



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-23-00705215-00CL DATE: January 4, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: In the Matter of a Plan of Compromise or Arrangement of  
Validus Power Corporation, and Others

BEFORE JUSTICE: Justice Osborne

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

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**ENDORSEMENT OF JUSTICE OSBORNE:**

1. The Monitor seeks an order:
  - a. approving the Transaction Agreement and the acceptance and execution by the Validus Entities thereof, each by KSV in its capacity as Monitor, in respect of the transaction with Macquarie Equipment Finance Ltd. (“Macquarie”) and Far North Power Corp. (“Far North”, and collectively with Macquarie, the “Purchasers”) as reflected in the Transaction Agreement;

- b. adding 1000745924 Ontario Inc. (“5924” or “Residualco”) as a company to these CCAA proceedings and as a Debtor as defined in the Receivership Order made in the companion receivership proceedings bearing Ct. File No. CV-23-00703754-00CL;
  - c. vesting in 5924 all right, title and interest, and all liabilities and obligations of, the Purchased Entities in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities, as applicable;
  - d. discharging the Claims and Encumbrances as against the Purchased Entities and the Retained Assets;
  - e. authorizing and directing the Validus Entities, by the Monitor, to issue the IFPC Interests and vesting all right, title and interest in them to the Assignee, as nominee and designated assignee of Macquarie;
  - f. vesting all of Validus Parent’s right, title and interest in and to the Purchased Validus Parent Assets in the Assignee;
  - g. authorizing and directing the Validus Entities, by the Monitor, to issue the IFPC Notes 1, 2 and 3, and vesting all right, title and interest in and to Notes 1 and 3 in Macquarie, and Note 2 in the Assignee;
  - h. redeeming, terminating and cancelling the IFPC Legacy Shares and the other Subject Interests for no consideration;
  - i. granting the Priority Payments Indemnity Charge and providing for the automatic termination thereof upon specified terms;
  - j. confirming that Continuing Contracts and Permits and Licenses to which any of the Validus Entities (other than the Validus Parent) are a party at the Effective Time, will be and shall remain in full force and effect upon and following the Effective Time;
  - k. authorizing but not obligating the Monitor to take all required steps to rectify the minute books of the Validus Entities and filing annual returns on their behalf;
  - l. authorizing Ryan Chua to act as the First Director of 5924 and confirming that he shall have no liability as a result of becoming the First Director save and except his own gross negligence or wilful misconduct;
  - m. granting relief from certain statutory requirements applicable to Ontario corporations in favour of the First Director in accordance with the terms of the Transaction Agreement and Reverse Vesting Order;
  - n. approving the third report of the Monitor dated December 15, 2023 (the “Third Report”) and the fourth report of the monitor dated December 22, 2023 (the “Fourth Report”);
  - o. approving the fees and expenses of the Monitor, the Receiver and their legal counsel (the same firm); and
  - p. extending the Stay Period until February 29, 2024.
2. Defined terms in this Endorsement have the meaning given to them in the motion materials, the reports of the Monitor and particularly the Third Report and the Fourth Report, and/or my previous Endorsements made in this matter, unless otherwise stated.

3. The relief sought today is unopposed. It has been served on the Service List in this CCAA Proceeding and on the Service List in the Receivership Proceeding referred to above, in which proceeding certain of the relief requested today is being sought. Moreover, and as further described below, all contract counterparties on the Continuing Contracts List (excluding those with easements tied only to real property) as well as all of the Regulatory Authorities referred to below have received notice of this motion. In short, I am satisfied that service was appropriate.
4. The background to, and context for, this motion is not repeated here and has been set out in my previous Endorsements made in this matter as well as in the reports of the Monitor and in particular the Third Report and the Fourth Report (as defined below).
5. The Validus Entities own and operate electricity generation facilities that provide capacity to Ontario's electricity grid, controlled by Ontario's Independent Electricity System Operator ("IESO"). The Validus Entities are indebted to Macquarie pursuant to a secured sale-leaseback transaction. IFPC sold certain Leased Property to Macquarie pursuant to a Participation Agreement, which Leased Property was then released back to IFPC pursuant to the terms of a Lease Agreement.
6. Macquarie holds general security including a collateral mortgage from IFPC, guarantees and general security from Bay Power, Kap Power, Kingston LP and Kingston GP, a guarantee and pledge of shares/units of IFPC, Bay Power, Kap Power, Kingston LP and Kingston GP from Validus Parent, and a limited recourse guarantee and pledge of material agreements from Validus Hosting.
7. On November 2, 2023, I granted the SISP Approval Order, following which the Monitor commenced the sales process. That sales process is fully set out in the Third and Fourth Reports.
8. The sales process included a stalking horse agreement with the Purchasers. Ultimately, only one other party remained active in the process as of the Bid Deadline and while that other prospective purchaser indicated to the Monitor that it planned to submit a bid, it did not do so prior to the Bid Deadline. The Bid Deadline was subsequently extended to December 11, 2023. The other prospective purchaser submitted an offer but provided no deposit nor evidence sufficient to the Monitor as to the ability to finance the proposed transaction. In any event, the Monitor confirms that that other prospective purchaser received notice of this motion and has not appeared to oppose the relief sought.
9. Ultimately, the Monitor concluded that upon the expiry of the extended Qualified Bid Deadline, no Qualified Bids, other than the Stalking Horse Offer, had been received and the Monitor declared the Stalking Horse Offer to be the Successful Bid.
10. The key terms of the Successful Bid are also set out in the Reports and in the motion materials. The Purchased Assets include the shares/units of Validus Parent in Kap Power, Bay Power, Kingston LP and Kingston GP, newly issued shares of IFPC, and certain assets of Validus Parent that are not subject to the security held by Macquarie.
11. The consideration payable under the Transaction Agreement is 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 (together with an indemnity for any amounts which are subsequently assessed as priority amounts to be secured by a proposed charge); payment by the Assignee of an amount to be determined by the Monitor in respect of administrative expenses; Macquarie releasing the Validus Entities from all outstanding obligations under the Participation Agreement, Lease Agreement and security; and Macquarie transferring the Leased Property to IFPC (collectively the "Credit Bid Consideration").
12. IFPC will also issue the IFPC Notes 1, 2 and 3 to the Purchasers as partial consideration of the conveyance of the Leased Property.

13. The Monitor submits that in addition to the Credit Bid Consideration, the Successful Bid provides additional benefits including the opportunity for ongoing employment for employees of the Validus Entities and the assumption of all pre-and post-filing liabilities relating to Continuing Contracts and for certain municipal property taxes. The Successful Bid is subject to certain conditions including an agreement with respect to Implementation Steps and approval of the transactions pursuant to a reverse vesting order (“RVO”) structure.
14. Importantly for today’s motion, the only remaining condition of materiality is the approval of the proposed RVO. The Terms and Conditions provide for an Outside Date for the Transaction of February 15, 2024.
15. The RVO structure contemplates that, upon satisfaction of all conditions, the Purchasers will acquire the Purchased Assets and the Excluded Assets, Excluded Contracts and Excluded Liabilities will be vested into 5924, such that the Purchasers will acquire shares and units of the Purchased Entities free and clear.
16. To address the delay and uncertainty relating to transferring various permits held and used by the Validus Entities in its highly regulated business, including the Technical Standards and Safety Authority, Ontario Energy Board, Ministry of the Environment, Innovation and Science, and Economic Development Canada, the RVO structure is being sought and contemplated.
17. Some 56 permits and licenses have been identified that are proposed to be preserved through the proposed RVO.
18. As set out in the motion materials and as has been addressed in previous motions in this CCAA proceeding, there were significant deficiencies in the books and records of the Validus Entities. There was effectively no continuing management, although the Monitor retained on a consulting basis a former officer to assist.
19. The deficiencies in the books and records resulted in, among other things, the Monitor conducting an Unknown Contract Bar Process as provided for in the SISP Approval Order referred to above. That Process was an effort to identify contracts to which the Validus Entities were or may have been parties but were unknown to the Monitor and/or which were not reflected in any identifiable way in the books and records.
20. Notices were put in relevant press media requesting any party who had a contract with one or more of the Validus Entities, and whose contract was not listed on the Monitor’s website, to contact the Monitor on or before the Deadline. The motion materials reflect that no party contacted the Monitor regarding unknown contracts.
21. All contract counterparties on the Continuing Contracts List (excluding those with easements tied only to real property) as well as the Regulatory Authorities have been provided notice of this motion.
22. The Monitor submits that extensive good faith efforts were made by it to sell the businesses and assets of the Validus Entities, and the proposed Transactions represent the best and highest recovery available to the Validus Entities.
23. Pursuant to the RVO, if granted, the liabilities of the Purchased Entities excluded from the Transaction will vest in 5924. 5924 would become a debtor company subject to the receivership and the CCAA proceedings. Mr. Chua has agreed to act as the First Director of 5924 but has required the additional protections and the release proposed in the RVO as a condition of so acting. The Monitor supports the granting of those protections.
24. In addition, an order to convey the Purchased Assets, certain rectifications to various minute books of the Validus Entities are required and those are steps contemplated to be taken pursuant to the Implementation Steps, with the result that today, the Monitor seeks the authority to take such steps.
25. The proposed RVO provides for Releases of all Released Claims in favour of the Released Parties. Those Released Parties include KSV, the Receiver and Monitor, its legal counsel, Macquarie and the Assignee

and their respective current and former directors, officers, employees, legal counsel, representatives and advisors, and Mr. Chua in his capacity as the First Director of 5924.

26. The Monitor submits that the proposed Releases are a condition to the obligations of the Purchasers to complete the Transaction under the Successful Bid, that the Released Parties have contributed substantial value to these proceedings and through the Successful Bid will provide significant benefit for numerous stakeholders, and that granting the Releases will assist in the final administration of the CCAA proceedings and avoid the potential need to run a claims process for such Released Claims.
27. The activities of the Monitor are set out in detail in the Third and Fourth Reports and approval of those activities is sought.
28. The fees of KSV in its dual capacities as Receiver and Monitor are described in the affidavit of Mr. Robert Kofman sworn December 22, 2023 together with the exhibits thereto. The Monitor submits that its fees and those of its counsel (in the dual capacities) are reasonable and appropriate in the circumstances.
29. Finally, the Monitor seeks a further stay extension to February 29, 2024 to close the Transaction and allow the Monitor to complete additional residual matters in these proceedings. The cash flow forecasts show that the Validus Entities are forecasted to have sufficiently liquidity to fund their operations through the proposed stay extension period.
30. I am satisfied that the relief sought should be approved in the particular circumstances of this case.
31. This Court has jurisdiction to approve the sale pursuant to section 36 of the CCAA. Subsection 36(3) sets out the non-exhaustive factors that the Court is required to consider in deciding whether to authorize such a sale.
32. Those factors dovetail with the criteria established in the case law colloquially referred to as the Soundair Principles: *Royal Bank of Canada v. Soundair Corp.*, [1991] 46 OAC 321 at para. 16.
33. In this case, I am satisfied that the section 36(3) factors have been satisfied. The process leading to the proposed sale was reasonable in the circumstances. It was approved, and indeed conducted by, the Monitor. The Monitor has set out fully in the Fourth Report its strong recommendation that the proposed Transaction be approved, and the basis for that recommendation.
34. All creditors have been consulted. Macquarie, as the senior secured creditor, (naturally) supports the transaction. Macquarie was also supportive of the SISP process. The effects of the proposed sale on the creditors and all other interested stakeholders have also been considered.
35. Finally, I am satisfied that the consideration to be received for the assets is reasonable and fair, taking into account their market value.
36. The proposed sale is the result of the SISP process previously approved. I was, at the time of the approval of that process, and I am now, satisfied that it was commercially reasonable and appropriate in the circumstances. I am also satisfied that the Monitor conducted the sales process in accordance with the mandate previously approved and in particular, the terms of the SISP Approval Order. In short, the process allowed the opportunity for the market to be broadly canvassed and provided an opportunity for interested parties to perform due diligence.
37. I pause to observe that the assets were not “new to the market” in the sense that earlier sales processes had been attempted and were unsuccessful. By that, I mean that potentially interested parties were aware that the assets and businesses were available for acquisition. Moreover, in a highly regulated market such as this, the universe of potentially interested buyers was relatively small.

38. The Transaction provides a going concern solution for the Purchased Entities. It contemplates the continuation of operations and preserves and maximizes continuing employment opportunities for employees of the Purchased Entities. As observed by the Monitor, this is particularly beneficial in this case as certain of the plants operate in remote or rural communities where the Validus Entities are significant employers.
39. The Monitor has confirmed that it does not believe that further time spent marketing the businesses and assets of the Validus Entities will result in a superior transaction. Nor is there sufficient funding to continue any marketing process. In the absence of approval of this transaction, Macquarie is not prepared to continue to fund the Validus Entities and current funding is projected to be exhausted on or around the proposed Outside Date of February 15, 2024.
40. The Monitor has expressed its professional opinion that the terms and conditions of the Transaction Agreement are commercially reasonable. I draw further comfort that the value of the proposed Transaction, and the consideration being paid for the Purchased Entities and otherwise pursuant to the Transaction Agreement is beneficial relative to the fair market value of the assets being transferred.
41. The value of the consideration being paid pursuant to the Transaction materially exceeds the amount paid for all four powerplants within the last two years of approximately \$45 million. In addition, I observe that the total consideration being paid of well in excess of \$60 million, is favourable when considered as against the outstanding debt owing to Macquarie which is itself approximately \$61 million. That Macquarie debt is extinguished as part of the consideration paid, and other debts of the Validus Entities are being assumed.
42. None of that would occur in a liquidation scenario, which is clearly the only alternative to approval of the Transaction. I am satisfied that the value and consideration being paid is appropriate and is in the best interests of all stakeholders since it represents the maximum value that can be realized following a transparent, fair and comprehensive sales process. In particular, existing employees and Continuing Contract Counterparties would be materially worse off in a liquidation scenario.
43. As noted above, the Transaction for which approval is sought contemplates an RVO structure. It is recognized, and indeed conceded by the Monitor, that RVOs continue to represent, and properly so, the exception and not the norm.
44. While the Court has the jurisdiction to approve RVO transactions pursuant to sections 11 and 36 of the CCAA, the question of whether such relief is appropriate in the circumstances of any case is a very real one.
45. Justice Penny of this Court has articulated clearly the factors to be considered by a court in respect of a proposed RVO transaction: See: *Harte Gold Corp., (Re)*, 2022 ONSC 653.
46. I am satisfied that this particular case represents one of those exceptional circumstances where an RVO is appropriate. The electricity generation business is highly regulated and highly complex. In *Just Energy Group Inc. et al. v. Morgan Stanley Capital Group Inc. et al.*, 2022 ONSC 6354, Justice McEwen of this Court recognized that RVOs had properly been granted in circumstances where the debtor operated in a highly regulated environment in which its existing permits, licenses or other rights were difficult or impossible to reassign to a purchaser; the debtor is a party to certain key agreements that would be similarly difficult or impossible to reassign to a purchaser; and where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.
47. That is precisely the situation here, where there are at least 56 licenses and permits, the transfer of which would be difficult and time-consuming at best, with the attendant increase in professional fees, all to the detriment of the stakeholders. Moreover, there is no viable alternative. No party has been identified or

emerged who is prepared and willing to sponsor a CCAA plan of arrangement. Employee flight risk has been highlighted to the Court throughout this proceeding. The RVO here will effectively provide most if not all of the benefits of a plan, while doing so with more certainty, and less cost, time, risk and instability.

48. The Purchasers have insisted on the RVO structure. There are no other Qualified Bids with the result that, as noted above, and liquidation is the only alternative.
49. I agree with the opinion of the Monitor that no stakeholders are prejudiced by the issuance of an RVO relative to any other structure for a transaction and indeed, the Monitor is of the view that many stakeholders will have an improved outcome given the treatment of pre-filing liabilities and the ongoing employment opportunities for employees. Priority amounts are also accounted for.
50. As to the value of the Transaction, the value of the permits and licenses held by the Validus Entities represent, in a practical sense, the key critical consideration in structuring the Transaction, and those are preserved, together with their value, through an RVO structure.
51. For all of these reasons, I am satisfied that the RVO should be approved in this case.
52. Moreover, I am satisfied that the Purchased Validus Parent Assets, consisting of the shares of Hosting, the litigation claim of Hut 8 and certain contracts in VPC's name but used in the business of the Purchased Entities, are appropriately included in the sale notwithstanding that Macquarie does not have security in respect of those assets. All of those assets were made available for sale under the SISP and no Qualified Bids were received for those assets. There is significant consideration and benefit provided under the proposed Transaction over and above the release of the Macquarie debt and security and those are summarized above.
53. Moreover, the Monitor is of the view that there is little evidence to support VPC's claim against Hut 8, but that there is considerable merit to the claim of Hut 8 against VPC. The Monitor is unaware of any material value in Hosting, which to its knowledge is inactive and has no assets. The Transaction Agreement requires an allocation of the consideration to be paid, and it provides that the consideration payable for the Purchased Validus Parent Assets will be satisfied by the assumption (by the Purchasers) of certain of the Priority Payments of Validus Parent.
54. I am further satisfied that the Continuing Contracts and Permits and Licenses have been addressed appropriately. They will continue with the Purchased Entities after the Effective Date as a result of which all counterparties will have the benefit of having an ongoing counterparty, and both pre-filing and post-filing arrears will be assumed and continued post closing.
55. Counsel for TransCanada appears today and confirmed that to waste heat contracts with the Validus Entities have already terminated or expired according to their own terms, with the result that Tran Canada does not oppose the relief sought today.
56. In short, no contractual counterparty is being subjected to a forced or opposed assignment of their contract.
57. I am satisfied that the concerns expressed by the Court in *PaySlate Inc. (Re)*, 2023 BCSC 608 with respect to the extent to which notice has been provided to all parties whose contracts are affected by the proposed RVO have been satisfied here. Indeed, that is in large part why I approved the Unknown Contract Bar Process on November 2, 2023, in order that (given the poor state of the books and records of the Validus Entities), the Monitor could identify any unknown contractual counterparties.
58. That process was conducted. No such parties came forward. The Monitor has served the motion materials on all known counterparties, with the appropriate exception of those who hold only a pure right in land evidenced by an easement registered against property, as well as the primary service list and all additional PPSA registrants.

59. I am also satisfied that, as contemplated in the Transaction, it is appropriate that the existing shares of Bay, Kap, Kingston and Hosting will be purchased and the existing shares of IFPC will be cancelled and new shares of IFPC issued and conveyed to one of the Purchasers, Far North. Other than that, all equity interest in the Purchased Entities will be cancelled for no consideration to ensure that upon the completion of the Transaction, the relevant Purchaser is the equity holder of each of the Purchased Entities. This relief is appropriate here particularly given the deficient state of the records, and is contemplated by sections 11 and 36 of the CCAA such that they may be approved notwithstanding any requirement for shareholder approval.
60. With respect to 5924, or Residualco, it is appropriate that that entity, which will become a debtor company, be added as a party to this CCAA proceeding. It satisfies the definition of a “debtor company” in section 2(1) of the CCAA. I am further satisfied that Mr. Chua, the former general counsel of the Validus Entities, is an appropriate First Director of 5924, the appointment of whom is required as a condition of incorporation.
61. Finally in this regard, I am satisfied that given the anticipation that he will resign prior to the anticipated bankruptcy of the company, relief from the requirement of section 119 of the Ontario *Business Corporations Act* which provides that a director named in the articles of incorporation may not resign until the first meeting of shareholders, is appropriate here. I am further satisfied that I have the discretion pursuant to my inherent jurisdiction and the statutory jurisdiction conferred under section 11 of the CCAA to grant that relief which in my view in this case is also consistent with section 11.5 of the CCAA, which permits directors to be removed by court order. Such relief has been granted in other cases where necessary to facilitate a transaction: See, for example, *Just Energy*.
62. With respect to the treatment of HST and Input Tax Credits, the relief sought contemplates that the pre-filing HST Claim will be vested into 5924, any entitlement to ITCs generated in respect of HST paid pre-filing, continues in that company, and indeed IFPC has already claimed approximately \$3.4 million of the pre-filing ITCs and the Monitor understands that further pre-filing ITCs may be available to claim by IFPC.
63. ITCs generated in respect of HST being paid to Macquarie on closing will be for the benefit of the restructured IFPC.
64. While setoff is preserved under the CCAA, the right to set off is, generally, restricted temporally (i.e., pre-filing to pre-filing; and post-filing to post-filing). The proposed Transaction here preserves such rights in that pre-filing HST liabilities may be set off against pre-filing ITCs, and post-filing HST liabilities (arising from the Transaction) are not set off against pre-filing ITCs but rather are for the benefit of IFPC or other Purchased Entities, post closing.
65. Counsel for the Department of Justice (Canada Revenue Agency) appears on this motion and does not oppose the relief sought.
66. I am also satisfied that the proposed Releases are appropriate in this case. The rationale and basis for those releases, including both the scope of the releases and the proposed Released Parties, were extensively addressed in the Fourth Report, the submissions of the Monitor (both written and oral) and were the subject of extensive questions by the Court during the hearing of this motion.
67. The proposed Releases appropriately carve out claims not permitted to be released pursuant to section 5.1(2) of the CCAA. The proposed Releases are consistent with the scope and nature of releases granted by CCAA courts in other cases, and in my view the proposed Releases here satisfy the factors set out in *Lydian International Limited (Re)*, 2020 ONSC 4006, as subsequently considered by the Court in *Harte Gold* (See paras. 178-9).



68. The *Lydian* factors include whether the parties to be released were necessary and essential to the restructuring; whether the claims to be released were rationally connected to the purpose of the plan and necessary for it; whether the plan could succeed without them; whether the parties being released were contributing to the plan; and whether the releases benefit the debtors as well as the creditors generally.
69. For all of the above reasons, I am satisfied that these factors are met here. The proposed Released Parties have been important to the proceedings including but not limited to the conduct of the SISP and negotiation and implementation of the Transaction. The benefits to stakeholders are fully set out in the Third Report (in respect of the SISP) and in the Fourth Report (in respect of the Transaction). I also accept the submission that Macquarie had significant contractual indemnifications pursuant to the Participation Agreement which it is giving up as part of the consideration for the Transaction. Macquarie, as well as Hut 8 are not new to this proceeding or to the Validus Entities as the Purchasers, but rather had significant pre-existing relationships with those parties with the result that there is a basis for a rational connection to the relief being sought all of which is accretive to the Validus Entities continuing as going concerns.
70. The scope of the proposed Releases is reasonable, particularly given by the significant opposition throughout this proceeding from the Validus Entities (although recognizing that those Entities neither appeared on this motion in person or represented by counsel who has been involved to date in this proceeding and nor do they oppose any of the relief sought today), and recognizing the incomplete state of the books and records of the Validus Entities. The Releases assist in completing, in a cost-effective and efficient way (without the necessity of, for example, a directors and officers claims process), the administration of the estate.
71. The activities of the Receiver and Monitor respectively, as set out in the Third and Fourth Reports, are appropriate, consistent with the respective mandates of each Court Officer, and are approved. Similarly, the fees and disbursements of the Receiver, the Monitor, and their counsel, are appropriate, fully substantiated by the fee affidavits filed, and are appropriate.
72. Finally, the stay extension to February 29, 2024 is appropriate. The cash flow forecasts, filed, reflect that there should be sufficient liquidity to fund operations through that proposed stay extension period. The extension is approved.
73. For all of the above reasons, the relief sought is approved.
74. Orders to go (vesting order and ancillary order) in the form signed by me today. These orders are effective immediately and without the necessity of issuing and entering.
75. Counsel for the Power Workers Union has requested that this Endorsement make clear the effect of the vesting order in respect of issues of particular importance to the members of that union, and I agree that such is appropriate in this case. The Monitor consents and no party opposes.
76. Accordingly, nothing in the vesting order, including for greater certainty the Release and Exculpation set out in paragraphs 29, 30 and 31 thereof, shall: (i) negatively affect or alter the rights of any of the Power Workers' Union, Canadian Union of Public Employees, Local 1000, C.L.C (the "Union"), Atlantic Power Services Canada LP ("Atlantic"), SNS Power Corp. ("SNS"), Validus Power Corp. ("VPC"), Kap Power Corp. ("Kap"), and Bay Power Corp. ("Bay") (together with the Union, each a "Party") in the Amended Application Under Section 69 and/or Subsection 1(4) of the Labour Relations Act, 1995 currently pending before the Ontario Labour Relations Board ("OLRB") having case reference No. 1670-21-R (Power Workers' Union, Canadian Union of Public Employees, Local 1000, C.L.C v. Atlantic Power Services Canada LP, SNS Power Corp., Validus Power Corp., Kap Power Corp., and Bay Power Corp.) (the "69/1(4) Application") or in the grievance dated November 28, 2022 filed by the Union against Atlantic, SNS, VPC, Kap, and Bay (the "Grievance"); (ii) prejudice the position of any Party in the 69/1(4) Application and/or the Grievance; (iii) prejudice the right, if any, of the Union to amend the 69/1(4) Application and/or the Grievance to protect their collective agreement and/or bargaining rights; or (iv)

prevent any Party from seeking any relief from the OLRB or Grievance arbitrator that can be granted in any of the foregoing.

Oleau, J.