



**First Report to Court of  
KSV Restructuring Inc. as  
Interim Receiver of  
Validus Power Corp., Iroquois Falls  
Power Corp., Bay Power Corp., Kap  
Power Corp., Validus Hosting Inc. and  
Kingston Cogen GP Inc.**

August 9, 2023

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COURT FILE NO.: CV-23-00703754-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

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

Respondents

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

FIRST REPORT OF KSV RESTRUCTURING INC.  
AS INTERIM RECEIVER  
AUGUST 9, 2023

## 1.0 Introduction

1. Pursuant to an application filed by Macquarie Equipment Finance Limited (“Macquarie”), the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued an order on August 2, 2023 (the “Interim Receivership Order”) appointing KSV Restructuring Inc. (“KSV”) as the interim receiver (the “Interim Receiver”), under section 47.1 of the *Bankruptcy and Insolvency Act* (the “BIA”), of all of the property, assets and undertaking of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. and Kingston Cogen Inc. (collectively, the “Companies”) acquired for, or used in relation to, the business carried on by the Companies (the “Property”) until the earlier of:
  - a) the taking of possession of the Property by a receiver, within the meaning of subsection 243 of the BIA; and
  - b) August 10, 2023.
2. This Report is filed by KSV in its capacity as Interim Receiver.

## 1.1 Purposes of this Report

1. The purpose of this report (“Report”) is to provide the Court with an update concerning the Interim Receiver’s activities and preliminary findings since it was appointed.

## 1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

## 1.3 Restrictions

1. In preparing this Report, the Interim Receiver has relied upon unaudited financial information provided by the Companies’ employees, the books and records of the Companies and discussions with representatives of the Companies, Macquarie and its legal counsel. The Interim Receiver has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Interim Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. With the exception of the Court, the Interim Receiver accepts no responsibility for any reliance placed by any third party on the Companies’ financial information presented herein.

## 1.4 Court Materials

1. Court materials filed in these proceedings are available on the Interim Receiver’s website at: <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

## 2.0 Interim Receiver’s Activities

1. Since the date of its appointment, the Interim Receiver has:
  - a) retained Ryan Forget, a former employee of the Companies, to act as a consultant to the Interim Receiver with respect to the operations of the Companies’ power plants;
  - b) gained access to the Companies’ bank accounts so that it could monitor activity in the accounts and approve disbursements in accordance with the Interim Receivership Order;
  - c) dealt with legal counsel to Canadian Imperial Bank of Commerce (“CIBC”) regarding amounts that CIBC appears to have frozen or setoff against amounts owing to CIBC by the Companies;
  - d) convened employee meetings with the Companies’ plant managers;
  - e) convened an employee meeting with all of the Companies’ employees;

- f) arranged for a backup of the computer of the Companies' Chief Financial Officer (the "CFO");
- g) arranged to backup the Companies' other computer systems and servers; and
- h) arranged for the sites to be supervised by security.

### 3.0 Account Information

1. According to Paragraph 54 of the affidavit of Joshua Stevens, a Macquarie employee, sworn July 31, 2023, the Companies' recordkeeping is deficient and reflects unremitted HST, source deductions and municipal taxes. Additionally, Paragraph 56 of Mr. Stevens' affidavit references a union grievance letter dated May 25, 2023 which alleges that the Companies "*failed to provide group benefit<sup>1</sup> coverage and to match and/or remit RRSP contributions for those unionized employees, contrary to the Union's collective agreement.*"
2. Following its appointment, the Interim Receiver requested that the CFO provide it with a summary of these unremitted payroll obligations. The CFO provided the schedule provided in Appendix "A", which reflects that the amounts reflected thereon have been accruing since October 2022. These amounts total approximately \$1.955 million. The Interim Receiver has not yet reviewed the accuracy or completeness of the schedule.

### 4.0 Employees

1. During the meetings between the Interim Receiver and the plant managers and the employees, the Interim Receiver advised employees of the purpose of these proceedings and the pending receivership application. During the question-and-answer period of these meetings, several of the employees expressed:
  - a) a lack of confidence in management;
  - b) concern if the Companies' management remains in control of the business; and
  - c) frustration with respect to benefit and RRSP amounts withdrawn from their payroll but not remitted, as required.
2. The Interim Receiver is of the view that mass resignation is a risk.

### 5.0 Funding

1. The Interim Receiver has reviewed the affidavit of Todd Shortt sworn August 7, 2023, which states that the Companies are projected to receive income of over \$2 million per month.

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<sup>1</sup> The Companies' benefit plans are administered by Canada Life.

2. The Interim Receiver has worked with Macquarie to prepare a cash flow for the receivership period. The cash flow reflects that substantially all cash receipts are required to maintain the operations of the business. The cash flow also shows that the projected cash receipts are not sufficient to service Macquarie's lease arrangements with the Companies, by way of payment of the monthly base rent of \$1.4125 million (including HST). Additionally, there is no funding to service the past due amounts owing from the Companies to Macquarie, which the Interim Receiver understands total approximately \$9.6 million (including HST), representing 6 monthly payments, before interest and costs.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

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

## **Appendix “A”**

Validus Power Corp.  
**Payroll Liability Balances**  
October 2022 through July 2023

	Oct 22	Nov 22	Dec 22	Jan 23	Feb 23	Mar 23	Apr 23	May 23	Jun 23	Jul 23	BALANCE
<b>Payroll Liabilities</b>											
Federal Income Tax	159,365.27	116,505.30	151,735.67	116,293.10	109,276.44	123,884.85	110,098.58	101,542.05	115,724.20	76,241.38	1,180,666.84
CPP - Employee	9,856.62	6,394.35	5,110.86	25,979.29	24,996.64	27,715.38	21,783.00	18,284.73	19,167.81	10,435.12	169,723.80
CPP - Company	9,856.62	6,394.35	5,110.86	25,979.29	24,996.64	27,715.38	21,783.00	18,284.73	19,167.81	10,435.12	169,723.80
EI - Employee	2,536.09	1,405.02	1,393.32	7,315.53	7,048.53	7,736.77	6,113.59	5,006.20	5,129.60	2,443.82	46,128.47
EI - Company	3,550.53	1,967.02	1,950.63	10,241.68	9,867.94	10,831.44	8,559.05	7,008.67	7,181.36	3,421.44	64,579.76
Net Vacation Accrued	-11,529.79	-5,601.66	-18,915.53	-18,160.03	-3,972.76	-5,973.99	-5,498.50	-1,386.47	-9,512.14	-20,430.79	-100,981.66
RRSP - 3.5%	137.31	274.62	411.93	0.00	0.00	274.62	274.62	274.62	411.93	274.62	2,334.27
RRSP - 8%	15,586.75	15,358.07	21,964.28	0.00	0.00	15,401.20	15,259.84	15,087.57	21,009.90	13,723.95	133,391.56
RRSP - Voluntary	4,075.05	3,965.15	5,749.91	0.00	0.00	4,451.46	4,021.99	3,550.28	4,056.88	1,991.59	31,862.31
RRSP 2	4,275.26	3,994.17	4,245.33	0.00	0.00	7,039.93	4,919.75	3,778.76	3,928.15	3,604.89	35,786.24
RRSP deduction	2,714.67	2,137.55	2,080.99	0.00	0.00	3,581.49	3,207.98	3,094.03	2,200.57	2,085.90	21,103.18
Union Dues	875.40	875.40	875.40	875.40	875.40	875.40	875.40	875.40	766.91	766.91	8,537.02
RRSP - Company Contribution	6,989.93	6,131.72	6,326.32	0.00	0.00	10,621.42	8,127.73	6,872.79	6,128.72	5,690.79	56,889.42
RRSP Company - 3.5%	137.31	274.62	411.93	0.00	0.00	274.62	274.62	274.62	411.93	274.62	2,334.27
RRSP Company - 8 %	14,924.74	14,724.35	21,013.70	0.00	0.00	14,739.19	14,597.83	14,453.85	21,009.90	13,723.95	129,187.51
RRSP Company 8%	662.01	633.72	950.58	0.00	0.00	662.01	662.01	633.72	0.00	0.00	4,204.05
<b>Total Payroll Liabilities</b>	<b>224,013.77</b>	<b>175,433.75</b>	<b>210,416.18</b>	<b>168,524.26</b>	<b>173,088.83</b>	<b>249,831.17</b>	<b>215,060.49</b>	<b>197,635.55</b>	<b>216,783.53</b>	<b>124,683.31</b>	<b>1,955,470.84</b>



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

**FIRST REPORT TO COURT OF  
KSV RESTRUCTURING INC., AS INTERIM RECEIVER  
OF VALIDUS POWER CORP, ET AL.  
DATED AUGUST 9, 2023**

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