased due to significant changes in the energy market. This view was based on an appraisal of the Iroquois Falls plant dated November 8, 2022 by Kroll Canada Limited (“Kroll”), which provided an enterprise value of IFPC in the range of \$157 million to \$215 million (midpoint of \$189 million). Notwithstanding this appraisal, the EY Sale Process did not result in any material unconditional offer for IFPC, which is considered one of the two most valuable plants. As noted above, the Monitor is preparing a list of potential bidders, including the parties that participated in the EY Sale Process. The Monitor is of the view that the SISP will provide the bidders that participated in the EY Sale Process with an additional opportunity to consider an acquisition and that the SISP will provide a clear indication of the current market value of the Property. In addition, nothing precludes Mr. Shortt or his affiliates from making a bid for the Property in the SISP. The Monitor expects to provide the Court with further details regarding the value of the Property when it seeks approval of a Successful Bid. The Monitor is not seeking approval of the Stalking Horse Offer at this time, but rather is seeking authorization to enter into the Stalking Horse Offer for purposes of conducting the SISP, given that it provides for a purchase price well in excess of the value paid by VPC for each plant in 2021/2022, being approximately \$45 million.
8. For the reasons discussed above, the Monitor is of the view that the degree of stability and certainty provided by a stalking horse in this situation will assist to complete a going-concern transaction for the Validus Entities’ business within a reasonable amount of time.

4.10 SISP Recommendation

1. The Monitor recommends that this Court issue the SISP Approval Order, among other things, approving the Stalking Horse Offer and the Bid Protections Charge for the following reasons:
 - a) stalking horse sale processes are a recognized mechanism in restructuring processes to maximize recoveries, while creating stability and certainty of a going-concern transaction, which is particularly important as it relates to employees and for the Validus Entities’ participation in IESO’s upcoming capacity auction;

- b) the Stalking Horse Offer is contemplated to preserve employment for the Validus Entities' employees on terms and conditions that are substantially similar to existing employment terms;
- c) the SISP provides an opportunity to complete one or more transactions with greater value than the Stalking Horse Offer, if one is identified, which benefits all stakeholders;
- d) it is in the best interests of the Validus Entities' stakeholders that the Stalking Horse Offer be preserved in order to have the opportunity to maximize value and to protect downside risk in the event that a superior offer is not submitted. As noted above, there is a risk of employee attrition without the degree of certainty provided by the Stalking Horse Offer, which may significantly impair the value of the Validus Entities;
- e) in the Monitor's view, the 35-day bid period duration of the SISP is sufficient in the circumstances to allow interested parties to perform diligence and submit offers. In addition, the SISP has been telegraphed to the market since August 11, 2023, when Hut 8 issued a press release announcing that it executed the Transaction Support Agreement. The Monitor has received several unsolicited enquiries from prospective purchasers resulting from these proceedings, the EY Sale Process and the Hut 8 press release. The Monitor also notes that the duration of the SISP reflects a balancing between ensuring that sufficient time is available to attempt to identify a superior transaction, the upcoming IESO auction timelines/requirements and the costs of conducting this proceeding for a further period of time (which excess costs would be borne by stakeholders). The Monitor also notes that any interested parties will have the benefit of using the Template PSA to submit an offer. Further, the Qualified Bid Deadline can be extended by the Monitor by a total of up to 14 days, if necessary;
- f) the Monitor is of the view that the Bid Protections, which represent approximately 3.85% of the Credit Bid Consideration under the Stalking Horse Offer, are reasonable in the circumstances and will not discourage interested parties from submitting offers in the SISP;
- g) the Stalking Horse Offer provides a mechanism to pay the Priority Payments of the Purchased Entities and the Priority Payments of Validus Parent, which include statutory deemed trust claims for unremitted source deductions;
- h) the SISP provides flexibility for Prospective Bidders to submit bids for certain of the plants/assets, and for those bids, together with the Stalking Horse Offer, to be the Successful Bid; and
- i) the consideration contemplated by the Stalking Horse Offer significantly exceeds the aggregate value that the Validus Entities paid for the four plants in 2021/2022, being \$45 million. 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 Kingston plants are not presently operating and are in need of significant repair and are believed to have less value than IFPC.

5.0 Unknown Contract Bar Process

1. Given the incomplete and unreliable nature of the Validus Entities' books and records, the proposed SISP Approval Order provides for a process to identify any unknown contract counterparties for the purposes of notifying any such party that an RVO will be sought at the conclusion of the SISP.
2. The proposed Unknown Contract Bar Process is summarized as follows:
 - a) a list of known contracts (the "Known Contract List") will be posted on the Monitor's website, which will include the contract counterparty and applicable contract, with the exception of employee agreements;
 - b) counterparties appearing on the Known Contract List will receive notice of the RVO, including how their contract is going to be treated in the context of the Successful Bid;
 - c) to identify whether there are any unknown excluded contracts/liabilities (the "Unknown Contracts") that would be affected by an RVO, the Monitor will:
 - post notices in the Globe and Mail (National Edition) and other local publications requesting that any party who believes they have a contract with one of the Validus Entities to confirm they are on the Known Contract List; and
 - require that any contract counterparty contact the Monitor by no later than November 28, 2023 (the "Unknown Contract Bar Date") to advise of the contract and provide an executed copy of that contract. Any contract counterparties identified through this process will receive notice of the hearing seeking the RVO to be sought at the conclusion of the SISP.
 - d) any party who does not respond by the Unknown Contract Bar Date will be deemed to be forever barred from asserting that it did not receive adequate notice of any treatment of any contractual right or claim in connection with these proceedings. Those parties would be able to assert claims against ResidualCo at the appropriate time.
3. The Monitor is cognizant of the notice and service issues raised by Canadian Courts in the context of RVO approval motions. The Monitor believes the proposed Unknown Contract Bar Process provides for a fair and reasonable process, well in advance of an RVO approval motion in these proceedings, to identify any unknown contract counterparties so that any such party can receive notice of an RVO approval motion and understand the proposed treatment of their contract(s), while providing certainty to the successful bidder in the SISP. The Monitor believes the proposed process is particularly appropriate in these circumstances given the state of the Validus Entities' books and records, including the risk that there may be unknown contracts affected by an RVO, should one be granted at the conclusion of these proceedings.

6.0 Receiver's Borrowings

1. The Receivership Order authorized the Receiver to borrow monies up to the principal amount of \$1 million (the "Maximum Borrowing Amount"), 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. As a result of certain unanticipated and contingent costs, including property insurance renewal premiums, reimbursement to employees of certain payroll related items outstanding as of the date of the Receivership Order and increased professional fees as a result of the complexity of this transaction, it is likely that an increase to the Maximum Borrowing Amount will be required in due course.
3. The Monitor has worked with Macquarie to prepare the Revised Cash Flow Forecast, which reflects the Validus Entities are projected to require borrowings under Receiver's Certificates in the amount of approximately \$1.3 million to December 31, 2023, being the current proposed expiry of the CCAA stay of proceedings, as discussed below. The Monitor is recommending the Receiver's Borrowings Charge be increased from \$1 million to \$1.5 million to provide some additional flexibility should actual cash flow requirements exceed the Revised Cash Flow Forecast.
4. Based on the Monitor's review of the Revised Cash Flow Forecast, the probable and hypothetical assumptions appear reasonably supported. As stated in the scope and terms of reference to this Report, the Revised 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 Revised Cash Flow Forecast has been prepared solely for the purpose of this Report and is not appropriate for any other purpose. The Validus Entities' and the Monitor's statutory reports on the Revised Cash Flow Forecast are collectively attached as Appendix "K".
5. The Monitor understands that Macquarie is prepared to fund these proceedings up to a maximum amount of \$1.5 million in accordance with the Revised Cash Flow Forecast provided the proposed increase to the Maximum Borrowing Amount and corresponding increase to the Receiver's Borrowings Charge is granted by the Court.

7.0 Extension of the Stay of Proceedings

1. The Monitor recommends that the Court issue an order granting an extension of the stay of proceedings from December 1 to December 31, 2023 for the following reasons:
 - a) as the Monitor is providing the overall supervision for the business during these proceedings, 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 carrying out their obligations in accordance with the orders issued in these proceedings;

- b) an extension will provide sufficient time for the Monitor to conduct the proposed SISP, subject to the SISP Approval Order being issued by the Court. Without the extension, it is likely that a further motion will be required in November for the sole purpose of extending the stay of proceedings beyond December 1, 2023, the date on which the stay presently expires. The Monitor believes that it will reduce costs to address the extension of the stay of proceedings on the return of this motion;
- c) subject to the proposed increase to the Receiver's Borrowings Charge, sufficient funding is projected to be available to the Validus Entities to fund these proceedings; and
- d) terminating the stay of proceedings on December 1, 2023 may result in enforcement actions by creditors and other parties, as well as significant diminution in value to the detriment of stakeholders resulting from the lost opportunity to complete a going-concern transaction.

8.0 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(f) 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**

Appendix “I”

Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc.

Projected Statement of Cash Flow

For the Period December 9 to February 2, 2024

(Unaudited; \$C)

Week	Notes	15-Dec-23	22-Dec-23	29-Dec-23	05-Jan-24	12-Jan-24	19-Jan-24	26-Jan-24	02-Feb-24	Total
		1	2	3	4	5	6	7	8	
<i>Receipts</i>										
	1									
	2	-	1,405,000	-	-	-	621,000	-	-	2,026,000
	3	-	1,025,471	-	-	-	-	-	-	1,025,471
		-	-	-	-	-	-	-	-	-
		-	2,430,471	-	-	-	621,000	-	-	3,051,471
<i>Disbursements</i>										
	4	125,000	53,000	125,000	53,000	125,000	53,000	125,000	198,000	857,000
	5	93,000	156,000	169,000	82,000	62,000	40,000	133,000	40,000	775,000
	6	-	257,655	-	-	-	-	-	-	257,655
	7	-	-	-	23,000	-	-	-	-	23,000
		-	445,000	-	-	-	-	-	64,000	509,000
		218,000	911,655	294,000	158,000	187,000	93,000	258,000	302,000	2,421,655
		(218,000)	1,518,816	(294,000)	(158,000)	(187,000)	528,000	(258,000)	(302,000)	629,816
	8	-	193,000	-	-	-	350,000	-	500,000	1,043,000
		(218,000)	1,325,816	(294,000)	(158,000)	(187,000)	178,000	(258,000)	(802,000)	(413,184)
		452,661	234,661	1,560,478	1,266,478	1,108,478	921,478	1,099,478	841,478	452,661
		(218,000)	1,325,816	(294,000)	(158,000)	(187,000)	178,000	(258,000)	(802,000)	(413,184)
		234,661	1,560,478	1,266,478	1,108,478	921,478	1,099,478	841,478	39,478	39,478

Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (the "Applicants")

Notes to Projected Statement of Cash Flow

For the Period December 9 to February 2, 2024

(Unaudited; \$C)

Purpose and General Assumptions

1. The purpose of the projection is to present a cash flow forecast of the Applicants for the period December 9, 2023 to February 2, 2024 (the "Period").

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

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

Assumes the sale transaction closes by January 31, 2024.

Probable and Hypothetical Assumptions

2. Represents payments from the Independent Electricity System Operator ("IESO") to IFPC and KGLP for being a capacity market participant and on standby to provide electricity generation to the market if requested by IESO.
3. Represents a refund of the capacity market deposit paid for IFPC, KCLP and Kap Power Corp as confirmed by IESO.
4. Includes employment related disbursements, including payroll, source deductions and other amounts.
5. Includes costs associated with Validus Power Corp.'s firm transportation contract with TransCanada Pipelines Limited, which is effective October 1, 2023.
6. Represents insurance premiums for additional coverage under the Applicants' insurance policy for the period October 1, 2023 to October 1, 2024.
7. Represents the estimated fees of consultants retained during these proceedings.
8. Represents the estimated fees of KSV as receiver/CCAA monitor, as well as those of its legal counsel.

COURT FILE NO.: _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY
POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC., KINGSTON
COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN GP INC.**

APPLICANTS

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

KSV Restructuring Inc. as Receiver and Manager of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (collectively, the "Applicants") has developed the assumptions and prepared the attached statement of projected cash flow as of the 15th day of December, 2023 for the period December 9, 2023 to February 2, 2024 ("Cash Flow"). All such assumptions are disclosed in the notes to the Cash Flow.

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

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

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

Dated at Toronto, Ontario this 15th day of December, 2023.

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS RECEIVER AND MANAGER OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP
POWER CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP
AND KINGSTON COGEN GP INC.**

COURT FILE NO.: _____

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VALIDUS
POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER
CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP AND
KINGSTON COGEN GP INC.**

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

The attached statement of projected cash-flow of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (collectively, the "Applicants") as of the 15th day December, 2023, consisting of a weekly projected cash flow statement for the period December 9, 2023 to February 2, 2024 (the "Cash Flow") has been prepared by KSV Restructuring Inc. in its capacity as Receiver and Manager of the Applicants (the "Receiver") for the purpose described in Note 1, using probable and hypothetical assumptions set out in the notes to the Cash Flow.

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

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

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

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

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

Dated at Toronto this 15th day of December, 2023.

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS CCAA MONITOR OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP
POWER CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP
AND KINGSTON COGEN GP INC.**