

Court File No. 31-2943175  
Estate File No. 31-2943175

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF PLANET ENERGY (B.C.) CORP.**

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**MOTION RECORD**  
**(returnable July 4, 2023)**

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**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto, ON M5X 1E2

**Edmond F.B. Lamek (LSO #33338U)**  
Tel: (416) 365-4444  
Email: edmond.lamek@dlapiper.com

**Danny M. Nunes (LSO #53802D)**  
Tel: (416) 365-3421  
Email: danny.nunes@dlapiper.com

**Lawyers for KSV Restructuring Inc., in its  
capacity as Interim Receiver**

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
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**SERVICE LIST**

**TO: DLA PIPER (CANADA) LLP**  
Suite 6000, 1 First Canadian Place  
Toronto, ON M5X 1E2

**Edmond F.B. Lamek**  
Tel: (416) 365-3444  
Email: [elamek@dlapiper.com](mailto:elamek@dlapiper.com)

**Danny M. Nunes**  
Tel: (416) 365-3421  
Email: [danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com)

**Lawyers for the Interim Receiver**

**AND TO: KSV RESTRUCTURING INC.**  
150 King Street West, Suite 2308  
Toronto, ON M5H 1J9

**Bobby Kofman**  
Tel: (416) 932-6228  
Email: [bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com)

**David Sieradzki**  
Tel: (416) 932-6030  
Email: [dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com)

**Jordan Wong**  
Tel: (416) 932-6025  
Email: [jwong@ksvadvisory.com](mailto:jwong@ksvadvisory.com)

**Interim Receiver**

**AND TO: STIKEMAN ELLIOTT LLP**  
5300 Commerce Court West, 199 Bay Street  
Toronto, ON M5L 1B9

**Daniel Murdoch**  
Tel: (416) 869-5529  
Email: [dmurdoch@stikeman.com](mailto:dmurdoch@stikeman.com)

**Lee Nicholson**  
Tel: (416) 869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

**Zev Smith**  
Tel: (416) 869-5260  
Email: [zsmith@stikeman.com](mailto:zsmith@stikeman.com)

**Gavin Inskter**  
Tel: (416) 869-5242  
Email: [ginkster@stikeman.com](mailto:ginkster@stikeman.com)

**Lawyers for Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.**

**AND TO: PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**  
155 Wellington Street West, 35<sup>th</sup> Floor  
Toronto, ON M5V 3H1

**Massimo Starnino**  
Tel: (416) 646-7431  
Email: [max.starnino@paliareroland.com](mailto:max.starnino@paliareroland.com)

**Kris Borg-Olivier**  
Tel: (416) 646-7490  
Email: [kris.borg-olivier@paliareroland.com](mailto:kris.borg-olivier@paliareroland.com)

**Evan Snyder**  
Tel: (416) 646-7490  
Email: [evan.snyder@paliareroland.com](mailto:evan.snyder@paliareroland.com)

**Lawyers for All Communications Network of Canada, Co.**

**AND TO: RICHTER INC.**  
181 Bay Street, #3510  
Bay Wellington Tower  
Toronto, ON M5J 2T3

**Karen Kimel**  
Tel: (416) 488-2345  
Email: [kkimel@richter.ca](mailto:kkimel@richter.ca)

**Adam Sherman**  
Tel: (416) 642-4836  
Email: [asherman@richter.ca](mailto:asherman@richter.ca)

**Proposal Trustee**

**AND TO: CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**George Benchetrit**  
Tel: (416) 218-1141  
Email: [george@chaitons.com](mailto:george@chaitons.com)

**Lawyers for the Proposal Trustee**

**AND TO: SHELL ENERGY NORTH AMERICA (CANADA) INC.**  
3500, 450-1<sup>st</sup> Street SW  
Calgary, AB T2O 5H1

400-4<sup>th</sup> Avenue SW  
Calgary, AB T2P 2H5

Email: [bankruptcy-notices@shell.com](mailto:bankruptcy-notices@shell.com)

**Creditor**

**AND TO: SHELL CANADA PRODUCTS as registering agent for SHELL ENERGY  
NORTH AMERICA (CANADA) INC.**

90 Sheppard Avenue East, Suite 600  
Toronto, ON M2N 6Y2

**Monica McLean**

**AND TO: MILLER THOMSON LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
Toronto, ON M5H 3S1

**Patrick Corney**  
Tel: (416) 595-8555  
Email: [pcorney@millerthomson.com](mailto:pcorney@millerthomson.com)

**Lawyers for the Ontario Energy Board**

## E-SERVICE LIST

[edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com); [danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com); [bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com);  
[dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com); [jwong@ksvadvisory.com](mailto:jwong@ksvadvisory.com); [dmurdoch@stikeman.com](mailto:dmurdoch@stikeman.com);  
[leenicholson@stikeman.com](mailto:leenicholson@stikeman.com); [zsmith@stikeman.com](mailto:zsmith@stikeman.com); [ginkster@stikeman.com](mailto:ginkster@stikeman.com);  
[max.starnino@paliareroland.com](mailto:max.starnino@paliareroland.com); [kris.borg-olivier@paliareroland.com](mailto:kris.borg-olivier@paliareroland.com);  
[evan.snyder@paliareroland.com](mailto:evan.snyder@paliareroland.com); [kkimel@richter.ca](mailto:kkimel@richter.ca); [asherman@richter.ca](mailto:asherman@richter.ca);  
[george@chaitons.com](mailto:george@chaitons.com); [bankruptcy-notices@shell.com](mailto:bankruptcy-notices@shell.com); [pcorney@millerthomson.com](mailto:pcorney@millerthomson.com);

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SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
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# **TAB 1**

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF PLANET ENERGY (B.C.) CORP.**

**NOTICE OF MOTION**

**KSV RESTRUCTURING INC.**, in its capacity as interim receiver (in such capacity, the “**Interim Receiver**”), without security, of all of the assets, undertakings and properties (the “**Property**”) of Planet Energy (Ontario) Corp. (“**PEONT**”) and Planet Energy (B.C.) Corp. (“**PEBC**”, and together with PEONT, “**Planet Energy**”), will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), on Tuesday, July 4, 2023 at 9:00 a.m. or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard via video conference.

**THE MOTION IS FOR:**

1. an Order substantially in the form attached at Tab 3 of the Motion Record, among other things:
  - (a) abridging and validating the time for service of the Notice of Motion and the Motion Record so that the motion is properly returnable on July 4, 2023 and dispensing with further service thereof;

- (b) extending the time within which PEONT is to file a proposal with the Official Receiver under Section 62(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), to August 18, 2023;
- (c) declaring that PEONT meets the criteria under Section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-22 (“**WEPPR**”), such that certain former employees of PEONT are entitled to receive payments under the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47 (“**WEPPA**”);
- (d) approving the terms and conditions of a sale process for the sale of the Property (the “**Sale Process**”);
- (e) approving the key employee retention plan (“**KERP**”) offered by the Interim Receiver to certain employees of PEONT (the “**KERP Employees**”);
- (f) approving a charge over the Property in favour of the KERP Employees in the amount of \$100,000 to secure the maximum amount payable under the KERP;
- (g) sealing Confidential Appendix “1” to the First Report of the Interim Receiver dated June 27, 2023 (the “**First Report**”) until further Order of this Court or the discharge of the Interim Receiver;
- (h) approving the First Report and the activities of the Interim Receiver set out therein; and
- (i) such further and other relief as counsel may advise and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

2. PEONT is a natural gas and electricity retailer that offers fixed-price electricity and gas supply contracts to retail and commercial customers in Canada, primarily in Ontario;
3. PEBC does not carry on active business operations;
4. on May 11, 2023, PEONT and PEBC each filed a Notice of Intention to Make a Proposal (the “NOIs”) pursuant to Section 50.4(1) of the BIA and Richter Inc. was appointed as proposal trustee (the “**Proposal Trustee**”) under each NOI;
5. pursuant to the Order of the Honourable Madam Justice Steele dated June 8, 2023, the Interim Receiver was appointed under Section 47.1 of the BIA further to a motion brought by All Communications Network of Canada, Co., Planet Energy’s largest unsecured creditor, by far;
6. on that same date, an extension of the time for Planet Energy to file a proposal with the Official Receiver up to and including July 4, 2023 was granted pursuant to a separate Order of the Honourable Madam Justice Steele;

***Sale Process Approval***

7. the Interim Receiver is currently considering whether the costs associated with conducting the Sale Process are justifiable in the circumstances, however, in order to reduce professional costs resulting from an additional motion seeking the Court’s approval of the Sale Process and to advance these proceedings without delay, the Interim

Receiver is seeking the Court's approval of the Sale Process at the return of the within motion;

8. if the Interim Receiver ultimately determines that the costs incurred in conducting the Sale Process are justifiable, the Sale Process terms and conditions contemplate that the Interim Receiver will file a Sale Process Certificate with the Court and serve it on the service list in these proceedings as well as the NOI proceedings, at which point the Sale Process shall be commenced;
9. the terms and conditions of the Sale Process provide sufficient time to adequately canvas the market of potential purchasers and to allow potential purchasers to conduct the necessary due diligence before deciding whether to submit a bid in the Sale Process;

***Extension of Time to File a Proposal***

10. PEONT is also seeking an extension of the deadline for it to file a proposal with the Official Receiver until August 18, 2023;
11. PEONT would likely be able to make a viable proposal if the extension is granted;
12. none of PEONT's creditors will be materially prejudiced if the extension is granted;
13. an extension of the deadline to file a proposal with the Official Receiver is not being sought by PEBC and, as such, upon the passage of the current deadline of July 4, 2023, PEBC will be deemed to have made an assignment in bankruptcy;

***WEPPA***

14. in the six months preceding the NOI filing, the Interim Receiver understands that there were a small number of PEONT employees whose employment was terminated;
15. while the former employees have been or will be paid their full wages and vacation pay, they will not be paid any termination or severance pay;
16. a declaration that PEONT meets the criteria under the WEPPA regulations and that the former employees are entitled to receive payments under WEPPA will assist them in filing WEPPA claims for unpaid termination and severance pay;
17. the Court has the discretion under Section 5(5) of WEPPA and Section 3.2 of WEPPR, in proceedings under Division I of Part III of the BIA, to order that a former employer meets the criteria prescribed by the regulation where all of the employees located in Canada of the former employer have been terminated, other than any retained to wind down its business operations;
18. it is the Interim Receiver's view that it is appropriate for the Court to make the declaration as those PEONT employees that are not transferred to a potential purchaser (if any) will have either assisted with the transition of PEONT's business to a purchaser or the wind-down of the business and the declaration will enable terminated employees to access their statutory entitlements with respect to unpaid termination and severance pay;

***KERP Approval***

19. in order for PEONT to advance these proceedings to maximize recoveries for creditors in the circumstances, the Interim Receiver has identified the KERP Employees whose continued involvement and assistance is critical;
20. the KERP is necessary to reduce the risk that these key employees will seek alternative employment during these proceedings;
21. the KERP Charge will secure the maximum amount of \$100,000 payable to the KERP Employees under the terms of the KERP;
22. a sealing order is necessary and appropriate, in accordance with the decision in *Sherman Estate*, as the unredacted copy of the KERP attached as Confidential Appendix "1" to the First Report contains certain personal and financial information for the KERP Employees;
23. Section 50.4(9) of the BIA;
24. Rules 1.04, 2.01, 2.03, 3.02, 14.05, 16, 38 and 40.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
25. such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Second Report of the Proposal Trustee, to be filed;

- (b) the First Report; and
- (c) such further and other materials as counsel may advise and this Honourable Court may permit.

June 27, 2023

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto, ON M5X 1E2

**Edmond F.B. Lamek (LSO No. 33338U)**  
Tel: (416) 365-3444  
Email: [edmond.lamек@dlapiper.com](mailto:edmond.lamек@dlapiper.com)

**Danny M. Nunes (LSO No. 53802D)**  
Tel: (416) 365-3421  
Email: [danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com)

**Lawyers for KSV Restructuring Inc., in its  
capacity as Interim Receiver**



**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.  
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (B.C.) CORP.**

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

PROCEEDINGS COMMENCED AT TORONTO

**NOTICE OF MOTION**  
(returnable July 4, 2023)

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto, ON M5X 1E2

**Edmond F.B. Lamek (LSO #33338U)**  
Tel.: (416) 365-4444  
Email: [edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)

**Danny M. Nunes (LSO #53802D)**  
Tel.: (416) 365-3421  
Email: [danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com)

Lawyers for KSV Restructuring Inc., in its capacity as Interim  
Receiver

## **TAB 2**



**First Report to Court of  
KSV Restructuring Inc. as  
Interim Receiver of  
Planet Energy (Ontario) Corp. and  
Planet Energy (B.C). Corp.**

June 27, 2023

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COURT FILE NO.: 31-2943175 AND 31-2943168

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
PLANET ENERGY (ONTARIO) CORP. AND PLANET ENERGY (B.C.) CORP.

IN THE MATTER OF THE INTERIM RECEIVERSHIP OF PLANET ENERGY (ONTARIO)  
CORP. AND PLANET ENERGY (B.C.) CORP.

FIRST REPORT OF KSV RESTRUCTURING INC.  
AS INTERIM RECEIVER OF  
PLANET ENERGY (ONTARIO) CORP. AND PLANET ENERGY (B.C.) CORP.

JUNE 27, 2023

## 1.0 Introduction

1. On May 11, 2023 (the “**NOI Filing Date**”), Planet Energy (Ontario) Corp. (“**PEONT**”) and Planet Energy (B.C.) Corp. (“**PEBC**”) and together with PEONT, the “**Companies**”) each filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B.-3*, as amended (the “**BIA**”). Richter Inc. was appointed as the proposal trustee in the NOI proceedings (the “**Proposal Trustee**”).
2. Pursuant to an application filed by the Companies’ most significant unsecured creditor, All Communications Network of Canada Co. (“**ACN**”), the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order on June 8, 2023 (the “**Interim Receivership Order**”) appointing KSV Restructuring Inc. (“**KSV**”) as the interim receiver (the “**Interim Receiver**”), under section 47.1 of the BIA, of all of the Companies’ property, assets and undertaking acquired for, or used in relation to, the business carried on by the Companies (the “**Property**”). A copy of the Interim Receivership Order is attached as Appendix “A”.
3. On June 8, 2023, the Court also made an order (the “**Stay Extension and Administration Order**”) which, among other things, (i) extended the Companies’ stay of proceedings and the deadline to file a proposal pursuant to section 50.4(9) of the BIA (“**Proposal**”) to July 4, 2023, and (ii) administratively consolidated the Companies’ NOI proceedings.

4. The principal purpose of the Companies' insolvency proceedings is to create a stabilized environment to consider the next steps in these proceedings, which may involve filing a Proposal, conducting a sale process for the Companies' business and assets (the "**Sale Process**") or winding down the business on a basis to be determined.
5. To reduce the professional costs resulting from a further motion in these proceedings, and advance these proceedings without delay, the Interim Receiver is seeking approval of the Sale Process at this time. If after the return of this motion, the Interim Receiver determines that the Sale Process is the most appropriate course of action, the Interim Receiver will file a certificate with the Court (the "**Sale Process Certificate**") and will serve the Certificate on the service list in these proceedings, the effect of which will be to launch the Sale Process.
6. This Report is filed by KSV in its capacity as Interim Receiver.

### 1.1 Purposes of this Report

1. The purposes of this report ("**Report**") are to:
  - a) provide background information about the Companies;
  - b) summarize the Interim Receiver's principal activities since its appointment, including dealing with the Ontario Energy Board (the "**OEB**") and other regulatory matters;
  - c) detail the proposed Sale Process;
  - d) discuss a proposed key employee retention plan (the "**KERP**") for certain of the Companies' employees and a proposed charge in the amount of \$100,000 to secure amounts payable under the KERP (the "**KERP Charge**");
  - e) set out the basis on which the Interim Receiver is recommending a sealing order for the confidential terms of the KERP;
  - f) summarize the Interim Receiver's recommendation regarding the relief being sought by the Interim Receiver, on behalf of PEONT, in the PEONT NOI proceedings, being:
    - declaring that PEONT meets the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-22 ("**WEPPR**"), such that former employees are entitled to receive payments under the Wage Earner Protection Program Act, S.C. 2005, c. 47, ("**WEPPA**"); and
    - extending the date by which PEONT is required to file a Proposal from July 4 to August 18, 2023; and

- g) recommend that this Court issue Orders:
- granting the relief sought by the Interim Receiver, on behalf of PEONT, regarding WEPPA and granting an extension of the NOI proceedings to August 18, 2023;
  - approving the Sale Process;
  - approving the KERP;
  - sealing the confidential details of the KERP; and
  - approving the Interim Receiver's activities to the date of this Report.

## 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 and the Proposal Trustee, the books and records of the Companies and discussions with representatives of the Companies, the Proposal Trustee and ACN. 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 Company's 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/planetenergy> (the "**Interim Receiver Website**"). Court materials filed in the NOI proceedings are available on the Proposal Trustee's website at: <https://www.richter.ca/insolvencycase/planet-energy-ontario-corp/> and <https://www.richter.ca/insolvencycase/planet-energy-b-c-corp/> (the "**Proposal Trustee Website**").

## 2.0 Background

1. PEONT is a privately owned entity established in 2006. PEBC is a wholly-owned subsidiary of PEONT.
2. PEONT is a natural gas and electricity retailer that offers fixed-price electricity and gas supply contracts to residential and commercial customers largely located in Ontario. Electricity supply comprises the majority of PEONT's business. PEONT is regulated in Ontario by the OEB. PEBC is inactive and does not carry on any business operations.
3. PEONT is the ultimate sole shareholder of several US based subsidiaries, including Planet Energy (Pennsylvania) Corp. ("**PEPC**"). As at the date of this Report, all of the US-based subsidiaries are inactive.
4. PEONT leases office space located at 5775 Yonge Street, Suite 1202, Toronto, Ontario; however, most of its employees work remotely.
5. As of the date of this Report, PEONT has 16 employees. PEONT does not maintain a registered pension plan for its employees, nor are any of the employees unionized.
6. ACN is the Companies' principal unsecured creditor. ACN and the Companies were parties to a sales agency agreement pursuant to which ACN marketed and referred potential customers to the Companies, which expired in 2016. In April 2018, ACN commenced an arbitration against the Companies, alleging that the Companies failed to make certain commission payments to ACN. In February 2021, the arbitrator issued a judgement awarding ACN approximately \$29.3 million against the Companies. The Companies commenced an application with the Court to set aside the arbitration award; however, in April 2022, the Court granted ACN's motion to enforce the arbitration award. The Companies appealed the Court's decision, which appeal was dismissed by the Court of Appeal for Ontario in May 2023. As at the date of this Report, ACN is owed approximately \$35.2 million, including the amount of the judgement, costs and interest to the beginning of June 2023.
7. Further information regarding the Companies is available on the Interim Receiver Website and the Proposal Trustee Website.

## 3.0 Creditors

### 3.1 Secured Creditors

1. The Companies' known secured creditors are:
  - a) Shell USA, Inc. ("**Shell**"), which is owed approximately \$607,500 comprising: (i) approximately \$536,100 for amounts owing under swap agreements; and (ii) approximately \$71,400 for amounts due for electricity and gas. These amounts are subject to change. Shell also owes PEONT approximately \$400k as of the date of this Report; and



- b) Bank of Nova Scotia (“**BNS**”), pursuant to an Authority to Hold Funds on Deposit of up to CAD\$1 million (the “**AHFD**”), in respect of amounts potentially owing under certain letters of credit (each a “**LOC**” and collectively, the “**LOCs**”) totaling US\$1.86 million it has issued on behalf of the Companies or related entities. The Interim Receiver understands that Export Development Canada has guaranteed the LOCs.
2. Since its appointment, the Interim Receiver has corresponded with both Shell and BNS. Prior to making or consenting to any distributions to secured creditors, the Interim Receiver will obtain from its independent legal counsel, DLA Piper (Canada) LLP (“**DLA**”), an opinion in respect of the security granted by the Companies in favour of both creditors.

### 3.1.1 Pennsylvania Litigation

1. Prior to these proceedings, at the request of PEONT, BNS posted a US\$630,000 LOC in favor of the Pennsylvania Public Utilities Commission (“**PPUC**”) in respect of PEPC’s tax and other obligations under the Pennsylvania Public Utilities Code (the “**Code**”).
2. In or around August 2022, PEPC terminated its customer contracts and ceased carrying on business. PPUC takes the position that PEPC improperly terminated these contracts, contrary to the provisions of the Code and the customer contracts. PPUC is seeking (i) to cancel PEPC’s license and (ii) through its Investigations and Enforcement Bureau, a civil penalty against PEPC in the amount of USD\$2,845,000 pursuant to a complaint filed by PPUC dated June 1, 2023 (the “**Complaint**”). During the week of June 19, 2023, PEPC filed a detailed response disputing the allegations in the Complaint.
3. As PEPC no longer carries on active business operations, the Complaint would not be an issue, but for the LOC. From a review of the language of the LOC, the Interim Receiver is of the view that the LOC is not intended to cover the fines and penalties, including those related to PPUC’s allegations against PEPC in the Complaint. The LOC provides that the “proceeds of the letter of credit may not be used to pay penalties or fines [emphasis added] levied against [the] principal [being PEPC] for the violation of the law or payment of any other obligations of the commonwealth”.
4. On June 22, 2023, the Interim Receiver’s counsel, DLA, advised BNS’s counsel of the Interim Receiver’s position concerning the LOC and required that it not pay amounts to PPUC under the LOC without the written consent of the Interim Receiver or order of the Court. BNS’s counsel has advised that BNS takes a different view of its obligations under the LOC. DLA will continue to dialogue with BNS’s counsel regarding the LOC, the AHFD and the EDC guarantees of the LOCs. The Interim Receiver will resist any attempts by PPUC to draw on the LOC in light of the wording set out in 3 above.
5. A hearing before the PPUC has been scheduled for August 2, 2023 to consider the Complaint and PEPC’s response. The Interim Receiver intends to engage US counsel to attend this hearing.

### 3.2 ACN

1. As at the NOI Filing Date, the Receiver understands that ACN was owed approximately \$35.2 million, plus interest, which continues to accrue. The amounts owing to ACN represent approximately 94% of the Companies' known unsecured claims.
2. Nino Sylvestri, the Companies' Chief Executive Officer and sole director, resigned on June 15, 2023. Shortly thereafter, the Interim Receiver engaged in discussions with Tom Ulry, a senior executive of ACN, to retain him as a consultant to assist the Interim Receiver to oversee the Companies' operations during these proceedings (the "**Consultant**"). Given the regulated nature of the Companies' business, the large fines that could result from a misstep managing the business, and the financial consequences that this would have for ACN as the Companies' largest stakeholder, the Interim Receiver believed it was appropriate to retain a consultant with deep experience in the industry, which is the case with Mr. Ulry. Accordingly, the Interim Receiver retained Mr. Ulry pursuant to a consulting agreement dated June 19, 2023.
3. The Consultant's role includes performing a review and inspection of the business so that the Consultant can properly advise the Interim Receiver with respect to the financial position of the Companies' contracts and the viability of the Companies' business. The Consultant's role also includes reviewing and assessing the daily operations of the business, future business prospects, the current and ongoing status of the Companies' regulatory compliance and other services, as agreed with the Interim Receiver. The Consultant does not have any decision making or other management responsibilities relating to the Companies' business and does not have the authority to bind the Interim Receiver.
4. If ACN decides to be a bidder or to participate in the Sale Process, the Consultant would not be entitled to any information regarding the conduct of the Sale Process, including the names of the other interested parties participating in the process, the amount of their bids and any other material matter concerning the Sale Process.

### 3.3 Other Unsecured Creditors

1. Based on the creditor listings filed in the NOI proceedings, the Companies' other unsecured creditors primarily comprise trade suppliers and utility service providers. As of the NOI Filing Date, PEONT's other known unsecured liabilities totalled approximately \$2.1 million. ACN is the only known unsecured creditor of PEBC. PEBC is not believed to have any assets.
2. The Interim Receiver and the Proposal Trustee intend to work together to use the statutory process to call for claims against PEONT in accordance with the BIA. The proposal proceedings are likely the most economic and efficient way for distributions to be made to creditors of PEONT in these proceedings. If so, such distributions may be made through a PEONT proposal to be filed in due course.

## 4.0 Preliminary Update

### 4.1 Employees

1. On June 15, 2023, the Interim Receiver convened a virtual town hall meeting with PEONT's employees. The Interim Receiver advised the employees that PEONT is presently continuing to operate in the normal course during the interim receivership proceedings while the Interim Receiver considers next steps, which may include a sale process.
2. The Interim Receiver also advised employees that there was no change to their employment status with PEONT.

### 4.2 Cash

1. The Companies have bank accounts at BNS. Certain of PEONT's US subsidiaries have bank accounts with JP Morgan Chase ("**JPMC**"). Immediately following its appointment, the Interim Receiver requested that BNS restrict the bank accounts to deposit only and arranged for the transfer of all funds to the Interim Receiver's bank account, in accordance with the Interim Receivership Order.
2. On June 19, 2023, BNS transferred approximately \$7.6 million to the Interim Receiver's bank account, which represented the entire balance in the Companies' bank accounts, net of a \$1 million reserve being held by BNS pursuant to the AHFD. BNS's counsel, Harrison Pensa LLP, advised that BNS intends to hold the funds in accordance with the AHFD given BNS's potential exposure under the LOCs.
3. As of the date of this Report, the Companies' US subsidiaries, including PEPC, have approximately CDN\$730,000 on deposit in JPMC bank accounts. The Interim Receiver is considering how to take possession of this cash.

### 4.3 The Ontario Energy Board

1. Following its appointment, the Interim Receiver and DLA attended a call with the OEB and its counsel, Miller Thomson LLP, to discuss these proceedings. The OEB requested that the Interim Receiver have PEONT disclose these proceedings to any new customer being solicited, as well as to any "renewing"<sup>1</sup> customers. The OEB also requested that the Interim Receiver advise all utilities in Ontario, with which PEONT deals, of these proceedings.
2. Accordingly, on June 22, 2023, the Interim Receiver sent a notice to the utility companies (the "**Utilities Notice**") advising of the Companies' NOI and interim receivership proceedings and that the Interim Receiver will provide the utilities with as much notice as possible if the Interim Receiver determines that PEONT's operations will be discontinued. The Interim Receiver did not guarantee any specific notice period. A copy of the Utilities Notice is attached as Appendix "B".
3. Given the uncertain status of PEONT's business, the Interim Receiver has instructed PEONT's employees to suspend customer renewals and to discontinue soliciting new customers until there is more visibility as to the long-term prospects of the business.

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<sup>1</sup> When a customer renews, it enters into a new contract.

## 5.0 Sale Process

1. As noted above, the Interim Receiver intends to commence the Sale Process upon filing the Sale Process Certificate and serving it on the Service List in these proceedings and the NOI proceedings. The Interim Receiver is presently considering whether the costs of the Sale Process are justifiable in the circumstances as there is some uncertainty that a sale process will result in a going-concern transaction. The Interim Receiver is also discussing the various options for the business with ACN, as the largest unsecured creditor of the Companies. The following factors are being weighed by the Interim Receiver as to the next steps in these proceedings:
  - a. the volatile nature of the business, the profitability of which is influenced by fluctuations in energy prices (which can be influenced by extreme weather);
  - b. PEONT's electricity business is operating without a hedge;
  - c. PEONT's gas supply contracts expire in October 2023;
  - d. the significant fines to which PEONT could be exposed if it's offside regulatory compliance;
  - e. the inability to source new customers, or to renew customers, while the business is in an insolvency proceeding;
  - f. the reliance on a handful of employees at PEONT who may soon look for alternative employment unless there is certainty that the business can be continued; and
  - g. any losses incurred by PEONT while the Sale Process is being conducted will reduce the amounts available for distribution to creditors, particularly ACN.
2. Based on the above factors, it is the Interim Receiver's view that ACN's position as to the relative benefits of a sale process should be given significant weight. The Interim Receiver will provide an update on ACN's position on the return of the motion.

### 5.1 Overview

1. A summary of the proposed Sale Process, if it proceeds, is as follows:

<b>Milestone</b>	<b>Key Dates (following the filing of the Sale Process Certificate)</b>
Distribution of teaser to target buyers	Immediately
Confidential Virtual Data Room to be opened	Immediately
Bid Deadline	35 days
Auction (if any)	45 days

2. The Interim Receiver will prepare marketing materials and solicit interest from parties potentially interested in pursuing a transaction (each, a "**Potential Bidder**").

3. In particular, the Interim Receiver will:
  - a) prepare and disseminate a “teaser” and a process letter to Potential Bidders, including a form of non-disclosure agreement (an “**NDA**”);
  - b) provide access to a data room containing information about the Companies, including financial information, customer contracts, supply agreements and other matters. Potential Bidders will be required to execute the NDA in order to obtain access to the data room;
  - c) request that such parties submit a binding offer meeting at least the requirements for a Qualified Bid (as described below) 35 days following the filing of the Sale Process Certificate, being the “Qualified Bid Deadline”; and
  - d) facilitate due diligence by, among other things, arranging meetings between the Companies’ key employees and Potential Bidders.
4. The Interim Receiver does not intend to prepare a confidential information memorandum as doing so will unduly delay the commencement of the Sale Process. Additionally, the Interim Receiver is of the view that the Information available in the data room and garnered through management meetings should be sufficient for all parties to submit an offer. The Interim Receiver will facilitate additional reasonable information requests made by Potential Bidders.
5. Potential Bidders will be provided with a copy of a template asset purchase agreement (the “**Template Purchase Agreement**”). Potential Bidders will be required to submit offers in the form of the Template Purchase Agreement, with a blackline to the Template Purchase Agreement.
6. A Potential Bidder that wishes to make a bid must deliver a written copy of its bid and other materials required by the Sale Process by no later than 5:00 pm (EST) on the Qualified Bid Deadline. The Qualified Bid Deadline may be extended by the Interim Receiver or further order of the Court.

## 5.2 Qualified Bids

1. To be a “Qualified Bid”, a bid must, among other things, meet the following requirements:
  - a) an offer in writing, substantially in the form of the Template Purchase Agreement, with any changes to the offer blacklined against the Template Purchase Agreement;
  - b) a provision stating that the offer is irrevocably open for acceptance until sixty days after the Qualified Bid Deadline;
  - c) a cash deposit of not less than 15% of the proposed purchase price;

- d) the proposed transaction is to be completed on an "as is, where is" basis and must include an acknowledgement that the purchaser has relied solely on its own independent review and investigation and that it has not relied on any representation by the Companies, the Interim Receiver, the Proposal Trustee or their respective agents, employees or advisors;
- e) it must not contain any condition or contingency relating to due diligence or financing or any other material conditions precedent to the purchaser's obligation to complete the transaction (save and except for approval by the Court); and
- f) it must include written evidence, satisfactory to the Interim Receiver, that the purchaser has the requisite consents (if any), licenses and permits, and the financial means to complete the proposed acquisition.

### **5.3 Multiple Qualified Bids**

1. If more than one Qualified Bid is received by the Bid Deadline, the Interim Receiver will have the option to request that such bidders submit additional offers until the Interim Receiver determines the best offer, which may not necessarily be the highest offer, based on its reasonable business judgement. The Interim Receiver will be entitled to conduct an in-person auction or such other process as it determines appropriate to facilitate the bidding process.

### **5.4 Sale Process Recommendation**

1. The Interim Receiver recommends that this Court issue an order approving the Sale Process for the following reasons:
  - a) given the risk factors identified in Section 5.1 above, it is critical that the Sale Process be completed expediently;
  - b) the Sale Process will provide for a wide marketing of PEONT's business and assets;
  - c) the duration of the Sale Process is sufficient to allow interested parties to perform diligence and submit offers. The Interim Receiver will have the flexibility to extend the deadlines in the Sale Process, if required;
  - d) the Sale Process provides a fair, efficient and transparent process to test the market;
  - e) ACN's support will be sought in advance of its commencement;
  - f) a sale of PEONT's business and assets may preserve employment for PEONT's employees on terms substantially similar to their current terms; and
  - g) as at the date of this Report, the Interim Receiver is not aware of any objections to the Sale Process.
2. As noted above, the Interim Receiver would only commence the Sale Process by filing the Sale Process Certificate.

## 6.0 KERP

1. The beneficiaries of the KERP (the “**KERP Employees**”) have been identified by the Interim Receiver as important to the ongoing operations of PEONT and these proceedings. The KERP Employees are included in Confidential Appendix “1”.
2. Payments under the KERP are to be paid upon the earlier of: (i) completion of a transaction for all or substantially all of the Companies’ assets under the Sale Process; or (ii) termination of the interim receivership proceedings or any subsequent receivership or related proceeding.
3. KERP Employees will not be entitled to the KERP if they voluntarily resign or are terminated for cause. However, KERP Employees will be entitled to their respective KERP payment if terminated without cause by the Interim Receiver before the applicable KERP payment date.
4. The Interim Receiver is seeking approval of the KERP and the creation of the corresponding KERP Charge in the amount of \$100,000 to secure the maximum amount payable under the KERP at any point in time. The KERP Charge is to rank subordinate to the Interim Receiver’s charge created under the Interim Receivership Order but is to have priority over all other claims against the Companies.
5. The KERP Employees are long-term employees for which there are no replacements at this time. These individuals have deep knowledge of the business, technical expertise and/or knowledge of regulatory matters. The Interim Receiver has communicated extensively with these individuals since its appointment. The KERP is intended to incent the KERP Employees to assist the Interim Receiver to maximize value in these proceedings.
6. The Interim Receiver supports the KERP for the following reasons:
  - a) the KERP Employees each have deep knowledge regarding PEONT’s business and would be difficult to replace;
  - b) the continued involvement and cooperation of the KERP Employees is critical to ongoing ordinary course business operations and each is likely to be helpful facilitating the Sale Process, if commenced;
  - c) the Interim Receiver believes that the KERP will assist to retain the KERP Employees, which is in the interest of stakeholders;
  - d) the amounts payable under the KERP are reasonable in the circumstances; and
  - e) ACN has been consulted in respect of the KERP and does not oppose its approval.

## **6.1 Sealing**

1. The Interim Receiver is requesting an order sealing Confidential Appendix "1", which contains the KERP terms, as it contains personal, identifiable and sensitive information, including the identity and proposed compensation of the KERP Employees. The Interim Receiver believes it is appropriate to seal this appendix in the circumstances. The sealing of this type of sensitive and personal information is customary in insolvency proceedings to avoid disruption to the debtor company and to protect the privacy of the KERP Employees.
2. The Interim Receiver does not believe that any stakeholder will be prejudiced if the KERP information that will be contained in Confidential Appendix "1" is sealed.

## **7.0 Extension of the NOI Proceeding**

1. On June 8, 2023, the Court approved an extension of the NOI proceedings to July 4, 2023. The Interim Receiver, on behalf of PEONT, is now seeking an extension of the time to file a proposal to August 18, 2023. The Interim Receiver understands that PEBC will not be seeking an extension, and accordingly, it will be deemed to have filed an assignment in bankruptcy on July 5, 2023.
2. Further information regarding the extension of the stay of proceedings is included in the Proposal Trustee's Second Report to Court, to be filed.
3. The Interim Receiver has been corresponding with the Proposal Trustee in connection with these proceedings and is supportive of the extension being sought of the NOI proceedings.

## **8.0 WEPPA**

1. The Interim Receiver on behalf of PEONT also seeks relief from the Court relating to WEPPA, which provides benefits to employees terminated in the six months prior to, or during, the NOI proceedings.
2. The Interim Receiver understands that there were a small number of headcount reductions implemented by PEONT in the six months prior to the NOI filing. All terminated employees have been paid, or will be paid, their full wages and vacation pay but will not be paid any termination and severance pay. The Interim Receiver, on behalf of PEONT, would like to facilitate PEONT's terminated employees filing of claims under WEPPA for unpaid termination and severance pay.
3. Section 5(1) of the WEPPA provides that an individual is eligible to receive payment under the WEPPA if, among other things, (i) the individual is owed eligible wages by a former employer; (ii) the former employer is subject to proceedings under Division I of Part III of the BIA; and (iii) a court determines under subsection 5(5) that the criteria prescribed by the regulation are met.



4. Section 5(5) of the WEPPA provides that on application by any person in proceedings under Division I of Part III of the BIA, a court may determine that a former employee meets the criteria prescribed by WEPPR. Section 3.2 of the WEPPR provides that “a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.”
5. In the Interim Receiver's view, it is appropriate for the Court to grant this relief as the PEONT employees that are not transferred to a potential purchaser (if any) will have either assisted with the transition of PEONT's business to a purchaser or in the wind-down of its business. Granting this relief will enable terminated employees to access their statutory entitlements with respect to unpaid termination and severance pay.

## 9.0 Overview of the Interim Receiver's Activities

1. In addition to the activities summarized above, the Interim Receiver's activities since the date of the Interim Receivership Order to the date of this Report have included, among other things, the following:
  - corresponding extensively with DLA and the Consultant;
  - working with the Consultant to oversee and understand the Companies' business operations;
  - reviewing the Companies' books and records provided by the Proposal Trustee and the Companies;
  - attending calls with the Companies' management team on a daily basis;
  - corresponding with the Proposal Trustee regarding, among other things, the coordination between the NOI proceedings and these interim receivership proceedings;
  - corresponding with the Companies and the Proposal Trustee regarding the Companies' bank balances and its banking arrangements with BNS and JPMC;
  - corresponding with BNS and arranging for the Companies' bank balances to be transferred to the Interim Receiver's bank account;
  - corresponding with DLA and the Companies regarding the Complaint and the letter of credit in favor of PPUC;
  - reviewing the Companies' response to the Complaint before it was filed with PPUC;
  - corresponding with DLA regarding the letter of credit issued by BNS and discussing DLA's correspondence with BNS' legal counsel;
  - paying the Companies' vendors for post-filing supply and attending several calls with vendors regarding these proceedings;

- dealing with employee payroll and benefits and with the Companies' consultants in respect of same;
- dealing with Colliers International, the property manager of the Companies' head office, and paying rent;
- reviewing the Companies' head office lease;
- arranging to back-up the Companies' servers and corresponding with Kroll Consulting Canada Co. in respect of same;
- reviewing the Companies' insurance policies;
- drafting this Report, reviewing and commenting on the related motion materials and corresponding with DLA regarding same;
- reviewing the Companies' motion materials in connection with the proposed stay extension;
- preparing and sending to creditors and to the Official Receiver the statutory notices required pursuant to subsection 245(1) and 246(1) of the BIA;
- corresponding with stakeholders or their legal counsel, including ACN, Shell and BNS;
- maintaining the Interim Receiver Website; and
- dealing with all other matters in this proceeding not specifically addressed above.

## 10.0 Conclusion and Recommendation

1. Based on the foregoing, the Interim Receiver respectfully recommend that this Court make an order granting the relief set out in Section 1.1 (1)(g) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
SOLELY IN ITS CAPACITY AS INTERIM RECEIVER OF  
PLANET ENERGY (ONTARIO) CORP. AND PLANET ENERGY (B.C.) CORP.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET  
ENERGY (ONTARIO) CORP.**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
PLANET ENERGY (B.C.) CORP.  
AN INSOLVENT PERSON**

THE HONOURABLE JUSTICE	)	THURSDAY, THE 8 <sup>th</sup> DAY OF JUNE,
	)	2023
STEELE	)	

**ORDER  
(Appointing Interim Receiver)**

THIS MOTION made by All Communications Network of Canada, Co. ("ACN"), for an Order pursuant to Section 47.1(1) of the Bankruptcy And Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "BIA") appointing KSV Restructuring Inc. as interim receiver (in such capacity, "KSV" or the "Interim Receiver") without security, of all of the assets, undertakings and properties of the Debtors, Planet Energy (Ont.) Corp., and Planet Energy (B.C.) Corp. (collectively, "Planet Energy" or the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard on June 5, 2023, by way of a virtual hearing.

ON READING the affidavits of Robert Stevanovski sworn May 15, 2023, and June 2, 2023 and the exhibits thereto, the affidavit of Nino Silvestri sworn May 26, 2023 and the exhibits thereto, and the First Report of the Proposal Trustee dated May 31, 2023 and its appendices, and on hearing the submissions of counsel for ACN, Planet Energy and the Proposal Trustee, in the presence of a representative of KSV, no one

appearing for Shell Energy North America (Canada) Inc. although duly served, and on being advised that KSV consents to act as the Interim Receiver,

### **SERVICE**

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

2. THIS COURT ORDERS that the Debtor, Interim Receiver and their 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 Applicant's 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. 81000-2-175 (SOR/DORS)

### **APPOINTMENT**

3. THIS COURT ORDERS that pursuant to section 47.1(1) of the BIA, KSV is hereby appointed as Interim Receiver, without security, as an officer of this Court and not as an agent of the Debtor, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property"), until the earlier of:

- (a) the taking of possession by a receiver or a trustee in bankruptcy of the Property;
- (b) the date on which the Court issues an order discharging the Interim Receiver; and
- (c) Court approval of a proposal.

#### **INTERIM RECEIVER'S POWERS**

4. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property as an officer of this Court and not as an agent of the Debtor, and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim 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;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, discussions with stakeholders including ACN or other parties regarding the operations of the Debtors including in respect of existing and future hedging arrangement, 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 Debtor, including the powers to enter into any agreements and incur any obligations in the ordinary course of business, and is authorized to cause the Debtor to (a) retail electricity within the meaning of s. 56 of the *Ontario Energy Board Act, 1998*, S.O., c. 15 Sch. B, as amended (the "**OEB Act**"), or (b) engage in natural gas marketing within the meaning of s. 47 of the OEB Act, pursuant to and subject to the Debtor's licences and other regulatory instruments issued by the Ontario Energy Board and applicable laws; and, for the avoidance of doubt, the Interim Receiver itself is not authorized to

and shall not (a) retail electricity within the meaning of s. 56 of the *OEB Act*, or (b) engage in natural gas marketing within the meaning of s. 47 of the *OEB Act*, and that all such electricity retailing and natural gas marketing during the pendency of the Interim Receiver's appointment shall constitute electricity retailing and natural gas marketing by the Debtor, and not by the Interim Receiver; to engage consultants, appraisers, agents, 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 Interim Receiver's powers and duties, including without limitation those conferred by this Order;

- (d) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (f) to settle, extend or compromise any indebtedness owing to the Debtor in the ordinary course of the Debtors' business and/or for the purpose of preserving and protecting the Property;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings in the ordinary course of the Debtors' business and/or for the purpose of preserving and protecting the Property, and to

defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings in the ordinary course of the Debtors' business and/or for the purpose of preserving and protecting the Property. 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;

- (i) to summarily dispose of any or all of the Property, that is perishable or likely to depreciate rapidly in value;
- (j) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim 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 Interim Receiver deems advisable;
- (k) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (l) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtor;
- (m) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have in the ordinary course of the Debtors' business, and/or for the purpose of preserving and protecting the Property; and
- (n) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.



and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER**

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) 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 Interim 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 Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, 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 Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 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 Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer 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 Interim Receiver for the purpose of allowing the Interim 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 Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that the Interim Receiver shall provide each of the relevant landlords with notice of the Interim 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 Interim 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 Interim Receiver, or by further Order of this Court upon application by the Interim Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE INTERIM 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 Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor, its Directors and Officers, or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor 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 Debtor, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim 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 Interim Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtor 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 INTERIM 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 Debtor, without written consent of the Interim Receiver or leave of this Court.

**ONTARIO ENERGY BOARD**

13. THIS COURT ORDERS that,

- (a) The Ontario Energy Board is excluded from the definition of Person in paragraph 5 of this Order;
- (b) Nothing in this Order prevents the exercise of regulatory authority as permitted by section 69.6 of the BIA;

- (c) Nothing in this Order exempts the Interim Receiver, the Debtor (and its directors and officers), or the Interim Receiver on behalf of the Debtor, from compliance with all legal and regulatory requirements relating to the retailing of electricity or the marketing of natural gas; and
- (d) Nothing in this Order affects any rights held by a "consumer" under or in relation to a "contract" (each as defined in the *Energy Consumer Protection Act 2010*, SO 2010, c 8 (the "**ECPA**"), including, for certainty, a consumer's right to cancel their contract with the Debtor for the provision of electricity and/or natural gas in accordance with their statutory rights under the ECPA and the regulations made thereunder.

14. THIS COURT ORDERS AND DIRECTS that, notwithstanding anything else in this Order, the Interim Receiver, the Debtor, or the Interim Receiver on behalf of the Debtor, will provide such timely information and assistance to the Ontario Energy Board as the Ontario Energy Board deems necessary or desirable to give effect to the legal and regulatory regime governing the retailing of electricity and marketing of natural gas in Ontario.

#### **CONTINUATION OF SERVICES**

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor 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 Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtor's 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 Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

### **INTERIM RECEIVER TO HOLD FUNDS**

16. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of 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 Interim 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 Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

17. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Interim 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 Interim 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*.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. THIS COURT ORDERS that nothing herein contained shall require the Interim 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 Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim 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 INTERIM RECEIVER'S LIABILITY**

19. THIS COURT ORDERS that the Interim 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 Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **INTERIM RECEIVER'S ACCOUNTS**

20. THIS COURT ORDERS that the Interim Receiver and counsel to the Interim 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 Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "Interim 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 Interim 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 Interim Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim 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 Interim 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 Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **OTHER ACCOUNTS**

23. THIS COURT ORDERS that, notwithstanding anything to the contrary in this Order, the Interim Receiver shall pay or cause the Debtor to pay the reasonable and documented fees and expenses of counsel to the Debtor, the Proposal Trustee and counsel to the Proposal Trustee incurred in respect of these proceedings, net of any retainer held by such persons.

#### **FUNDING OF THE INTERIM RECEIVERSHIP**

24. THIS COURT ORDERS that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$50,000 (or such greater amount 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 Interim 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 "Interim Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

26. THIS COURT ORDERS that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Interim Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

27. THIS COURT ORDERS that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim 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 Interim Receiver's Certificates.

#### **SERVICE AND NOTICE**

28. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (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 <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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/planetenergy>. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim 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 the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

## **GENERAL**

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

30. THIS COURT ORDERS that the Interim Receiver shall not be or be deemed to be a receiver within the meaning of subsection 243(2) of the BIA.

31. THIS COURT ORDERS that nothing in this Order affects the duties of the Proposal Trustee under the BIA.


32. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtor.

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 Interim 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

34. THIS COURT ORDERS that the Interim 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 Interim 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 ACN shall have its reasonable and documented costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Interim Receiver from the Debtor's estate 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 Interim 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.

 Digitally signed  
by Jana Steele  
Date: 2023.06.14  
12:23:14 -04'00'

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## SCHEDULE "A"

### INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the interim-receiver (the "Interim Receiver") of the assets, undertakings and properties of Planet Energy (Ont.) Corp. and Planet Energy (B.C.) Corp. (collectively, the "Debtor") 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 \_\_\_ day of \_\_\_\_\_, 2023 (the "Order") made in the proceedings having Court File No. and Estate No. 31-2943175, has received as such Interim Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, which the Interim 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] 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 Interim 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 Interim 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 Interim 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 Interim 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 Interim 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 \_\_\_\_\_, 20\_\_.

KSV Restructuring Inc., solely in its capacity  
as Interim Receiver of the Property, and not  
in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF PLANET ENERGY (B.C.) CORP., AN INSOLVENT  
PERSON**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
PROCEEDING COMMENCED AT  
TORONTO**

---

**ORDER**

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**Paliare Roland Rosenberg Rothstein LLP**  
155 Wellington Street West  
35th Floor  
Toronto ON M5V 3H1  
Tel: 416.646.4300

**Massimo Starnino (LSO#41048G)**  
Tel: 416.646.7431  
Email: Max.Starnino@paliareroland.com

**Kris Borg-Olivier (LSO# 53041R)**  
Tel: 416.646.7490  
Email: Kris.Borg-Olivier@paliareroland.com

Lawyers for the Applicant,  
All Communications Network of Canada, Co.

## **Appendix “B”**



**ksv advisory inc.**

220 Bay St., Suite 1300 PO Box 20

Toronto, Ontario, M5J 2W4

T +1 416 932 6262

F +1 416 932 6266

ksvadvisory.com

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Court File/Estate No. 31-2943175

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL  
OF PLANET ENERGY (ONTARIO) CORP. AND PLANET ENERGY (B.C.) CORP.**

Please be advised that on May 11, 2023, Planet Energy (Ontario) Corp. ("**PE Ontario**") and Planet Energy (B.C.) Corp. ("**PE BC**", and together with PE Ontario, "**Planet Energy**") each filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act* ("**BIA**") (the "**NOI Proceedings**").

The effect of the NOI Proceedings is to invoke a statutory 30 day stay of proceedings from creditors' claims and termination of contracts, while Planet Energy determines if it is able to negotiate a restructuring of its affairs with a sufficient percentage of its creditors to make a Proposal to Creditors under section 50(1) of the BIA (a "**Proposal**") in order to avoid a bankruptcy. A licensed insolvency trustee ("**LIT**") firm is named as trustee under the NOI to assist the debtor in respect of the NOI Proceedings and provide certain statutory reports to the creditors and the Court. In Planet Energy's case, the LIT is Richter Inc. ("**Richter**"). (Additional information concerning the NOI Proceedings can be found on Richter's case website: <https://www.richter.ca/insolvencycase/planet-energy-ontario-corp/>.)

As part of the NOI Proceedings, at the request of a major creditor, by Order dated June 8, 2023, (the "**IR Order**") the Ontario Superior Court of Justice ordered that an Interim Receiver be appointed over Planet Energy's assets pursuant to section 47.1(1) of the BIA (the "**IR Proceedings**") while the NOI Proceedings unfold. The IR Order appointed KSV Restructuring Inc. ("**KSV**"), another LIT firm, as Interim Receiver. As a result of the IR Order, the Interim Receiver has the authority to take control and possession of Planet Energy's assets and to exercise decision-making control over Planet Energy's day-to-day operations while the NOI Proceedings continue. At the present time, the intention is for Planet Energy to continue in the ordinary course, pending the determination of a path forward in the Planet Energy NOI Proceedings. (Additional information concerning the IR Proceedings can be found on KSV's case website: <https://www.ksvadvisory.com/experience/case/planetenergy/>.)

The NOI Proceedings and the IR Proceedings are at an early stage and it is premature to determine if there will be a going-concern sale of PE Ontario's business. We are providing each of the Utilities with this Notice so that you have the opportunity to consider contingency planning in the event that there is no going-concern solution for PE Ontario. In the event that the Interim Receiver determines that a going-concern result is unlikely, we will provide the Utilities and the Ontario Energy Board with as much notice as possible of that determination, to facilitate an orderly transition of PE Ontario customers' services back to the Utilities. Please note that no guarantees can be provided as to a minimum amount of notice that may be provided to the Utilities.

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC. IN ITS CAPACITY AS COURT  
APPOINTED INTERIM RECEIVER OF PLANET ENERGY  
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

# **TAB 3**



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

THE HONOURABLE ) TUESDAY, THE 4<sup>th</sup>  
 )  
JUSTICE OSBORNE ) DAY OF JULY, 2023

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF PLANET ENERGY (B.C.) CORP.**

**ORDER  
(Extension of Time to File Proposal, Sale Process and KERP Approval)**

**THIS MOTION**, made by KSV Restructuring Inc., in its capacity as the interim receiver (in such capacity, the “**Interim Receiver**”), without security, of all of the assets, undertakings and properties (the “**Property**”) of Planet Energy (Ontario) Corp. (“**PEONT**”) and Planet Energy (B.C.) Corp. (together, “**Planet Energy**”), for an Order, *inter alia*, extending the time for PEONT to file a proposal with the Official Receiver up to and including August 18, 2023, approving a sale process in respect of the Property (the “**Sale Process**”), approving a key employee retention plan (the “**KERP**”), sealing the terms of the KERP and granting a charge over the Property to secure amounts payable under the KERP (the “**KERP Charge**”), was heard this day by videoconference.

**ON READING** the First Report of the Interim Receiver dated June 27, 2023 and the appendices thereto, the Second Report of Richter Inc., in its capacity as proposal trustee (the “**Proposal Trustee**”) of Planet Energy, to be filed, and the appendices thereto, and on hearing the submissions of counsel for the Interim Receiver, counsel for the Proposal Trustee and those other

parties listed on the counsel slip, no one else appearing for any other person although duly served as appears from the Affidavit of Service of ♦ sworn ♦, 2023, filed.

### **SERVICE**

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

### **EXTENSION OF TIME TO FILE A PROPOSAL**

2. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, the time for PEONT to file a proposal with the Official Receiver be and is hereby extended up to and including August 18, 2023.

### **SALE PROCESS APPROVAL**

3. **THIS COURT ORDERS** that, subject to the Interim Receiver filing and serving the Sale Process Certificate (as defined in the First Report), the Sale Process, as described in the First Report, be and is hereby approved and the Interim Receiver is hereby authorized to perform its obligations under and in accordance with the Sale Process and to take such further steps as it considers necessary or desirable in carrying out the Sale Process.

### **KERP APPROVAL**

4. **THIS COURT ORDERS** that the KERP, as set out in the First Report and Confidential Appendix "1" thereto, be and is hereby approved.

5. **THIS COURT ORDERS** that the KERP Employees (as defined in the First Report) shall be entitled to the benefit of and are hereby granted the KERP Charge on the Property, of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, which charge shall not exceed \$100,000 to secure amounts payable under the KERP.

6. **THIS COURT ORDERS** that the KERP Charge shall be subordinate to the Interim Receiver's Charge set out in the interim receivership Order of the Honourable Madam Justice

Steele dated June 9, 2023 but shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, against the Property, but subject to Sections 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

#### **WEPPA**

7. **THIS COURT ORDERS AND DECLARES** that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47, s. 1 (the “**WEPPA**”), PEONT and its employees, upon termination, meet the criteria prescribed by Section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and each of PEONT’s employees are eligible, or will be eligible upon termination, to receive payments under and in accordance with WEPPA following the termination of their employment.

#### **SEALING**

8. **THIS COURT ORDERS** that Confidential Appendix “1” to the First Report shall be sealed pending further Order of this Court, the filing of a Certificate of Completion by the Proposal Trustee or the discharge of the Interim Receiver.

#### **APPROVAL OF REPORT AND ACTIVITIES**

9. **THIS COURT ORDERS** that the First Report and the activities of the Interim Receiver set out therein be and are hereby approved.

#### **GENERAL**

10. **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 Interim 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim

Receiver and its agents in carrying out the terms of this Order.

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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.  
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (B.C.) CORP.**

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

PROCEEDINGS COMMENCED AT TORONTO

**ORDER**

(Extension of Time to File a Proposal, Sale Process and KERP  
Approval)

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto, ON M5X 1E2

**Edmond F.B. Lamek (LSO #33338U)**  
Tel.: (416) 365-4444  
Email: [edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)

**Danny M. Nunes (LSO #53802D)**  
Tel.: (416) 365-3421  
Email: [danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com)

Lawyers for KSV Restructuring Inc., in its capacity as Interim  
Receiver

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.  
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (B.C.) CORP.**

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

PROCEEDINGS COMMENCED AT TORONTO

**MOTION RECORD**  
(returnable July 4, 2023)

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto, ON M5X 1E2

**Edmond F.B. Lamek (LSO #33338U)**  
Tel.: (416) 365-4444  
Email: [edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)

**Danny M. Nunes (LSO #53802D)**  
Tel.: (416) 365-3421  
Email: [danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com)

Lawyers for KSV Restructuring Inc., in its capacity as Interim  
Receiver