

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

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

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

**MOTION RECORD
(Increase of Receiver's Borrowing Limit)**

October 19, 2023

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

Jennifer Stam LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com
Evan Cobb LSO#: 55787N
Tel: 416.216.1929
evan.cobb@nortonrosefulbright.com

Lawyers for the Receiver

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TAB 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43,
AS AMENDED

**NOTICE OF MOTION
(Increase of Receiver's Borrowing Limit)**

KSV RESTRUCTURING INC., ("**KSV**") in its capacity as the court-appointed Receiver (the "**Receiver**") of all the property, assets and undertakings of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp, Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc., (collectively, the "**Companies**") and Kingston Cogen Limited Partnership ("**Kingston LP**") and together with the Companies, the "**Validus Entities**"), will make a motion to a Judge of the Superior Court of Justice (Commercial List), on a date to be scheduled, by judicial videoconference via Zoom at Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard (*choose appropriate option*)

- In writing under subrule 37.12.1(1) because it is on consent;
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

(videoconference details to be provided)

Please advise if you intend to join the motion by emailing Katie Parent at katie.parent@nortonrosefulbright.com

THE MOTION IS FOR AN ORDER, among other things:

- (a) If necessary, abridging and validating the time for service and filing of this Notice of Motion and Motion Record and dispensing with further service thereof;
- (b) Amending paragraph 23 of the Receivership Order (as defined below) to increase the Receiver's borrowing limit under the Receiver's Borrowing Charge (as defined in the Receivership Order) from \$1 million to \$1.5 million; and
- (c) Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) Pursuant to an application filed by the Applicant, Macquarie Equipment Finance Limited ("**Macquarie**"), to appoint KSV as receiver and manager of the Validus Entities, the Ontario Superior Court of Justice (Commercial List) issued an order on August 2, 2023 adjourning Macquarie's application until August 10, 2023 and

appointing KSV as interim receiver of all the property, assets and undertaking of the Validus Entities;

- (b) On August 10, 2023, the Court granted an Order (the “**Receivership Order**”) appointing KSV as the receiver and manager of the properties, assets and undertakings of the Validus Entities (in such capacity, the “**Receiver**”);
- (c) On August 29, 2023, upon application by the Companies, by the Receiver, the Court granted an Initial Order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”), that, among other things, appointed KSV as the Monitor and extended the stay of proceedings to Kingston LP;
- (d) On September 8, 2023, the CCAA stay of proceedings in favour of the Validus Entities was extended to December 1, 2023 to provide additional time to complete negotiations of the terms of a transaction agreement and undertake a sale and investment solicitation process;
- (e) The Validus Entities, by the Receiver, is concurrently seeking the approval of, among other things, a sale and investment solicitation process (the “**SISP**”) for the Validus Entities, within the CCAA proceedings;

Receiver’s Borrowing Limit

- (f) Pursuant to paragraph 23 of the Receivership Order, the Receiver was provided an initial borrowing limit of \$1 million with advances secured by the Receiver’s Borrowings Charge (as defined in paragraph 23 of the Receivership Order);

- (g) Pursuant to paragraph 3 of the Initial Order, the Receiver's borrowing limit and the Receiver's Borrowing Charge were recognized and enforced in the CCAA proceedings;
- (h) The Receiver has worked with Macquarie to prepare a revised cash flow forecast for the period ending December 31, 2023 (the "**Revised Cash Flow Forecast**") which reflects a funding requirement of up to \$1.5 million;
- (i) The increase to the Receiver's borrowing limit is necessary as there have been certain unanticipated and contingent costs in the Receivership proceeding, including:
 - (i) property insurance renewal premiums;
 - (ii) reimbursement to employees of certain payroll related items outstanding as of the date of the Receivership Order; and
 - (iii) increased professional fees as a result of the complexity of the SISP transaction;
- (j) The Applicant has agreed to continue to provide the funds in accordance with the Revised Cash Flow Forecast upon approval from this Court; and
- (k) Such further and other grounds as counsel may advise and this Honourable Court may deem just;

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

- (l) The second report of KSV Restructuring Inc. in its capacity as monitor in the CCAA proceedings of the Validus Entities dated October 19, 2023 and
- (m) Such further and other evidence as counsel may advise and this Court may permit.

October 19, 2023

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Tel: 416. 202.6707
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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**NOTICE OF MOTION
(Increase of Receiver's Borrowing Limit)**

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Toronto, ON M5K 1E7
Fax: 416.216.3930

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Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Evan Cobb LSO#: 55787N

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Lawyers for the Receiver

TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	● DAY, THE ●
)	
JUSTICE OSBORNE)	DAY OF ●, 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.,
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AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43,
AS AMENDED

ORDER**(Increase of Receiver's Borrowing Limit)**

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the court-appointed receiver (in such capacity, the "**Receiver**") of all the property, assets and undertakings of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp, Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc., (collectively, the "**Companies**") and Kingston Cogen Limited Partnership ("**Kingston LP**" and together with the Companies, the "**Validus Entities**") for an order approving the increase of the Receiver's borrowing limit under the Receiver's Borrowing Charge (as defined in the Order of the Court dated August 10, 2023 (the "**Receivership Order**")) from \$1 million to \$1.5 million, was heard this day via videoconference.

ON READING the Motion Record, the second report of KSV Restructuring Inc. in its capacity as monitor within the proceedings of the Validus Entities under the *Companies' Creditors Arrangement Act*, and on hearing the submissions of counsel to the Receiver and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of [NAME] sworn [DATE], filed:

SERVICE

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

INCREASE OF RECEIVER'S BORROWING LIMIT

2. THIS COURT ORDERS that Paragraph 23 of the Receivership Order is amended as follows:

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~~ \$1,500,000 (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.

GENERAL

3. 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.

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

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

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