

**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

**RESPONDING MOTION RECORD
OF THE RESPONDENTS**

August 9, 2023

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#5833716 | 4133893

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

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AFFIDAVIT OF TODD SHORTT

I, Todd Shortt, of the City of Toronto, in the Province of Ontario, MAKE

OATH AND SAY:

1. I am a director and the president and chief executive officer of each of the Respondents and, as such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. I am making this affidavit in response to the Application by Macquarie Equipment Finance Limited (“**Macquarie**”) to appoint KSV Restructuring Inc. (“**KSV**”) as full possessory receiver over all of the assets of Validus Power Corp. (“**Validus**”), Iroquois

Falls Power Corp. (“**IFPC**”), Bay Power Corp. (“**BPC**”), Kap Power Corp. (“**KPC**”), Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (together, “**Kingston**”) with the powers set out in the proposed order.

3. I have read the affidavits of Joshua Stevens sworn July 31, 2023 and August 2, 2023 and make this affidavit in response to these affidavits. Due to the short time frame, I am unable to respond comprehensively to Mr. Stevens’ affidavits.

4. Validus, through its subsidiaries, owns and operates four power plants in Ontario. I will refer to them in the same way Macquarie does, as the North Bay Plant, the Kapuskasing Plant, the Iroquois Falls Plant and the Kingston Plant.

5. Prior to Macquarie’s involvement, Validus already owned the North Bay Plant and Kapuskasing Plant.

6. Macquarie provided financing for Validus to purchase the Iroquois Falls and Kingston Plants, through a Securities Purchase Agreement dated December 9, 2021 that closed on or about April 7, 2022.

7. I don’t understand the amounts claimed by Macquarie. Macquarie advanced \$36 million toward the purchase of the Iroquois Falls Plant and the Kingston Plant, which was structured as a sale leaseback transaction. Validus has already paid back millions of dollars to Macquarie.

8. Validus’s lawyers asked for a breakdown of the calculation showing how Validus allegedly owed Macquarie approximately \$56 million, only a year after advancing \$36 million and despite having been paid millions of dollars. Macquarie’s lawyers undertook

to provide the breakdown, but have not yet done so, even though Macquarie demanded that we deliver our responding material by noon today, on a holiday Monday.

9. Regardless, Macquarie's position is very well secured. The power plants are extremely valuable. Validus was able to purchase the power plants at very low prices in comparison to their potential value. Since the purchases, the value of the plants has skyrocketed due to significant changes in the energy market.

10. In order to explain this, the following is a brief description of the capacity market in Ontario.

11. The Independent Electricity System Operator ("**IESO**")¹ capacity market is a system used to ensure there is enough electricity available for everyone in Ontario.

12. In the capacity market, electricity generators (like power plants or renewable energy sources) get paid not only for the electricity they produce when it is used, but also for being available to produce electricity when it is needed.

13. This is important because electricity demand fluctuates throughout the day and year. Sometimes people and businesses use a lot of electricity, and sometimes they don't. The capacity market ensures that during those times when electricity use is high, there are enough power generators ready to meet the demand.

14. By paying generators for their capacity to produce electricity, it encourages companies to invest in building and maintaining power plants, which helps keep the lights

¹ Incorrectly described as the Independent Energy System Operator in Mr. Stevens' affidavit

on and keeps Ontario's electrical grid reliable. It is much easier to expand on current natural gas generation plants.

15. So, in summary, the IESO capacity market is a way of making sure there is enough electricity available for everyone by paying power generators for being ready to produce electricity when needed.

16. The following are some of the reasons why it has become advantageous to own and operate a natural gas power plant today:

- (a) Electricity Demand: Demand has increased significantly, so plants have more opportunities to sell its electricity at higher prices when demand is high;
- (b) Supply and Demand Dynamics: Changes in the supply of electricity from other sources can impact the market. Other power plants have closed down or reduced their capacity, so there is a higher demand for natural gas plants' capacity, allowing natural gas plants to command better prices;
- (c) Market Rules and Regulations: The rules and regulations of the capacity market have changed over time, favoring natural gas-powered plants in some ways, such as offering more attractive payment rates or incentives;
- (d) Technological Advancements: If natural gas plants have undergone upgrades or improvements in efficiency, they will be more competitive in the capacity market, leading to better financial outcomes;

- (e) Supply: Current sources of power generation in the province are either in repair/refurbishment stages and/or will be shuttered, including the largest power generation source, the Pickering Nuclear Plant, which provides 16 – 20% of the provinces base load power today. It is necessary to incentive all providers of power, including natural gas powered turbine plants, to continue to run and to expand. Also the wind does not always blow and the sun does not always shine, so renewable energy sources are not reliable to replace lost capacity;
- (f) Economic Considerations: Natural gas power plants can be relatively cost-effective to build and operate, making them attractive options to meet increasing electricity demand while considering budget constraints; and
- (g) Technical Considerations: The power grid may require localized power generation to support specific areas with higher electricity demand, or to address grid constraints and transmission losses.

17. Validus and its subsidiaries currently receive over \$2 million per month in income. Both the North Bay and Kapuskasing plants have been selected to go online. This was scheduled to take place in September 2023. However, due to Macquarie's interference, the process has now been delay to January 2024. At this time, Validus's cash flow will dramatically improve.

18. Most recently, as set out in Mr. Stevens' first affidavit, IFPC and Kingston received \$1,983,523.93 and \$829,370.65 on July 21, 2023, \$2,012,950 of which was "swept" by Macquarie and the balance of which should have been available for Validus's operations.

However, Macquarie itself restricted Validus's ability to use the funds to pay and/or reimburse legitimate expenses, and now complains about Validus's alleged "defaults" in its obligations.

19. The Kingston Plant and the North Bay Plant have recently been approved for increased capacity (500mw for Kingston and 30mw for North Bay). This is huge, as Ontario is running out of power due to the pending shutdown of the Pickering plant.

20. Validus obtained an appraisal of the Iroquois Falls Plant from Kroll Canada Limited ("**Kroll**"), a highly respect appraisal firm. Kroll appraised the enterprise value of IFPC in the range of \$157 million to \$215 million, with a midpoint value of \$189 million.

21. I was not involved in the earlier sale process through Ernst & Young and I don't know why this process was not successful.

22. I acknowledge that Validus has struggled in its operations. This is partly as a result of a breakdown in the relationship between Validus and BPC, on the one hand, and Hut 8 Mining Corp. ("**Hut 8**"), in respect of a lease in North Bay, Ontario. This dispute resulted in Validus losing an important source of revenue. The dispute with Hut 8 had a snowball effect on the rest of Validus's operations.

23. I don't believe that Macquarie has any genuine concern about its security position in light of the value of the power plants. Macquarie's position should be fully secured by its interests in the Iroquois Falls Plant and the Kingston Plant alone and the Respondents' huge cash flow opportunities which are on the verge of being realized.

24. Further, in order to ensure that Macquarie was protected, Macquarie was given approval over Validus's banking facilities even prior to the appointment of KSV as an interim receiver. No expenditures were being made without Macquarie's approval.

25. In his second affidavit, Mr. Stevens suggested that he was concerned about potential diversion of funds. However, Ms. Goertz was requesting reimbursement of company expenses incurred by us on our personal credit cards from Validus's cash flow, which Macquarie itself had promised to reimburse. In breach of these promises, Macquarie did not approve the reimbursement.

26. I believe that Macquarie is seeking to take advantage of Validus's temporary setbacks in order to acquire Validus's operations for itself through its proposed appointment of KSV as a full receiver over all of the Respondents' assets, the immediate conversion of the receivership into a *Companies' Creditors Arrangement Act* filing, and the submission by Macquarie of a "stalking horse bid" that would result in Macquarie itself acquiring ownership of all of the power plants.

27. Macquarie has been actively thwarting steps that we have been taking to improve Validus's position. Mostly recently, Macquarie interfered with the purchase of additional land adjacent to the Kingston Power Plant which would have dramatically increased Kingston's ability to expand its operations. I personally put up the deposit funds, which were lost as a result of Macquarie's refusal to facilitate the purchase.

28. Since we learned of this receivership application less than a week ago, I have been working full-time to obtain alternative financing to take out in Macquarie's position. I have successfully arranged this financing, which just needs to be formally documented.

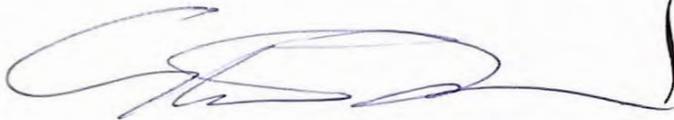
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29. If a receiver is appointment with full power to operate and sell the business before I am able to finalize and close the financing, Validus's business will be destroyed. The shareholders, including myself, will potentially lose millions of dollars of our own investments in the company. All of the other stakeholders will be harmed.

30. In the meantime, Macquarie's position is fully protected by the interim order granted on August 2, 2023, which allows KSV to monitor and control the business.

31. The future is very bright for Validus' business. I believe that the business can be stabilized during the interim receivership and that deferring the appointment of a receiver until Macquarie can be paid out would be in the interest of all the stakeholders.

SWORN before at the City of Toronto, in the
Province of Ontario this 7th day of August, 2023



Commissioner for Taking Affidavits
(or as may be)


TODD SHORTT

#5831102

B E T W E E N

MACQUARIE EQUIPMENT FINANCE LIMITED
Applicant

-and-

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Proceeding commenced at Toronto

**AFFIDAVIT OF TODD SHORTT
SWORN AUGUST 7, 2023**

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