



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: BK-23-02943175-0031 DATE: 4 July 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: *Notice of Intention to make a Proposal of Planet Energy
Ontario Corp and Planet Energy B.C. Corp.*

BEFORE JUSTICE: **P. Osborne**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Zev Smith	Counsel for Planet Energy (Ontario) Corp. AND Planet Energy (B.C.) Corp.	zsmith@stikeman.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Evan Snyder	Counsel for All Communications Network of Canada, Co.	Evan.snyder@paliaroland.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Bobby Kofman	Interim Receiver (KSV Restructuring Inc.)	bkofman@ksvadvisory.com
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George Benchetrit	Counsel for Proposal Trustee	george@chaitons.com
Patrick Corney	Counsel for Ontario Energy Board	pcorney@millertomson.com

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Interim Receiver (KSV Restructuring Inc.) moves for various relief as set out in the Amended Notice of Motion returnable today.
2. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.
3. None of the relief sought today is opposed. All materials have been provided to the Service List. I observe that in particular, the Ontario Energy Board is represented by counsel in Court today and does not oppose the relief sought.
4. The Interim Receiver relies principally on the First Report and the Second Report of the Proposal Trustee. The background to, and basis for, the relief sought are set out in those two Reports.
5. In the circumstances, I am satisfied that the relief sought should be granted.
6. The deadline by which PEONT must file a proposal is extended to August 18, 2023, and I am satisfied that such extension is appropriate and necessary in the circumstances to maximize the potential outcome for all stakeholders.
7. I am satisfied that PEONT meets the criteria set out in section 3.2 of the *Wage Earner Protection Program Regulations* such that certain former employees are entitled to receive WEPPA payments.
8. I am also satisfied that the sales process for the Property as set out in the First Report of the Proposal Trustee is appropriate and should be approved. This will assist in ensuring that the market is canvassed in appropriate, fair and transparent manner with a view to maximizing the outcome for stakeholders.
9. In considering a sales solicitation process, the Court should assess the following factors (See *CCM Master Qualified Fund v. bluetip Power Technologies*, 2012 ONSC 1750 at para. 6):
 - a. the fairness, transparency and integrity of the proposed process;
 - b. the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
 - c. whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.
10. These factors are to be considered in light of the well-known *Soundair* Principles, which, while applicable to the test for approving a transaction following a sales process, not surprisingly track the same principles applicable to that process itself. (See *Royal Bank of Canada v. Soundair Corp.*, (1991), 4 O.R. (3d) 1 (Ont. C.A.) at para. 16):
 - a. whether the party made a sufficient effort to obtain the best price and to not act improvidently;
 - b. the interests of all parties;
 - c. the efficacy and integrity of the process by which the party obtained offers; and
 - d. whether the working out of the process was unfair.
11. In my view, the proposed sales process is appropriate and should be approved. If the transaction materializes, approval and vesting relief can be sought another day.
12. I am also satisfied that Mr. Thomas Ulry can and should be engaged as a consultant by the Interim Receiver on the terms set out in the engagement letter which is part of the motion materials. He is clearly experienced and, I am satisfied on the basis of the materials filed, will add value to the process. ACN is represented in Court today and does not oppose his appointment.

13. I am further satisfied that the key employee retention plan (KERP) offered by the Interim Receiver to certain employees of PEONT should be approved together with the corresponding charge over the Property in the amount of \$100,000 to secure the maximum amount payable under the KERP.
14. Confidential Appendix "1" to the Interim Receiver's First Report sets out the individual entitlements to amounts according to the terms of the KERP. I grant a sealing order as requested and am satisfied that the confidential material satisfies the *Sierra Club* and *Sherman Estates* test. The sealing order is in effect until further order of this Court. Counsel for the Interim Receiver is directed to file with the Commercial List Office a copy of the confidential material in a sealed envelope marked: "Confidential and not to form part of the public record pending further order of this Court".
15. Finally, the First Report and the activities of the Interim Receiver set out therein are appropriate and are approved.
16. Orders to go in the form signed by me today which are effective immediately and without the necessity of issuing and entering.

Olson, J.