



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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 10th
JUSTICE OSBORNE) DAY OF AUGUST, 2023

B E T W E E N:

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

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

Respondents

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

ORDER
(Appointing Receiver)

THIS APPLICATION made by Macquarie Equipment Finance Ltd. (the “**Applicant**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties

of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (collectively, the “**Debtors**”, and each a “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtors, or any of them, including, without limitation, the real property described in Schedule “A” hereto, was heard this day by judicial video conference via Zoom in Toronto, Ontario.

ON READING the Notice of Application of the Applicant, dated July 31, 2023, filed; the affidavit of Joshua Hamilton Stevens, sworn July 31, 2023 (the “**Stevens Affidavit**”) and the exhibits thereto, filed; the factum of the Applicant, dated July 31, 2023, filed; the consent of KSV to act as Receiver, dated July 24, 2023, filed; the supplemental affidavit of Joshua Hamilton Stevens, sworn August 2, 2023, and the exhibits thereto, filed; the second supplemental affidavit of Joshua Hamilton Stevens, sworn August 8, 2023, and the exhibits thereto, filed; the reply factum of the Applicant, dated August 9, 2023, filed; the affidavit of Todd Shortt, sworn August 7, 2023, filed; the affidavit of Todd Shortt, sworn August 10, 2023, and the exhibits thereto, filed; and the first report of KSV as interim receiver of the Debtors, dated August 9, 2023, filed;

AND UPON hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Debtors, counsel for Canadian Imperial Bank of Commerce, and such other counsel who were present, no one else appearing although duly served as appears from the lawyer’s certificates of service of Mike Noel sworn August 1, 2, 8 and 9, 2023, filed; the affidavit of service of Kunalan Shelvarajah sworn August 1, 2023, filed; and the affidavit of service of Sivarajah Sivaperuman sworn August 9, 2023, filed.

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, or any of them, including, without limitation, the real property known described in Schedule “A” hereto (the “**Property**”).

RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, including, without limitation the Debtors’ bank accounts wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, or any of them, including the powers to enter into any agreements, incur any obligations in the ordinary course of business in connection with the Property, cease to carry on all or any part of the business, reject or cease to perform any contracts of the Debtors, or any of them, or in respect of the Property;
- (d) to engage construction managers, project managers, contractors, subcontractors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants,

managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any of them, or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, or any of them, and to exercise all remedies of the Debtors, or any of them, in collecting such monies or accounts, including, without limitation, to enforce any security held by the Debtors, or any of them;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors, or any of them;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of the Debtors, or any of them, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, or any of them, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to investigate, and report to this Court on, intercompany payments, transactions and other arrangements between any of the Debtors and other Persons (as defined below), including without limitation the Validus Group (as defined below), that

appear to the Receiver to be out of the ordinary course of business. All Persons shall be required to provide any and all information and documents related to the Debtors requested by the Receiver in connection with such investigations;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of any and all such Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion, and with the Applicant's consent, may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property in these proceedings;
- (n) to report to, meet with and discuss with such affected Persons as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority, including, without limitation, the Independent Electricity System Operator and the Ontario Energy Board, and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors, or any of them, or any person that the Receiver engages pursuant to paragraph 3(d), and to meet with and discuss with such governmental authority and execute any agreements, or provide any notices, required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, or any of them, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors, or any of them;
- (r) to undertake any investigations deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (s) to apply to this Court for such further relief, advice and directions as the Receiver may determine as necessary or desirable;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtors, or any of them, may have; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtors, or any of them, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that: (i) the Debtors; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, equity holders, including, without limitation, investors and shareholders, and all other persons acting on their instructions or behalf; (iii) all construction managers, project managers, contractors, subcontractors and service providers, and all other persons acting on their instructions or behalf; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer, in the cloud or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer, cloud or other system and providing the Receiver with any and all access codes, account names, account numbers, account creating credentials that may be required to gain access to the information.

7. **THIS COURT ORDERS** that all Persons, including, without limitation, Validus Power Services Inc., other entities within the Validus group of companies and entities and any other affiliates of the Debtors (collectively, the “**Validus Group**”), and each of them, shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any of them, and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Validus Group, or any of them, shall be required to do the following things: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days’ notice of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors, or any of them, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors, or any of them, or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtors, or any of them, the Receiver, or affecting the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Debtors, or any of them, to carry on any business which the Debtors, or any of them, is not lawfully entitled to carry on; (ii) exempt the Receiver or the

Debtors, or any of them, from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, or any of them, without written consent of the Receiver or leave of this Court.

ACCELERATED LEASE PAYMENTS

13. **THIS COURT ORDERS** that notwithstanding anything in this Order to the contrary, nothing in this Order shall prohibit, restrict, pause or interfere with the running of the notice period in respect of the Accelerated Payments (as defined in the Stevens Affidavit), and the Debtors' respective obligations therefor, pursuant to the July Demand Letters (as defined in the Stevens Affidavit) delivered by the Applicant to the Debtors.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that all Persons, including, without limitation, the Validus Group, having oral or written agreements with the Debtors, or any of them, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll services, insurance, employee benefits, transportation services, utility or other services to the Debtors, or any of them, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver (including, where a notice of termination may have been given with an effective date after the date of this Order), and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal

prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

15. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

16. **THIS COURT ORDERS** that all employees of the Debtors, or any of them, shall remain the employees of the applicable Debtor until such time as the Receiver, on behalf of the applicable Debtor, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

17. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete

one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

19. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any

gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

20. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

23. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant by way of a credit facility, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest, fees and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. **THIS COURT ORDERS** that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Receiver’s Certificates**”), as modified to reflect the terms of the credit facility between the Receiver and Applicant referred to in paragraph 23, for any amount borrowed by it pursuant to this Order.

26. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

SERVICE AND NOTICE

27. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice->

commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

28. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to any creditors of the Debtors, or any of them, or other interested parties at their respective addresses as last shown on the records of the Debtors, or any of them, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

CRITICAL PAYMENTS

30. **THIS COURT ORDERS** that the Receiver may make payments owing by the Debtors, or any of them, to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order where such payments are deemed by the Receiver critical to

the operation of the Debtors and/or for any matter concerning safe care and operation of the Debtors; provided that any such payment that exceeds \$25,000, or where the aggregate of all such payments exceeds \$200,000 shall require the prior written consent of the Applicant.

GENERAL

31. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy or monitor of the Debtors, or any of them.

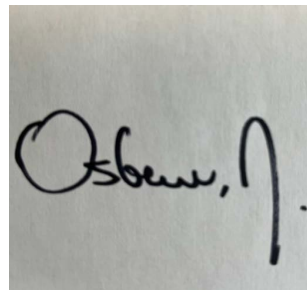
33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

34. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

35. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the estates of the Debtors, or any of them, with such priority and at such time as this Court may determine.

36. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

37. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof without any need for entry and/or filing.



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SCHEDULE "A"

DESCRIPTION OF REAL PROPERTY

Iroquois Falls Power Corp.

Firstly:

PIN 65337-0369 (LT)

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

Secondly:

PIN 65337-0456 (LT)

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

Thirdly:

PIN 65337-0458 (LT)

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

Fourthly:

PIN 65337-0372 (LT)

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

Fifthly:

PIN 65337-0373 (LT)

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

Kap Power Corp.

Firstly:

PIN 65095-0051 (LT)

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

Secondly:

PIN 65095-0052 (LT)

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

Bay Power Corp.

PIN 49127-0021 (LT)

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

Kingston Cogen GP Inc.

Firstly:

PIN 45132-0375 (LT)

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

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

Secondly:

PIN 45132-0377 (LT)

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

Thirdly:

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

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

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

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

DATED the ____ day of _____, 2023.

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

Per: _____
Name:
Title:

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(Appointing Receiver)**

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Lawyers for Macquarie Equipment Finance Limited,
the Applicant