

**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.**

**MOTION RECORD**

September 21, 2023

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(as at September 19, 2023)

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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.**

**NOTICE OF MOTION**

All Communications Network of Canada, Co. ("**ACN**"), a creditor, will make a motion to a judge presiding over the Commercial List, at 11:00 a.m. on September 26, 2023, at the courthouse, 330 University Ave., Toronto, Ontario, or at such later or other time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard by video conference.

**THE MOTION IS FOR:**

- (a) An order, if necessary, abridging the time for service, validating the method of service, and dispensing with further service of this Notice of Motion and Motion Record;
- (b) An order, in the form attached hereto as Schedule "A",
  - a. declaring that the period for Planet Energy (Ont.) Corp. ("**PEONT**") to file a proposal is terminated;
  - b. declaring that PEONT is deemed to have made an assignment in bankruptcy;

- c. appointing KSV Advisory Inc. ("**KSV**") as trustee in bankruptcy of PEONT, in lieu of the trustee appointed under the notice of intention filed by PEONT; and
- d. discharging KSV and Richter Inc. ("**Richter**") as Interim Receiver and proposal trustee, respectively, and approving their respective fees and disbursements, together with those of their counsel; and

(c) Such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. PEONT is reseller of natural gas and electricity in Ontario;
2. Pursuant to an arbitral award dated February 3, 2021, as recognized and enforced by an orders of this court dated April 27, 2022, and of the Court of Appeal for Ontario dated May 5, 2023, PEONT is indebted to **ACN** in the approximate amount of \$28 million plus interest and costs;
3. ACN is the largest unsecured creditor of PEONT, expected to represent in excess of 95% of its debt;
4. On May 11, 2023, PEONT filed a Notice of Intention to Make a Proposal ("**NOI**"), appointing Richter Inc. ("**Richter**") as the proposal trustee in the NOI proceedings (the "**Proposal Trustee**");
5. By an order dated June 8, 2023, KSV was appointed as interim receiver (the "**Interim Receiver**") without security of all the assets, undertaking and properties of PEONT acquired for or used in relation to a business carried on by PEONT;

6. Efforts by the Interim Receiver to sell PEONT's assets and undertaking were unsuccessful, and the amount available for distribution to creditors is expected to be less than \$10 million.

7. On August 17, 2023, this Court ordered that the time for PEONT to file a proposal in the NOI proceedings be extended up to and including October 2, 2023, to facilitate an orderly wind-down of the business by the Interim Receiver and to determine if a distribution proposal or a bankruptcy was most advantageous for stakeholders;

8. The two main issues that were outstanding in the interim receivership at the time of the last extension were (a) notification of customers that their contracts were being terminated and their transition to new suppliers; and, (b) the resolution of regulatory proceedings commenced in the State of Pennsylvania against a U.S. subsidiary of PEONT (the "**Pennsylvania Proceedings**") that could be relevant to a Letter of Credit posted by PEONT (the "**Scotia LC**");

9. Since August 17, 2023:

(a) PEONT has notified its remaining customers that it is unable to continue to carry on business and that their utility services would be transitioned to a new supplier, and, in that regard:

(i) natural gas customers have all been transitioned to their applicable utility service provider; and,

(ii) the transition of electricity customers is ongoing and is expected to be completed in the near term;

(b) Discussions in respect of the Pennsylvania Proceedings have not resulted in a settlement to date, although efforts to resolve such proceedings consensually are ongoing.;

10. PEONT will not likely be able to make a proposal, before the expiration of the proposal period on October 3, 2023, that will be accepted by the creditors: ACN has had a number of discussions with the Interim Receiver having regard to the circumstances described above, and does not perceive any advantage to a proposal, and, to the contrary, anticipates some time and cost savings in the event of an immediate bankruptcy with KSV as the trustee in bankruptcy;

11. It is in the best interests of the creditors that KSV be appointed as the trustee in bankruptcy of PEONT, in lieu of Richter, because KSV, as interim receiver, has been administering the operations of PEONT since its appointment, including the transition of customers and discussions in respect of the Pennsylvania Proceedings, and is, therefore, best placed to continue those processes and to ensure that the transition to bankruptcy occurs in an orderly and efficient manner, and that dividends are paid to creditors as quickly as possible;

12. KSV has agreed to accept the appointment as trustee in bankruptcy.

13. Sections 50.4(11) and 57.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

14. Rules 1.04, 1.05, 2.03, 3.02, 16.04, 16.08, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

15. Such further and other grounds as counsel may advise.

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

- (a) the Affidavit of Tom Ulry sworn September 21, 2023;
- (b) the Affidavit as to fees and disbursements of David Sieradzki sworn September 20, 2023;
- (c) the Affidavit as to fees and disbursements of Edmond Lamek sworn September 20, 2023;
- (d) the Affidavits as to fees and disbursements to be served and filed by Richter Inc. as proposal trustee;
- (e) such further and other evidence as counsel may advise and this Honourable Court may permit.

September 21, 2023

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 All Communications Network of Canada, Co.

TO: THE SERVICE LIST

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

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

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

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**NOTICE OF MOTION**

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Lawyers for the All Communications Network of  
Canada, Co., a creditor



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

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

**ORDER  
(Substitution of Trustee and Related Relief)**

THIS MOTION, made by All Communications Network of Canada, Co. ("**ACN**"), for, among other things, an order pursuant to sections 50.4(11) and 57.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), terminating the period of time available to the debtor to file a proposal herein (the "**Proposal Period**"), and appointing KSV Restructuring Inc. ("**KSV**") in lieu of Richter Inc. ("**Richter**") the proposal trustee appointed under the notice of intention to make a proposal that was filed herein

ON READING the Motion Record of ACN, dated September 21, 2023, filed, including the Affidavit of Tom Ulry sworn September 21, 2023, and the fee affidavits of David Sieradzki and Edmond Lamek sworn September 20, 2023 (together, the "**Fee Affidavits**"), and on hearing the submissions of counsel to ACN, KSV in its capacity as Interim Receiver (the "**Interim Receiver**"), and Richter in its capacity as proposal trustee, no one else appearing,

1. THIS COURT ORDERS that the time for bringing this motion is hereby abridged, the method of service is hereby validated, and further service of the Notice of Motion and Motion Record is hereby dispensed with such that the motion is properly returnable today.
2. THIS COURT ORDERS AND DECLARES that, pursuant to subsection 50.4(11) of the BIA, the Proposal Period is hereby terminated.

3. THIS COURT ORDERS, pursuant to section 57.1 of the BIA, KSV is hereby appointed as licensed insolvency trustee in the Debtor's bankruptcy proceedings.

4. THIS COURT ORDERS that the fees, disbursements and taxes of KSV as Interim Receiver and its counsel, DLA Piper (Canada) LLP ("**DLA**") for the period ending August 31, 2023 are hereby approved in the amounts set forth in the Fee Affidavits, and further approves an amount not to exceed \$60,000 in respect of the fees, disbursement and taxes of the KSV as Interim Receiver and DLA accrued for the period of September 1, 2023 and ending September 26, 2023.

5. THIS COURT ORDERS that KSV is hereby discharged as Interim Receiver, provided however that notwithstanding its discharge herein, KSV shall: (i) remain Interim Receiver for the performance of such incidental duties as may be required to complete the administration of the interim receivership herein; and (ii) continue to have the benefit of all the rights and protections afforded to it under the BIA, its appointment order or as an officer of this Court.

6. THIS COURT ORDERS AND DECLARES that KSV and its officers, directors, employees, agents and professional advisors is hereby released and discharged from any and all liability that they now have or may hereafter have by reason of, or in any way arising out of, their acts or omissions in respect of KSV's appointment as Interim Receiver, save and except for any gross negligence or wilful misconduct.

7. THIS COURT ORDERS that Richter is hereby discharged as the proposal trustee, provided however that notwithstanding its discharge herein, Richter shall continue to have the benefit of all the rights and protections afforded to the proposal trustee under the BIA or as an officer of this Court.

8. THIS COURT ORDERS that the fees, disbursements and taxes of Richter as proposal trustee, including the fees, disbursements and taxes of its counsel, Chaitons LLP, up to and including the time of discharge, are hereby approved in the aggregate amount of \$◆.

**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.**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER  
(Substitution of Trustee and Related Relief)**

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

# TAB 2

Court File No. 31-2943175  
Estate 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.**

**AFFIDAVIT OF TOM ULRY**

**(Sworn September 21, 2023)**

I, **Tom Ulry**, of the City of Charlotte, in the State of North Carolina, MAKE OATH  
AND SAY:

1. I am an executive of ACN Communication Services LLC, an affiliate of All Communications Network of Canada, Co. ("**ACN**"), and, having regard to my experience in the energy resale market in Ontario and elsewhere, I have been retained as a consultant to assist KSV Restructuring Inc. ("**KSV**") in its capacity as Interim Receiver (the "**Interim Receiver**") of Planet Energy (Ontario) Corp. ("**PEONT**"), with respect to its administration of PEONT's business in connection with its appointment, discussed below. As such, I have personal knowledge of the matters contained in this affidavit, except where I have indicated an alternate source of information, and in those instances I believe all such information to be true.

2. I am providing this affidavit in support of ACN's motion for an order terminating PEONT's proposal proceedings, and substituting KSV as licensed insolvency trustee in these proceedings (the "**Trustee**"). Having regard to the circumstances of these proceedings and a number of discussions with the Interim Receiver, ACN does not see a

immediately to bankruptcy with KSV as Trustee is likely to expedite distributions to creditors and maximize recoveries through administrative efficiencies.

3. PEONT is a reseller of natural gas and electricity in Ontario.

4. ACN is PEONT's largest creditor, owed in excess of \$28 million (the "**ACN Debt**"). A copy of PEONT's proof of claim is marked as **Exhibit "A"** to this affidavit (the "**Proof of Claim**").

5. As indicated in the Proof of Claim, the ACN Debt has been liquidated by operation of an arbitral award dated February 3, 2021, which has been affirmed by and order of this court dated, April 27, 2022, and an order of the Court of Appeal for Ontario dated May 5, 2023 (the "**Court of Appeal Decision**").

6. Based on the creditor lists filed by PEONT in connection with these proceedings and my subsequent discussions with representatives of the Interim Receiver, I estimate that ACN represents in excess of 95% of PEONT's debt.

7. On May 11, 2023, shortly after the release of the Court of Appeal Decision, PEONT commenced these proceedings by filing a Notice of Intention to Make a Proposal ("**NOI**"), appointing Richter Inc. ("**Richter**") as the proposal trustee in the NOI proceedings (the "**Proposal Trustee**");

8. On June 8, 2023, KSV was appointed as Interim Receiver, without security, of all the property, assets and undertakings of PEONT, and has been administering the affairs of PEONT since that time.

9. The activities of the Interim Receiver are described in the Second Report of the Interim Receiver dated August 14, 2023, a copy of which is marked as **Exhibit “B”** to this affidavit (the **“Second Report”**), without attachments. The Second Report reflects that efforts to sell PEONT’s assets and undertaking were unsuccessful. In these circumstances, I expect that the amount available for distribution to creditors will be less than \$10 million.

10. In light of the outcome of the effort to sell PEONT, on August 17, 2023, this Court ordered that the time for PEONT to file a proposal in the NOI proceedings be extended up to and including October 2, 2023, to facilitate an orderly wind-down of the business by the Interim Receiver and to determine if a distribution proposal or a bankruptcy was most advantageous for stakeholders. A copy of the court’s August 17, 2023, endorsement is marked as **Exhibit “C”** to this affidavit.

11. There were two principal issues outstanding in the interim receivership at the time of the last extension:

- (a) the notification of customers that PEONT would be winding up its business and would no longer be providing them with energy services and, where necessary, the orderly transition of these customers to the applicable utility service provider; and,
- (b) the resolution of regulatory proceedings commenced against a U.S. subsidiary of PEONT in the State of Pennsylvania (the **“Pennsylvania Proceedings”**) which the Interim Receiver has been overseeing because PEONT had posted a letter of credit in connection with services provided to

consumers in that jurisdiction (the “**Scotia LC**”) and the Interim Receiver disputes that Scotia LC covers any penalties or fines arising from the Pennsylvania Proceedings;

12. Since August 17, 2023, I am advised as follows by David Sieradski of KSV.

(a) To date, the customer transition process has gone well. PEONT has notified its remaining customers that it is unable to continue to carry on business and that their utility services would be transitioned. To that end:

(i) natural gas customers have all been transitioned to their applicable utility service provider; and,

(ii) the transition of electricity customers is ongoing, but is expected to be completed in the near term.

(b) Discussions with respect to the regulatory proceedings in Pennsylvania have not resulted in a settlement to date, although efforts to resolve such proceedings consensually are ongoing.

13. ACN has had several discussions with the Interim Receiver having regard to the circumstances described above, and, as a result, does not perceive any advantage to and is not supportive of a proposal. To the contrary, ACN anticipates some time and cost savings in the event of an immediate bankruptcy with KSV as the Trustee, inasmuch as:

(a) a bankruptcy will avoid the cost and delay of drafting a proposal and related reports to creditors, convening a meeting of creditors to consider and vote



on the proposal and, if accepted by the creditors, preparing materials to seek Court approval of the proposal, and of administering the proposal; and,

(b) professional costs will be limited to one set of professionals.

14. ACN is of the view that KSV is best placed to assume the role of Trustee of PEONT because, since the appointment of the Interim Receiver, KSV and its counsel have been attended to all operational matters, including, most recently, the transition of customers in consultation with representatives of the Ontario Energy Board, and the Pennsylvania Proceedings. As Trustee, KSV will be able to maintain and continue those processes to facilitate the transition to bankruptcy as seamlessly as possible, and the making of distributions to creditors as expeditiously as possible.

15. I am advised by David Sieradzki that KSV consents to its appointment as Trustee as proposed by can, and that KSV is of the view that there efficiencies to be obtained for the benefit of creditors if KSV is appointed as Trustee.

**AFFIRMED** remotely by Tom Ulry at Charlotte, North Carolina, before me at the City of Toronto, in the Province of Ontario, on this 21<sup>st</sup> day of September, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

DocuSigned by:  
*Catherine Dunne*  
2A74777EB93546E...

Commissioner for Taking Affidavits

Catherine Michelle Dunne, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires May 18, 2026.

DocuSigned by:  
*Tom Ulry*  
9C44911A69CC498...

**TOM ULRY**

This is **Exhibit "A"**  
Referred to in the Affidavit of Tom Ulry  
Affirmed remotely before me this 21<sup>st</sup> day of September, 2023

DocuSigned by:  
*Catherine Dunne*  
2A74777EB93546E

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A Commissioner for Taking Affidavits (or as may be)

## Form 31

### Proof of Claim

**Section 50.1, subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and paragraphs 51(1)(e) and 66.14(b) of the Act)**

*All notices or correspondence regarding this claim must be forwarded to the following address: **All Communications Network of Canada Co. c/o Paliare Roland Rosenberg Rothstein LLP, 155 Wellington St. W., 35<sup>th</sup> Floor, Toronto, ON M5V 3H1 Attention: Max Starnino, [max.starnino@paliareroland.com](mailto:max.starnino@paliareroland.com); and, Evan Snyder, [evan.snyder@paliareroland.com](mailto:evan.snyder@paliareroland.com).***

In the matter of the bankruptcy of Planet Energy (Ontario) Corp. (name of debtor) of the City of Toronto, Province of Ontario (city and province) and the claim of All Communications Network of Canada Co. ("**ACN**"), creditor.

I, **Charles Barker**, of Mooresville, NC, do hereby certify:

1. That I am **the Director** of ACN.
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of bankruptcy (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 5th day of July, 2023, and still is, indebted to the creditor in the sum of **\$28,096,588.21** plus interest and costs (the "**Debt**"), as specified in the Arbitral Final Award dated February 3, 2021, the entirety of which has been previously been filed in these proceedings and parts of which have been excerpted and attached hereto as Schedule A; as affirmed by the Judgment of Justice Cavanaugh in Reasons for Judgment dated April 7, 2022, a copy of which is attached hereto as Schedule B, and by Reasons for Decision of the Court of Appeal for Ontario dated May 5, 2023, a copy of which is attached hereto as Schedule C.

4. *(Check and complete appropriate category.)*

A. UNSECURED CLAIM OF **\$28,096,588.21** plus interest and costs

That in respect of the Debt, I do not hold any assets of the debtor as security and

*(Check appropriate description)*

- Regarding the amount of \_\_\_\_\_, I claim a right to a priority under section 136 of the Act.
- Regarding the amount of **\$28,096,588.21 plus interest and costs**, I do not claim a right to a priority.

(Set out on an attached sheet details to support priority claim.)

B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE \$

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based.)

C. SECURED CLAIM OF \$

That in respect of this debt, I hold assets of the debtor valued at \$ as security, particulars of which are as follows:

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

D. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF \$

That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of \$

*(Attach a copy of sales agreement and delivery receipts.)*

E. CLAIM BY WAGE EARNER OF \$

That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$

That I hereby make a claim under subsection 81.4(8) of the Act in the amount of \$

F. CLAIM AGAINST DIRECTOR \$

*(To be completed when a proposal provides for the compromise of claims against directors.)*

That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:

*(Give full particulars of the claim, including the calculations upon which the claim is based.)*

G. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM \$

That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based.)

5. That, to the best of my knowledge, the above-named creditor is not related to the debtor within the meaning of section 4 of the Act, and has not dealt with the debt or in a non-arm's length manner.

6. That the following are the payments that I have received from, and the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of section 4 of the Act, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Section 2 of the Act: (Provide details of payments, credits and transfers at undervalue.)

(Applicable only in the case of the bankruptcy of an individual.)

I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Concord, N.C., this 25 day of July, 2023.

**ALL COMMUNICATIONS NETWORK OF CANADA CO.**

Kim McMillan

Witness

Name: Kim McMillan

Charles Barker

Per:

Charles Barker, Director  
Address: 1000 Progress Place  
Concord, NC 28025 USA  
T: 704.260.3678  
E: [chip.barker@acninc.com](mailto:chip.barker@acninc.com)

(I have authority to bind the corporation)  
Creditor

Note: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

Warnings: A trustee may, pursuant to subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of this security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

Note: If a copy of this Form is sent electronically by means such as email, the name and contact information of the sender, prescribed in Form 1.1, must be added at the end of the document.

## **SCHEDULE "A"**

an EXCERPT of the Arbitral Award, comprised of pages 1, and 106-109

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**  
International Arbitration Tribunal

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.,**

Claimant/Counter-Respondent

v.

**ICDR Case No. 01-18-0001-6527**

**PLANET ENERGY CORP.,  
PLANET ENERGY (ONTARIO) CORP.,  
PLANET ENERGY (B.C.) CORP.,**

Respondents/Counter-Claimants

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**FINAL AWARD**

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I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement contained in the Amended, Restated and Assigned Sales Agency Agreement Canada entered into by and among Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp., and All Communications Network of Canada, Co., dated as of November 9, 2012, and having duly heard the proofs and allegations of the Parties, do hereby AWARD as follows:

1. This is a final award ("**Final Award**") in an arbitration among All Communications Network of Canada, Co. ("**ACN**" or "**Claimant**"), Planet Energy Corp. ("**PE**"), Planet Energy (Ontario) Corp. ("**PEO**"), and Planet Energy (B.C.) Corp. ("**PEBC**") (each of PE, PEO, and PEBC is a "**Respondent**" and collectively they are referred to as "**Planet,**" "**Planet Energy,**" or "**Respondent**").
2. On March 7, 2019, the ICDR notified the Parties via e-mail of a partial final award on jurisdiction and decision on joinder dated March 6, 2019 ("**Partial Final Award**"). The Partial Final Award is incorporated by reference in this Final Award and terms not otherwise defined herein have the meaning ascribed to them in the Partial Final Award.
3. This arbitration arises out of an Amended, Restated and Assigned Sales Agency Agreement Canada, dated as of November 9, 2012, entered into by and among PE, PEO, and PEBC, on the one hand, and ACN on the other (the "**SAA**").
4. According to ACN, its case against Planet is a simple one for non-payment of commissions due under the SAA. According to Planet, ACN violated all of its fundamental obligations under the SAA, including by sacrificing Planet sales to



the exchange rate set forth in Section VI(E) above.<sup>574</sup>

485. Planet also makes a claim for costs and attorneys' fees, asserting that aside from the relative success of the parties, the Arbitrator should consider the reasonableness of the costs claimed by the successful party, the procedural behavior of the parties, whether the parties conducted the arbitration in an expeditious and cost-effective manner; and whether the successful party declined a reasonable settlement offer.<sup>575</sup> Planet makes no mention of Section 19(f)(iii) but points to the Arbitrator's authority to apportion costs under the ICDR Rules (see Article 34).<sup>576</sup>
486. Here, Planet says that the Arbitrator should award Planet all of its legal fees and expenses because of ACN's alleged misconduct in relation to document production and the Section 1782 Proceeding, or, at a minimum US \$150,000. It also seeks the costs of preparing for a hearing which allegedly could have been avoided if ACN engaged in serious settlement discussions, RSM's non-audit related fees and expenses (in addition to claiming under Section 15 for audit-related costs), and ICDR administrative costs and Arbitrator fees and compensation, in a total amount of approximately US \$1 million.<sup>577</sup>
487. In consideration of these positions, Section 19(f)(iii) of the SAA, and the ICDR Rules, the Arbitrator determines that as the non-prevailing party, Planet shall reimburse ACN for ACN's own costs and expenses of the arbitration, including its reasonable attorneys' fees and costs, third party document management costs, and the expert fees of Stout, in the total amount of **CAD \$2,080,351.00**. The Arbitrator is satisfied that this amount is reasonable given the nature, complexity, and duration of this case, and in consideration of the relative amounts being claimed by Respondents. The Arbitrator notes, in particular, that Stout's scope of work was more extensive than RSM's.
488. The administrative fees and expenses of the ICDR and the Arbitrator's compensation shall be split equally by the Parties. (The Arbitrator had no expenses.)

## VII. Award

489. For the reasons stated above, the undersigned Arbitrator hereby AWARDS as follows:

- a. Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp., materially breached the Amended, Restated and Assigned Sales Agency Agreement Canada entered into by and among Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp.,

<sup>574</sup> ACN's PO27 Submission, Summary of Damages Claimed.

<sup>575</sup> Planet's Post-Hearing Brief at ¶ 92.

<sup>576</sup> Planet's Post-Hearing Brief at ¶ 90.

<sup>577</sup> Planet's Post-Hearing Brief at ¶¶ 94-98.



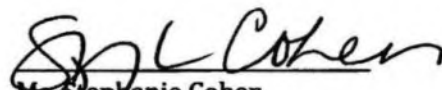
and All Communications Network of Canada, Co., dated as of November 9, 2012 (the “SAA”).

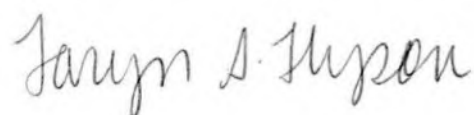
- b. Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. were not entitled to withhold Gross Margin payments under the SAA from Claimant All Communications Network of Canada, Co. as a set-off or credit against disputed indemnity obligations.
- c. The SAA requires Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. to continue making Gross Margin commission payments to Claimant All Communications Network of Canada, Co. in respect of any customer referred by Claimant All Communications Network of Canada, Co., for as long as such customer remains a customer under the SAA, irrespective of the means by which the customer renews their account and regardless of what energy product(s) the customer consumes.
- d. For non-payment/ underpayment of commissions under the SAA through June 2020, Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. are jointly and severally liable to pay Claimant All Communications Network of Canada, Co. damages in the total amount of **CAD \$19,114,272.00**, inclusive of prejudgment interest through June 2020 and HST.
- e. For future commissions due under the SAA, Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. shall pay Claimant All Communications Network of Canada, Co. damages in the total amount of **CAD \$7,080,652.00**, inclusive of HST. Such amount also includes the amount of CAD \$2,290,515.00 inclusive of HST which is payable for future commissions on renewals made after January 1, 2017.
- f. For the reasonable and customary expenses incurred by Claimant All Communications Network of Canada, Co. in connection with the audit of Planet under the SAA and not otherwise recoverable hereunder, Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. are jointly and severally liable to reimburse Claimant All Communications Network of Canada, Co. its pro rata share of the Arbitrator’s compensation relating to the audit, in the total amount of **US \$10,550.00**.
- g. For damages arising under Section 12 of the SAA, ACN shall indemnify Planet in the amount of **CAD \$191,128.00**.
- h. As reimbursement of its costs incurred in connection with the arbitration, including attorneys’ fees and expenses, Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. are jointly and severally liable to pay Claimant All Communications Network of Canada, Co. the total amount of **CAD \$2,080,351.00**.

- i. Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. shall bear their own costs and attorneys' fees and expenses in connection with the arbitration.
- j. The administrative fees and expenses of the International Centre for Dispute Resolution totaling US \$63,722.85 shall be borne equally, and the compensation and expenses of the Arbitrator totaling US \$234,350.00 shall be borne equally. Therefore, All Communications Network of Canada, Co. has to pay Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. an amount of US \$1,334.29.
- k. Any amounts stated in US currency herein shall be converted to Canadian currency at the rate of CAD \$1.35 to US \$1.00.
- l. Prejudgment interest shall continue to accrue at the rate of 9% per annum on any amounts awarded herein to All Communications Network of Canada, Co. that are not paid within 30 days of the date of this Final Award, except that such interest under subparagraph (f) shall be limited to interest on the amount awarded in subparagraph (f) less the amount set forth in subparagraph (j).
- m. This Final Award is in full settlement of all claims and counterclaims submitted to this arbitration and any and all other claims or counterclaims not expressly granted herein are denied.

I hereby certify that, for the purposes of Article I of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award is deemed to have been made in TORONTO, ONTARIO, CANADA.

Date: Feb. 3/21

  
Ms. Stephanie Cohen  
Sole Arbitrator

Sworn to me this 3<sup>rd</sup> day of February, 2021.  


TARYN S. HYSON  
Notary Public - State of New York  
No. 01HY6376914  
Qualified in Queens County  
My Commission Expires June 18, 2022

State of NEW YORK

)

County of Kings

) SS:

)

I, Stephanie Cohen, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Final Award.

Feb. 3/21  
Date

Stephanie Cohen  
Stephanie Cohen  
Sole Arbitrator

On this 3<sup>rd</sup> day of February 2021 before me personally came and appeared Stephanie Cohen, to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Taryn S. Hyson  
Notary Public

TARYN S. HYSON  
Notary Public - State of New York  
No. 01HY6376914  
Qualified in Queens County  
My Commission Expires June 18, 2022

## **SCHEDULE “B”**

the Reasons for Decision of Justice Cavanagh

**CITATION:** All Communications Network of Canada, Co. v. Planet Energy Corp., 2022 ONSC 2178

**COURT FILE NO.:** CV-21-00659022-00CL

**COURT FILE NO.:** CV-21-00658223-00CL

**DATE:** 20220407

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**(COMMERCIAL LIST)**

**BETWEEN:**

**ALL COMMUNICATIONS NETWORK  
OF CANADA, CO.**

)  
)  
) Kris Borg-Olivier for All Communications  
) Network of Canada, Co.  
)

Applicant )

- and - )

**PLANET ENERGY CORP., PLANET  
ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP.**

)  
) Daniel Murdoch, Zev Smith and Jordana  
) Kroft for the Planet Energy Corp., Planet  
) Energy (Ontario) Corp., and Planet Energy  
) (B.C.) Corp.  
)

Respondents )

**AND BETWEEN:**

**PLANET ENERGY CORP., PLANET  
ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP**

Applicants )

- and - )

**ALL COMMUNICATIONS NETWORK  
OF CANADA, CO.**

Respondents )

) Heard: August 20, 2021  
)  
)

**CAVANAGH J.**

**REASONS FOR JUDGMENT**

**Introduction**

[1] The applicants in the application commenced in Court File No. CV-21-00658223 are Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. (together, “Planet”).

[2] Planet brings this application to set aside a final arbitral award dated February 3, 2021 (the “Award”). The Award was issued in an arbitration (the “Arbitration”) between Planet and the respondent All Communications Network of Canada, Co. (“ACN”). The Arbitration was administered under the rules of the International Center for Dispute Resolution (the “ICDR Rules”) before the arbitrator, Stephanie Cohen (the “Arbitrator”).

[3] ACN was the successful party in the Arbitration. Planet Energy was ordered to pay ACN in excess of \$29 million comprising damages, interest, and costs.

[4] ACN brings a separate application for an order recognizing and enforcing the Award.

[5] For the following reasons, Planet’s application for an order setting aside the Award is dismissed. ACN’s application for a judgment recognizing and enforcing the Award is granted.

**Factual Background**

[6] Planet is an energy retailer that provides primarily five-year fixed-price electricity and natural gas supply to residential customers throughout Canada and the United States.

[7] ACN is a direct selling company organized under the laws of Nova Scotia. ACN has contractual relationships with thousands of independent business owners, known as IBOs, in Canada. IBOs are independent contractors of ACN, typically individual entrepreneurs or small business owners, who contract with ACN for the opportunity to earn additional income through commissions by referring customers for the telecommunications, energy, and other residential and commercial services provided by ACN or by third party providers with which ACN contracts (such as Planet).

[8] The Arbitration between ACN and Planet arose out of the Amended, Restated and Assigned Sales Agency Agreement Canada, dated November 9, 2012, between the parties (the “SAA”). Under the SAA, ACN agreed to use its network of IBOs to sell Planet’s products. The SAA expired by its terms in November 2016. Certain provisions, including Planet’s obligations to make commission payments to ACN, survived termination of the SAA.

[9] Planet agreed to pay ACN a commission for every referred customer who successfully registered for Planet’s products and services. Planet and ACN tracked these customer referrals through an online portal where ACN (and its OBOs) would refer potential customers to register for products and services.



[10] In the SAA, ACN covenanted to use commercially reasonable efforts to sell Planet's products in "the Territory" and not to take actions that it knew would be harmful to Planet's retail energy business. ACN agreed to indemnify Planet for losses resulting from complaints, whether asserted or threatened, by any third party, customer or regulatory authority in connection with ACN or the IBOs selling Planet's products.

[11] In March 2018, Planet provided notice to ACN of an indemnification claim under the SAA relating, among other things, to a compliance investigation by the Ontario Energy Board ("OEB") in respect of the conduct of ACN's IBOs when selling Planet's products. Planet informed ACN that it would not pay further commissions as a set-off to the amounts claimed to be owed by ACN to Planet on its claims for indemnification.

[12] The SAA provided that any claim, controversy, or dispute between the parties was to be resolved by binding arbitration. In April 2018, CAN commenced the Arbitration seeking payment of the commissions it claimed were owing under the SAA.

[13] Planet defended ACN's claims in the Arbitration and counterclaimed, alleging that ACN had breached its obligations under the SAA by (a) failing to use commercially reasonable efforts to sell Planet's products; (b) failing to ensure that its IBOs adhered to applicable regulations and contractual standards for the sale of energy products; (c) barring Planet from events where it could present to IBOs; (d) deliberately declining to cooperate with Planet in an orderly wind-down of the business prior to expiry of the SAA; and (e) breaching its confidentiality obligations and commitment not to do harm to Planet by working with an affiliated energy company, Xoom Energy, LLC ("Xoom"), to replace and compete with Planet in Canada.

[14] The Arbitration was an international arbitration governed by Ontario's *International Commercial Arbitration Act, 2017* (the "Act"). A hearing on the merits was conducted the Zoom video-conference over eleven days in June 2020.

[15] On February 3, 2021, the Arbitrator issued the Award. The Arbitrator found that "ACN's claims have been upheld in all material respects and ACN is the prevailing party in the arbitration."

[16] The Award resulted in Planet owing ACN the total amount of \$29,259,787 as of August 20, 2021, comprising damages and the costs of the arbitration, as well as prejudgment interest.

### **Analysis**

[17] The UNCITRAL Model Law on International Commercial Arbitration (1985) (the "Model Law") is a multilateral instrument designed to provide consistent, stable, and predictable rules respecting the conduct of international commercial arbitrations that how they are dealt with by domestic courts. The Model Law is incorporated into Ontario law as Schedule 2 to the Act.

[18] Article 5 of the Model Law provides:

In matters governed by this Law, no court shall intervene except where so provided in this Law.

[19] Article 34(1) of the Model Law provides that “[r]ecourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article”.

[20] Article 34(2) of the Model Law provides:

An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or
- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a dispute not contemplated by were not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
- (ii) the award is in conflict with the public policy of this State.



[21] In *Bayview Irrigation District No. 11 v. United Mexican States*, 2008 CarswellOnt 2682, Allen J., at para. 11, describes the court's role in reviewing an arbitral award:

Article 34 sets out the grounds upon which a court can set aside an arbitration award. The court's role in reviewing an award is restricted to those grounds. Article 34(2)(a) establishes a claimant has the onus to prove one or more of the grounds under Article 34 is present. The Court is not permitted to engage in a hearing *de novo* on the merits of the Tribunal's decision or to undertake a review such as that conducted by a court in relation to a decision of a domestic tribunal. A high degree of deference is accorded on review by a court. [*United Mexican States v. Karpa* (2005), 74 O.R. (3d) 180 (Ont. C.A.) at para. 41 ("*Karpa*")]. Authorities have construed the court's authority to refuse enforcement narrowly.

[22] In *Bayview Irrigation*, at para. 14, Allen J. confirmed that while great deference is shown to arbitral tribunals, a tribunal has the obligation to ensure equal treatment of the parties, that minimum procedural standards are observed and that the decision does not offend public policy. If a tribunal falls short of those standards, a court can set aside the arbitral decision.

[23] Planet submits that the Award should be set aside on three grounds:

- a. Planet was unable to present its case because it was deprived of an opportunity to respond to the evidence and arguments advanced by ACN or to discover its case because the Arbitrator denied Planet reasonable discovery and the right to cross examine ACN's witnesses on the complete evidentiary record, and failed to sanction ACN when it failed to produce relevant documents;
- b. The Award is contrary to public policy because Planet cannot comply with the Award without violating the *Energy Consumer Protection Act* ("*ECPA*"); and
- c. The Arbitrator exceeded her jurisdiction in her interpretation of the SAA because she ignored the plain meaning of the SAA and, by improperly relying on extrinsic evidence, re-wrote the SAA's terms.

[24] I address each of Planet's three submissions, in turn.

***Was Planet denied the opportunity to present its case?***

[25] Planet contends that it was unable to present its case at the Arbitration and that the Award should be set aside under Article 34(2)(a)(ii) of the Model Law.

[26] Planet makes three main submissions in support of this contention.

[27] First, Planet submits that ACN failed to produce key documents relevant to Planet's case, and the Arbitrator failed to exercise the remedies available to her to compel production of these documents, or to sanction ACN for its insufficient production.

[28] I refer to the relevant events in the arbitration proceeding with respect to this issue.

[29] Planet had pleaded that Xoom was the alter ego of ACN. It unsuccessfully sought to add Xoom as a party. On September 17, 2019, in Procedural Order No. 12, the Arbitrator established dates for the parties to exchange requests for documents under the ICDR Rules. Production was to be completed by December 31, 2019. ACN had not provided documents by November 15, 2019 (the date for production of documents in response to requests to which there was no objection) and ACN opposed many requests for production of documents made by Planet.

[30] On November 19, 2019, a hearing was held before the Arbitrator to address the disputed document requests. ACN had agreed to 16 of Planet's document requests and there was a hearing with respect to the balance. The Arbitrator ordered ACN to produce documents in response to 43 of Planet's requests. The Arbitrator issued Procedural Order No. 13 on November 27, 2019. The Arbitrator did not order ACN to obtain documents from Xoom. Document production was to be complete by December 31, 2019.

[31] On December 31, 2019, ACN produced several hundred documents.

[32] Planet conducted its initial review of the ACN document production and concluded that it was inadequate and in violation of the ICDN rules. On January 16, 2020, counsel to Planet wrote to the Arbitrator setting out the grounds for ACN's failure to produce documents responsive to 39 out of 43 document requests. ACN responded with a letter from its counsel disagreeing that its document production is deficient.

[33] On January 20, 2020, the Arbitrator issued Procedural Order No. 16 denying Planet's request for leave to submit an application regarding deficiencies in ACN's document production and instructed Planet to draw "deficiencies directly to ACN's attention, in order that ACN may correct any omissions and supplement its production". The Arbitrator ruled that "[t]o the extent that ACN disputes alleged deficiencies raised by Planet, such deficiencies will be appropriate subjects for the Parties' pre-hearing submissions and/or cross-examination at the evidentiary hearing. If Planet succeeds in establishing that ACN failed to produce responsive documents, Planet may invite the Arbitrator to draw adverse inferences and/or grant such other relief as may be appropriate."

[34] Planet complied with the Arbitrator's directive, but no further documents were received from ACN. Planet argues that it did not – and does not – know what documents ACN may have withheld or failed to produce.

[35] Planet brought an application to the District Court under a United States statute, 28 U.S.C. §1782, (the "1782 Application") seeking a subpoena for production of documents relevant to the arbitration in the possession of Xoom. ACN asked the Arbitrator to prohibit the 1782 Application on the ground that Planet had failed to obtain leave from the Arbitrator to seek judicial intervention which, it argued, was in breach of the applicable rules. The Arbitrator declined to do so and noted that if relevant documents were withheld by ACN, the 1782 Application "could potentially yield relevant and material documents essential to Planet's case". The Arbitrator noted that ACN had raised concerns about procedural delay, and she ruled that the Arbitration proceed in accordance with the schedule previously set. The Arbitrator ruled that, presumptively, "any delay or impasse

that might arise in connection with the Application shall not be deemed good cause for the extension of any deadlines in the arbitration, including the evidentiary hearing”.

[36] By Order dated June 5, 2020, the District Court granted the 1782 Application. Production of documents by Xoom was ordered to be due on June 22, 2020.

[37] On June 19, 2020, the Arbitrator sent an email to counsel. She determined that if Planet seeks to have new documents admitted into the evidentiary record, from Xoom’s forthcoming production, it was required to submit copies of such documents no later than June 24, and ACN was given until June 25 to state any objection. The Arbitrator wrote that Planet’s request for 10 days from the June 22 deadline for Xoom’s production of documents “is patently disproportionate to the task at hand”. The Arbitrator wrote that if there is no objection to Planet’s application, closing submissions shall proceed on June 26, 2020 and “the parties shall address the relevance and materiality of the new documents, any impact on Planet’s requests for adverse inferences, and such other arguments as may be appropriate during their closings”.

[38] Xoom produced over 400 documents four days before the closing arguments. The Arbitrator accepted that 8 of these documents are relevant documents and 3 are highly relevant.

[39] One of Planet’s counterclaims was that ACN shared Planet’s confidential customer information to facilitate Xoom’s entry into the Territory. Xoom produced two emails involving ACN employees that, Planet submits, appear to illustrate sharing of Planet’s confidential sales and customer information. There were two attachments to the emails that were not produced that Planet submits, based on their descriptions, may have included confidential Planet information. Planet submits that it was unable to address this issue when presenting its case because of the late delivery of documents by Xoom and the failure to produce the missing attachments.

[40] Planet submits that the Arbitrator’s refusal to grant an adjournment as a result of the production of documents by Xoom constitutes a palpable and free-standing refusal to accord reasonable procedural fairness to Planet. Planet submits that it was disproportionately affected by the Arbitrator’s failure to compel ACN to abide by its discovery obligations and refusal to grant an adjournment while Planet brought the 1782 Application because ACN was able to present its case with the benefit of full document production from Planet while Planet was forced to present its case before it had full document production from ACN or Xoom.

[41] Planet submits that the ICDR Rules provide an arbitrator with four remedies to address non-compliance with document production orders: (1) issue a follow-up order; (2) award costs; (3) seek or support judicial assistance; and (4) apply adverse inferences. Planet submits that because the Arbitrator did not exercise any of these remedies in circumstances where ACN had failed to comply with procedural orders, Planet was unable to present its case and the Award should be set aside.

[42] Planet’s arguments that ACN’s failure to comply with its document production obligations resulted in its inability to present its case were made to the Arbitrator during the Arbitration proceedings. Xoom’s entry to the Ontario market was an issue at the Arbitration and the Arbitrator made findings with respect to these issues.

[43] In the Award, the Arbitrator addressed Planet's submission that ACN had failed to comply with its document production obligations:

443. According to Planet, ACN failed to produce material evidence in violation of the Arbitrator's document production orders and ACN's own agreements to produce documents. It also says that Xoom's production in response to the 1782 Application resulted in "scores" of documents that ACN should have produced, but withheld, and it seeks various adverse inferences against ACN. Planet further alleges that the whole Xoom Documents show:

- ACN's intertwined relationship with Xoom created a conflict of interest with ACN's obligations under the SAA;
- ACN freely shared Planet's confidential information with Xoom for their mutual benefit;
- ACN abdicated its responsibilities to Planet in favour of the Xoom Canada launch; and
- ACN deliberately omitted a transition plan required for an orderly wind down.

444. According to Planet, this post-hearing non-party production prevented it from "presenting its case on these documents in its principal pleadings and at the hearing".

445. ACN denies all of these allegations. It says that throughout this proceeding, Planet made repeated, unfounded allegations about ACN's document production, insisting that the lack of documentary evidence supporting its "speculative theory of the case" could only have resulted from ACN withholding documents, and taking the "extraordinary" step of making a Section 1782 Application.

446. Despite this "overreaching," ACN says that the balance of the Xoom Documents put forth as new exhibits by Planet (ultimately, 100 that Planet contends ACN should have produced) were non-responsive and irrelevant to the matters at issue in the arbitration. Further, while it admits to a "small number" that were responsive to one of the Stern Schedule requests and should have been produced, far from substantiating Planet's theory of the case, ACN argues the Xoom Documents:

- confirmed evidence in the arbitration to the effect that Xoom began considering expansion into Canada in 2015 but did not ramp up its work in that regard until early 2016, starting with Alberta;
- confirmed that ACN's document production was largely complete (acknowledging that the production, like any large document production, was imperfect); and



- did not support any of Planet's theories about scheming and coordination between Xoom and ACN aimed at promoting Xoom in Ontario at Planet's expense.

447. Having reviewed the complete collection of Xoom Documents prior to oral closing arguments and then again post-hearing against Planet's Xoom Spreadsheet and ACN's Xoom Spreadsheet, Planet's Adverse Inferences Chart, the 1782 Subpoena/Stern Schedule Comparison, as well as the Parties' submissions concerning the evidence adduced at the hearing, the Arbitrator finds that Planet's claims that ACN failed to produce material evidence or that any adverse inferences are warranted must be rejected.

448. The Arbitrator has summarized the factual evidence in this case in great detail above, which plainly shows that Planet's theory of the case as it pertains to Xoom and ACN is without merit and that Planet's protestations about being unable to present its case due to alleged misconduct by ACN with respect to its document production are inflammatory and untrue. Out of the 100 Xoom Documents that Planet says ACN should have produced, the Arbitrator identified 3 that are highly relevant, though they are all part of the same e-mail chain and concern the same subject (R350-R352). ACN concedes that these particular documents were responsive and should have been produced. But they do not change the Arbitrator's view of the case or reasonably give rise to an inference that they were purposefully withheld from production. Quite simply, the Xoom Documents contain no "game changers" or "smoking guns." Nor do they put any different light on the evidence that was presented at the hearing or suggest that ACN has been concealing documents or that it conspired with Xoom to Planet's detriment or shared Planet's confidential information.

[44] The Arbitrator made findings of fact in relation to the issue of Xoom's entry into Ontario and concluded that ACN continued to meet its obligations to Planet. The Arbitrator concluded at para. 452 of the Award that "the evidence does not support a finding that: (i) ACN materially failed to perform under the SAA; (ii) Planet suffered damages as a result of any alleged breach of contract or fiduciary duty by ACN; or (iii) ACN committed unfair trade practices by misappropriating Planet's trade secrets and confidential information". The Arbitrator supported the conclusions in this paragraph of the Award by summarizing a series of findings she made based on the evidence.

[45] Planet's submissions on these applications in relation to ACN's compliance with its document production obligations repeat the same submissions that were made to the Arbitrator. The Arbitrator had the benefit of hearing all of the evidence and of considering Planet's submissions about relevance of documents, prejudice from late production, and the appropriateness of drawing adverse inferences against ACN, in the context of a full understanding of the evidentiary record. The Arbitrator's decisions with respect to Planet's submissions regarding ACN's document disclosure obligations are entitled to deference.

[46] Planet clearly disagrees with the Arbitrator's findings and conclusions, but it has failed to furnish proof that it was unable to present its case because of the Arbitrator's decisions with respect to ACN's document production obligations.

[47] The second argument advanced by Planet in support of its submission that it was denied the opportunity to present its case is that the Arbitrator's refusal to grant an adjournment for the 1782 Application also obstructed Planet's cross-examination of ACN's witnesses. Planet submits that this had a critical impact on Planet's ability to impugn – and the arbitrator's ability to assess – the credibility of ACN's witnesses. Planet submits that the cross-examinations would have been significantly aided by the documents produced by Xoom and the missing attachments which, it contends, show that ACN was facilitating Xoom's entrance into the Territory with Planet's confidential information.

[48] Planet relies on the legal principle that cross-examination is essential to trial fairness and that it would be a denial of natural justice for an arbitral tribunal to prohibit cross-examination. See *Mayer v. Osborne Contracting Ltd.*, 2012 BCCA 77, at paras. 80-81.

[49] Planet contends that in the absence of cross-examination of ACN's witnesses on the Xoom documents and the missing attachments, the Arbitrator's findings about the Xoom documents are inconsistent with the evidence and gave no consideration to other ACN documents that should reasonably be assumed to be missing given the deficiencies in ACN's production and Xoom's assertion that the missing attachments were not part of the business records transferred when ACN sold Xoom to NRG Energy Inc. in June 2018. Planet submits that because the Arbitrator did not require ACN to uphold its document disclosure obligations or impose any penalty for its failures to meet them, there is every reason to suspect that ACN failed to produce additional relevant and key documents.

[50] In the Award, the Arbitrator addressed Xoom's production of documents pursuant to the order in the 1782 Application. The Arbitrator set out the procedural history in respect of these documents including her rulings in the June 19, 2020 email. The Arbitrator referred to Planet's proposal that 122 Xoom documents be admitted into the record from among 400+ documents produced by Xoom. The Arbitrator referenced her confirmation that the proposed exhibits were admitted into the record and that oral closings would take place on June 26, 2020. The Arbitrator recorded in the Award, at para. 101, that “[a]t no time before or after the Arbitrator admitted the Xoom Documents into the record did either Party ever argue that they should be permitted to recall one or more witnesses to testify or to seek the appearance of any new witness”.

[51] I do not accept Planet's submission that the record shows that it was denied an opportunity to cross-examine witnesses in respect of the Xoom documents. Planet was represented by experienced counsel at the Arbitration. It was open to counsel to request the right to cross-examine one or more witnesses on the Xoom documents. A decision was taken not to do so. It is not open to Planet, having taken this decision, to now argue that its ability to conduct further cross-examination was unfairly denied.

[52] Planet has failed to furnish proof that it was denied the right to cross-examine on the Xoom documents and that it was thereby unable to present its case.

[53] The third submission that Planet makes in support of its argument that it was unable to present its case is that the Arbitrator ignored or failed to consider Planet's evidence and legal submissions.

[54] Planet submits that the Arbitrator ignored Planet's evidence in respect of the audit conducted by ACN under the SAA and, instead, relied exclusively on the evidence of ACN's expert, Stout, which, it submits, was inconsistent with the evidence as a whole and undermined on cross-examination.

[55] Planet points to passages from the Award in various paragraphs and argues (i) the Arbitrator criticized Planet for failing to produce underlying files supporting the monthly commission advice provided to ACN when Planet's evidence was that the files were always made available to Stout as was the underlying data, and the Arbitrator failed to provide proper reasons for preferring Stout's evidence to evidence tendered by Planet (that it submits was undisputed); (ii) the Arbitrator penalized Planet for proving only "limited access" to certain files when, according to Planet, it acted in accordance with the Arbitrator's procedural orders; (iii) the Arbitrator, in concluding that Stout had no way to independently confirm the cost of sales used for margin calculations, ignored Planet's evidence that Stout had been given access to all of Planet's relevant records which provided the necessary source information to confirm the margin calculations; and (iv) the Arbitrator accepted an assertion made by Stout that it could not independently verify certain detailed commission files against a third party source when Planet's evidence confirmed that Stout did independently verify the third party source data. Planet submits that the Arbitrator's failures led her to accept Stout's calculations for commissions for over \$4 million on sales volumes that did not flow to Planet.

[56] Planet points to a passage from the transcript of the cross-examination of Stout's witness at the hearing in which the witness agreed that any constraints in the way Stout could work with files during its audit of Planet under the SAA were pursuant to procedural orders in the Arbitration. The witness agreed that Planet provided access to files pursuant to procedural orders and that process constrained Stout's ability to use them.

[57] Planet relies on *Consolidated Contractors Group S.A.L. v. Ambatovy Minerals S.A.*, 2016 ONSC 7171 in which Penny J. held, at para. 57, that a party might be said to have been unable to present his or her case when the tribunal ignored or failed to take the evidence or the submissions of the parties into account.

[58] Planet submits that Stout advanced the theory that there was \$4 million in commissions that Planet had failed to pay based on data from Planet's internal management system and that it accepted this data in favour of actual utility data. Planet argues that there was substantial evidence tendered showing why the actual utility data was the proper data to use, but the Arbitrator ignored this evidence and concluded that the approach taken by Stout was proper and made an award of unpaid commissions on this basis.

[59] Planet, in response to my questions at the hearing of these applications about the challenges presented to a judge asked to review the sufficiency of an arbitrator's reasons, particularly those involving detailed and contentious financial and accounting evidence and expert testimony, accepted that it would be improper for me to make findings in substitution for those made by the Arbitrator. Planet submits that the key underlying fact is that \$4 million of commission payments cannot be owed unless Planet earned revenues to support such commissions. Planet submits that its auditors conducted an annual audit of Planet and they never identified such additional revenue in the financial statements. Planet submits that the Arbitrator's acceptance of Stout's damages

calculations implicitly determined that Planet's audited financial statements were inadequate because it ignored evidence in relation to this key issue, with the result that Planet was unable to present its case.

[60] In the Award, at section O, the Arbitrator, gave extensive reasons in relation to the audit. The Arbitrator described Planet's contemporaneous gross margin calculations and commission payments as being based upon "Remittance Commission Files" that estimated commissions due to ACN. The Arbitrator referred to the fact that during the audit, Planet created "Detailed Commission Files" which were not created contemporaneously in the ordinary course of business but for the purpose of the arbitration. The Arbitrator at paras. 417- 421 of the Award addressed Planet's criticism that Stout relied on the Remittance Commission Files rather than the Detailed Commission Files and concluded that the criticism is misplaced. The Arbitrator wrote that she had studied the testimony of the parties' experts and their written reports in detail and weighed the relevant fact witness testimony. The Arbitrator found that "Stout's methodology was reasonable (if not conservative), its conclusions accurate, and the criticisms leveled by RSM and Plummer are unfounded". The Arbitrator found that Planet's expert, RSM, had failed to approach Planet's work with skepticism and largely submitted reports that adopted Planet's work and representations without any, or only limited, attempts at verification. She found that RSM's critiques of the Stout reports should be entitled to little weight.

[61] The audited financial statements to which Planet refers in argument were not tendered into evidence at the Arbitration and the Arbitrator could not have referred to them in relation to this issue.

[62] I refer to these passages from the Award to show that the Arbitrator addressed the issues raised by Planet in relation to the claim for unpaid commissions, and she directed her mind to the arguments advanced by Planet based on the proper approach to be taken to data upon which the experts relied and the weight to be given to expert evidence. I am unable to find, based on selected passages from the Award to which I was directed by Planet, that the Arbitrator ignored evidence given and submissions made on behalf of Planet leading to a fundamentally unsupported and unfair award for payment of commissions that should be set aside.

[63] Planet submits that the Arbitrator did not reasonably consider Planet's claim for loss of profits of \$7,795,990 relating to declining enrolments due to ACN's breaches of the SAA and that the Arbitrator ignored the evidence of Planet's expert. The Arbitrator concluded that the decline in enrollments was the result of ordinary market forces.

[64] Planet points to its evidence that (a) the decline in Planet's enrolments from IPOs was substantially greater than the decline in enrolments industrywide; (b) Planet's small tele-sales team was able to outperform ACN's IPOs based on cold calls, in stark change from prior periods; (c) ACN's marketing team stopped running Planet's promotions, canceled weekly meetings and instead promoted the Canadian launch of Xoom; (d) beginning in 2015, ACN no longer allowed Planet to attend IBO events, which it was entitled to do under the SAA and which had historically engaged IPOs and generated a significant volume of sales for Planet; and (e) ACN ceased sending communications to its IBOs promoting Planet.



[65] In the Award, the Arbitrator, at paras. 449-452, addressed Planet's submissions that ACN had violated its obligations under the SAA causing substantial and material injury to Planet. The Arbitrator concluded that the evidence does not support a finding that ACN materially failed to perform under the SAA or that Planet suffered damages as a result of any alleged breach of contract or fiduciary duty by ACN. The Arbitrator addressed the evidence with respect to Planet's access to ACN's training events. The Arbitrator found that ACN did not make changes to its marketing or sales strategies for IBOs during the agency period or in anticipation of Xoom's entry into Canada. The Arbitrator found that during the wind-down phase and when working internally on Xoom expansion, ACN leadership emphasized that ACN would continue to provide the same level of services to Planet until the end of the agency period. The Arbitrator found that any decline in sales during the agency period can be attributed to a variety of market forces, including those that she identified. She found that at the time, all ACN products and services were experiencing a decline.

[66] Planet submits that the Arbitrator ignored Planet's evidence in support of its claim for indemnification in the amount of \$2,056,627 due to IBO misconduct. Planet refers to a spreadsheet tendered into evidence summarizing thousands of customer complaints relating to IBO misconduct. Planet had advised the Arbitrator that it produced many contemporaneous documents and would make additional documents underlying the spreadsheet available upon request. Planet submits that in the Award, the Arbitrator rejected Planet's claim on the basis that the spreadsheet was not prepared contemporaneously, and that Planet was seeking the benefit of the doubt. Planet submits that the documents were available for review, but the Arbitrator elected not to review them.

[67] The Arbitrator addressed Planet's claim for disputed enrollments in the Award at paras. 459-464. The Arbitrator noted that according to ACN, Planet had failed to produce documents that establish the basis of the complaint, its resolution, the basis for the calculation of the fee, whether it was waived, and any actual losses suffered by Planet as a result of the contract cancellation. The Arbitrator noted that the spreadsheet was not prepared in the ordinary course of business, but solely for the arbitration. The Arbitrator considered that Planet essentially asks for the benefit of the doubt that its claim was properly prepared.

[68] The record shows that the Arbitrator considered the arguments made by Planet and, for reasons given in the Award, she did not accept them. Planet is asking this Court to consider the evidentiary record anew and substitute new findings for those made by the Arbitrator. This is not the proper role of the Court on this application. The Arbitrator had the benefit of hearing the witnesses and reviewing the documentary record, and her findings are entitled to deference. This is not a case where the Arbitrator ignored or failed to take the evidence or the submissions of Planet into account.

[69] Planet has failed to furnish proof that it was unable to present its case because the Arbitrator ignored or failed to consider Planet's evidence and submissions.

***Is the Award contrary to public policy?***

[70] Planet submits that the Award should be set aside because it is contrary to public policy.

[71] In *Depo Traffic Facilities (Kunshan) Co. v. Vikeda International Logistics and Automotive Supply Ltd.*, 2015 ONSC 999, Chiappetta J. confirmed, at para. 47, that the public policy defence “ought to be invoked only if the judgment involves an act that is illegal in the forum or if the action involves acts repugnant to the orderly functioning of the social or commercial life of the forum”.

[72] Planet submits that the Arbitrator disregarded its submissions and the governing legal principles by ordering Planet to make commission payments to ACN that are illegal under Ontario law and would expose Planet to penalties if it were to satisfy the Award. For this reason, Planet submits that the Award violates the public policy of Ontario and should be set aside.

[73] At the Arbitration hearing, Planet relied on the amendment to the *ECPA* on January 1, 2017 to include s. 9.3 which provides:

9.3 No supplier shall provide remuneration to a salesperson who sells or offers to sell electricity or gas to consumers or who advertises or markets the sale of electricity or gas to consumers on behalf of the supplier if the manner of remuneration contravenes the rules provided for in the regulations.

[74] Planet relied on a regulation under the *ECPA*, Regulation O. Reg. 389/10 which provides that the remuneration provided to a salesperson must not include any remuneration that is based on a commission or on the value or volume of sales.

[75] The Arbitrator referred to s. 9.3 of the *ECPA* in the Award, at paras. 402-403, and she noted that the *ECPA* defines a “salesperson” as a person “who, for the purpose of effecting sales” of gas or electricity conducts gas or electricity marketing “on behalf of a retailer or makes one or more representations to one or more consumers on behalf of a retailer, whether as an employee of the gas marketer or not”.

[76] At the Arbitration hearing, Planet relied on a memo from staff of the OEB in an email dated March 2, 2020 in which OEB staff expressed their view that “a salesperson may not be remunerated for any new, renewed or extended contract based on a commission or on the value or volume of sales, including the renewal/extension of contracts entered on or before January 1, 2017”. Planet submitted at the hearing that this memo supported its position that s. 9.3 of the *ECPA* and the *ECPA* regulation prohibited the payment of commissions to ACN or its IBOs for any new or renewed contracts entered into after January 1, 2017.

[77] The Arbitrator referred in the Award to the submissions by ACN that its entitlement to commissions does not contravene the *ECPA* because “the entitlement arises on ACN’s initial acquisition of the customer, and not based on any role it has in the marketing and signing of new, subsequent contracts to customers, of which it has none.” ACN cited section 3(e) of the SAA that provides that the entitlement to commissions arises regardless of who sold the energy product and permits Planet to sell directly to existing customers without any ACN/IBO involvement.

[78] In the Award, the Arbitrator addressed Planet’s argument that the *ECPA* precludes Planet from paying commissions to ACN for any ACN customers whose renewals became effective on or after January 1, 2017. The Arbitrator concluded that the *ECPN* does not do so. The Arbitrator

explained why she reached this conclusion. The Arbitrator found that for renewals entered post January 1, 2017, customer contact rests exclusively with Planet. The Arbitrator addressed the guidance given by staff at the OEB and noted that OEB staff had stated that the basis for their view was their understanding that ACN would be conducting retailing on behalf of the retailer for the purpose of effecting sales of energy contracts. The Arbitrator concluded that this guidance “does not appear to have taken into account the terms of Section 3(e) or that for all renewals entered post January 1, 2017, customer contact rests exclusively with Planet”. The Arbitrator concluded that given that the *ECPA* is a consumer protection statute, for the regulation to apply, there must be some active marketing activity by ACN.

[79] The Arbitrator was required to interpret the *ECPA* to address the submissions made by Planet. The Arbitrator was not presented with any controlling authority with respect to the question of statutory interpretation she was asked to decide. The Arbitrator did not disregard the *ECPA*, as Planet submits she did. In reaching her conclusion, the Arbitrator considered the language of the statutory provision and the regulation and that the *ECPA* is a consumer protection statute. The Arbitrator took into account the view offered by OEB staff and their stated basis for this view, as she was invited to do by Planet. The Arbitrator came to a different conclusion with respect to the question of statutory interpretation that was before her than the interpretation advanced by Planet.

[80] In *Corporacion Transnacional de Inversiones, S.A. de C.V. v. STET International, S.p.A.*, 1999 CarswellOnt 2988, at para. 30, Lax J. cited jurisprudence confirming “the care which courts must exercise in relying upon public policy as a reason for refusing enforcement of a foreign arbitral award”. Justice Lax held that to succeed on this ground, the award “must fundamentally offend the most basic and explicit principles of justice and fairness in Ontario, or evidence intolerable ignorance or corruption on the part of the Arbitral Tribunal”.

[81] The Arbitrator’s interpretation of the *ECPA* and the regulation in this context is a reasonable one. Planet has not shown that the Arbitrator made an error in her factual findings with respect to the basis for the views of OEB staff. Planet has not shown that as a result of the Arbitrator’s decision, the Award fundamentally offends the principles of justice and fairness in Ontario. The Arbitrator’s decision on the question of statutory interpretation is entitled to deference.

***Did the Arbitrator exceed her jurisdiction?***

[82] Planet submits that in the Award, the Arbitrator ignored the key terms of the SAA, relied on extrinsic evidence, and imported her own meanings to the SAA and, in so doing, exceeded her jurisdiction.

[83] Planet submits that according to the plain language of the SAA, ACN was only entitled to commissions on sales to ACN customers with the amount of such commissions to be calculated based on these customers’ usage across all products.

[84] Planet submits that the Arbitrator rewrote the SAA’s terms by ordering Planet to pay \$19,114,272 of commissions to ACN. Planet argues that the Arbitrator improperly relied on extrinsic evidence of ACN’s witness who was involved in the negotiation of the SAA.

[85] In the Award, the Arbitrator set out the general principles of contract interpretation under New York law that she applied, including that extrinsic evidence may be considered to determine the parties' intent as to the meaning of an ambiguous term.

[86] With respect to the question of the calculation of gross margin payments to which ACN was entitled under the SAA, the Arbitrator found that the SAA was clear and unambiguous and, accordingly, she did not consider extrinsic evidence. When the Arbitrator addressed the question of ACN's entitlement to commissions on renewals, the Arbitrator determined that the SAA "is reasonably susceptible to more than one meaning and, therefore, that it is ambiguous. In these circumstances, the Arbitrator turns to consider the extrinsic evidence presented of the Parties' intent with respect to commissions for renewals."

[87] The Arbitrator wrote that she considered the evidence of the SAA's negotiation history and the parties' words and conduct during the course of their relationship. The Arbitrator found that this evidence shows "a consistent and uniform course of conduct with respect to ACN's entitlement to commissions from renewals". The Arbitrator concluded that for any customer referred by ACN to Planet through the online portal, ACN is entitled to continue receiving commissions for as long as that customer remains with Planet, regardless of the means by which the relationship with Planet was renewed.

[88] The Arbitrator recorded in the Award the evidence upon which she relied for this conclusion, which included evidence given by a witness called by ACN who, she wrote, was the only witness directly involved in negotiation of the 2009 SAA, which mirrors the SAA. The Arbitrator noted in the Award that Planet offered no evidence to rebut ACN's version of the parties' contract negotiations although the person who was directly involved in negotiations for Planet was available and willing to testify and he was not called as a witness.

[89] The Arbitrator was required to determine whether the SAA was ambiguous, and she explained why she concluded that it is reasonably susceptible to more than one interpretation. Having done so, under principles of New York law, the Arbitrator was entitled to consider extrinsic evidence.

[90] I have reviewed the Arbitrator's findings with respect to interpretation of the SAA and I am unable to conclude that the Arbitrator acted outside of her jurisdiction by interpreting the SAA as she did. Planet may disagree with the Arbitrator's findings, but Planet has failed to show that the Arbitrator exceeded her jurisdiction by interpreting the SAA as she did.

[91] Planet has failed to show that the Award should be set aside under Article 34 of the Model Law.

[92] ACN has provided the court with a certified copy of the Award. The Award is presumptively enforceable and recognizable pursuant to Article 35 of the Model Law, subject only to the arguments advanced by Planet under Articles 34 and 36 of the Model Law.

### **Disposition**

[93] For these reasons:



- a. Planet's application for an order setting aside the Award is dismissed.
- b. ACN's application for Judgment is granted. Judgment is to issue:
  - i. Recognizing and enforcing the Award; and
  - ii. Ordering that, in accordance with the Award, Planet shall pay to ACN \$29,259,787.00 as at August 20, 2021 together with prejudgment interest accruing since that date in accordance with the Award, and postjudgment interest at the statutory rate.

[94] If the parties are unable to resolve costs, ACN may make written submissions within 20 days. Planet may make responding submissions within 20 days thereafter. If so advised, ACN may make brief reply submissions within 10 days thereafter.

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Cavanagh J.

**Released: April 7, 2022**

**CITATION:** All Communications Network of Canada, Co. v. Planet Energy Corp., 2022 ONSC 2178

**COURT FILE NO.:** CV-21-00659022-00CL

**COURT FILE NO.:** CV-21-00658223-00CL

**DATE:** 20220407

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**ALL COMMUNICATIONS NETWORK  
OF CANADA, CO.**

**Applicant**

**- and -**

**PLANET ENERGY CORP., PLANET  
ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP.**

**Respondents**

**AND BETWEEN:**

**PLANET ENERGY CORP., PLANET  
ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP**

**Applicants**

**- and -**

**ALL COMMUNICATIONS NETWORK  
OF CANADA, CO.**

**Respondents**

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**REASONS FOR JUDGMENT**

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Cavanagh J.

**Released:**

## **SCHEDULE “C”**

the Reasons for Decision of the Court of Appeal for Ontario

COURT OF APPEAL FOR ONTARIO

CITATION: All Communications Network of Canada v. Planet Energy Corp.,  
2023 ONCA 319  
DATE: 20230508  
DOCKET: C70642 & C70653

Lauwers, Paciocco and Thorburn JJ.A.

BETWEEN

All Communications Network of Canada, Co.

Applicant (Respondent)

and

Planet Energy Corp., Planet Energy (Ontario) Corp., and  
Planet Energy (B.C.) Corp.

Respondents (Appellants)

AND BETWEEN

Planet Energy Corp., Planet Energy (Ontario) Corp., and  
Planet Energy (B.C.) Corp.

Applicants (Appellants)

and

All Communications Network of Canada, Co.

Respondent (Respondent)

Daniel S. Murdoch and Zev Smith, for the appellants

Kris Borg-Olivier, for the respondent

Heard: March 27, 2023

On appeal from the judgment of Justice Peter J. Cavanagh of the Superior Court  
of Justice, dated April 7, 2022

**Thorburn J.A.:**



## OVERVIEW

[1] This is an appeal of an order upholding an arbitral award in favour of the respondent, All Communications Network of Canada, Co. (“ACN”), in the amount of \$29,259,787 plus interest.

[2] The appellants, Planet Energy Corp., Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. (together “Planet”), provide fixed-price electricity and natural gas to residential customers in Canada and the U.S.

[3] The respondent, ACN is a marketing business that has contracts with thousands of Canadian independent business owners who earn commissions by referring customers to ACN or its third-party providers, including Planet.

[4] Planet and ACN entered into the Amended, Restated and Assigned Sales Agency Agreement (the “Agreement”) on November 9, 2012.

[5] Planet agreed to pay gross margin commission payments to ACN for every customer who successfully registered for Planet’s products and services.

[6] ACN agreed to use its network of independent business owners to make commercially reasonable efforts to sell Planet products and to take no actions that would be harmful to Planet’s business in the contractually defined territory of Ontario, British Columbia, and Manitoba (collectively, the “Territory”). Section 12(a)(ii) of the Agreement provides that,

ACN hereby agrees to indemnify and hold Planet ... harmless from and against all damages which any Planet Indemnified Person may sustain, incur or assume as a result of any allegation, claim, civil or criminal action, proceeding, charge or prosecution which may be alleged, made, instituted or maintained against any Planet Indemnified Person arising out of, resulting from or based upon...

(ii) any claim asserted or threatened to be asserted by any third party in connection with ACN, its affiliates or the IBOs, selling the Energy Products or serving or having served pursuant to this Agreement; provided, however, ACN shall not be liable to indemnify and hold any Planet Indemnified Person harmless from any such damages to the extent it is the result of the gross negligence, bad faith, willful misconduct or criminal conduct of, or the breach of this Agreement by, the party seeking indemnification hereunder.

[7] Although the Agreement expired in November 2016, Planet's obligation to pay commissions to ACN survived the termination of the Agreement.

[8] Planet claims that in early 2015, contrary to the terms of the Agreement, ACN began working with Xoom Energy, LLC ("Xoom") to develop an energy retail business to compete with Planet, resulting in a significant decline in customer enrolments after January 2015. Moreover, in March 2018, Planet advised ACN that it would not pay any further commissions as there was a compliance investigation by the Ontario Energy Board ("OEB") into the conduct of the independent business owners who sold Planet's products. Planet told ACN that it

would set-off the amounts it claimed were owed by ACN pursuant to the investigation against any commissions payable to ACN.

[9] The Agreement provides that all claims be resolved by binding arbitration and that any award is “final, conclusive, non-appealable and binding upon the parties” and “enforced in any court of competent jurisdiction”. In April 2018, the parties proceeded to arbitration.

[10] ACN claimed it was owed commissions under the Agreement. Planet disputed ACN’s claim for commissions and claimed that ACN and its independent business owners failed to make reasonable efforts to sell Planet’s products and breached their confidentiality obligations and commitment not to harm Planet by working with Xoom to compete with Planet in Ontario. Planet claimed that Xoom was the alter ego of ACN.

[11] The arbitrator granted ACN’s claims for commissions payable under the agreement and dismissed Planet’s claims against ACN for breach of its confidentiality obligations and commitment not to harm Planet by working with a competitor.

[12] Planet brought an application to the Superior Court to set aside the arbitral award on the basis that, among other things, the arbitrator deprived Planet of the opportunity to present its case, and the award to ACN was contrary to public policy because it violated the *Energy Consumer Protection Act, 2010*, S.O. 2010,

c. 8 (“*ECPA*”). ACN brought a separate application for an order recognizing and enforcing the award.

[13] The application judge rejected Planet’s claims and upheld the arbitral award. Planet seeks to set aside the award or refer it back for proper consideration and claims the application judge erred by:

- i. not conducting a *de novo* hearing;
- ii. holding that the arbitrator did not deny Planet the opportunity to present its case pursuant to article 34(2)(a)(ii) of the Model Law; and
- iii. concluding that the arbitral award was not contrary to public policy pursuant to article 34(2)(b)(ii) of the Model Law.

[14] For the reasons that follow, I would dismiss the appeal.

[15] Before considering these issues, I will set out the applicable rules of arbitration and the underlying rulings and decisions of the arbitrator and the application judge.

## **THE RULES OF ARBITRATION**

[16] This was an international arbitration governed by Ontario’s *International Commercial Arbitration Act, 2017*, S.O. 2017, c. 2, Sched. 5 (the “*Act*”) and administered under the rules of the International Center for Dispute Resolution (the “*ICDR rules*”).

[17] The United Nations Commission on International Trade Law (“UNCITRAL”) Model Law on International Commercial Arbitration (1985) (the “Model Law”) is a multilateral instrument designed to provide consistent, stable, and predictable rules respecting the conduct of international commercial arbitrations and how they are dealt with by domestic courts.

[18] The Model Law is incorporated into Ontario law as Schedule 2 to the *Act*.

[19] Article 5 of the Model Law provides that, “no court shall intervene except where so provided in this Law.” This is consistent with the trend in favour of limiting court involvement in international commercial arbitration as the parties made a conscious decision to exclude court jurisdiction in favour of international arbitration. The Model Law provides for court involvement only where a party challenges and seeks the termination of the mandate of an arbitrator (articles 11, 13 and 14), challenges the jurisdiction of the arbitral tribunal (article 16), or seeks to set aside the arbitral award (article 34).

[20] Article 18 provides that each party be given a full opportunity to present its case and article 19 lays out the rights and powers of the parties to determine the rules of procedure and guarantees the parties' freedom to agree on the procedure to be followed in conducting the arbitration, subject to a few mandatory provisions. This includes the power to determine the admissibility, relevance and weight of the evidence.

[21] Article 34(1) of the Model Law provides that “[r]ecourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article” (emphasis added). Article 34(2) of the Model Law provides that:

An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

...

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration... or

(b) the court finds that:

(i) the award is in conflict with the public policy of this State. [Emphasis added.]

## THE UNDERLYING LEGAL PROCEEDINGS

### The Arbitration Proceeding

[22] As noted above, ACN commenced an arbitral proceeding claiming it was owed commissions under the Agreement. Planet denied ACN’s claim and

brought its own claim against ACN and its independent business owners for failure to make reasonable efforts to sell its products, and breach of their confidentiality obligations and commitment not to harm Planet by working with Xoom to compete with Planet in Ontario. Planet claimed that Xoom was the alter ego of ACN.

[23] At the outset, Planet named Xoom as a respondent party in the arbitration. Planet's attempt to add Xoom to the arbitration was dismissed by the arbitrator. The arbitrator also denied requests by Planet to join additional parties to the arbitration, including Xoom-affiliated entities.

[24] A number of procedural orders were made before the hearing:

[25] On September 17, 2019, the arbitrator held that production of documents was to be completed by December 31, 2019. ACN had not provided certain documents by November 15, 2019 (the date for production of documents in response to requests to which there was no objection) and ACN opposed many requests for production of documents made by Planet.

[26] On November 19, 2019, a hearing was held to address the disputed document requests. The arbitrator subsequently ordered ACN to produce documents but did not order it to obtain documents from Xoom. ACN produced several hundred documents. Planet took the position that the disclosure was inadequate.



[27] On January 20, 2020, the arbitrator denied Planet's request for leave to submit an application about deficiencies in ACN's document production. However, the arbitrator ruled that "[t]o the extent that ACN disputes alleged deficiencies raised by Planet, such deficiencies will be appropriate subjects for the Parties' pre-hearing submissions and/or cross-examination at the evidentiary hearing. If Planet succeeds in establishing that ACN failed to produce responsive documents, Planet may invite the Arbitrator to draw adverse inferences and/or grant other relief as may be appropriate."

[28] Planet was not satisfied with this response and, without seeking the permission of the arbitrator, brought an application to the United States District Court of North Carolina seeking production of documents in the possession of Xoom (the "U.S. Application").

[29] In response, ACN asked the arbitrator to issue an order compelling Planet to cease and desist with the U.S. Application.

[30] In a procedural order dated March 11, 2020, the arbitrator declined to do so. She did, however, acknowledge that Planet had breached applicable procedures agreed on by the parties by failing to seek leave to make the U.S. Application. She also held that ACN raised legitimate concerns about procedural delay and the impact of the U.S. Application on the proceedings and held that "[p]resumptively, any delay or impasse that might arise in connection with the



[U.S. Application] shall not be deemed good cause for the extension of any deadlines in this arbitration...” The U.S. District Court granted the application and ordered Xoom to produce the documents by June 22, 2020.

[31] On June 19, 2020, the arbitrator held that Planet must submit any new Xoom documents to be admitted, no later than June 24, 2020 and ACN was given until June 25, 2020 to state any objection. (Planet had requested 10 days but the arbitrator rejected this as “patently disproportionate to the task at hand”.)

[32] On June 22, 2020, four days before closing arguments were to be made, Xoom produced over 400 documents (the “Xoom Documents”).

[33] The arbitrator held that only eight were relevant, three of which were highly relevant.

[34] One week before closing arguments were delivered, ACN produced a spreadsheet outlining Planet’s sales by jurisdiction. Planet claims this is the type of information that one competitor could use to develop a sales strategy. Planet says it became aware of this information when, further to the U.S. District Court order, Xoom produced two emails without attachments. Planet claims the attachments may have included confidential Planet information such as Planet’s sales in Ontario and B.C. by month and the percentage of Planet’s customers who subscribe to power versus gas services.

[35] On February 3, 2021, the arbitrator rendered her decision. She held that ACN's "claims have been upheld in all material respects and ACN is the prevailing party in the arbitration." Damages to ACN were assessed at \$29,259,787 as of August 20, 2019, including the costs of the arbitration and prejudgment interest.

### **The Application to the Superior Court**

[36] Planet brought an application to the Superior Court to set aside the award and ACN brought a cross-application to enforce the award of damages. Planet argued, in part, that:

- i. It was unable to present its case in accordance with article 34(2)(a)(ii) of the Model Law, because it was deprived of an opportunity to respond to the evidence and arguments advanced by ACN and denied the right to discovery and cross-examination on a complete evidentiary record; and
- ii. The award was contrary to public policy because Planet could not comply with the award without violating the *ECPA*, contrary to article 34(2)(b)(ii) of the Model Law.

[37] The application judge dismissed Planet's application to set aside the award and granted ACN's application recognizing and enforcing the award. In deferring to the arbitrator's decision, the application judge observed that the arbitrator had the benefit of hearing all of the evidence, reviewing the full evidentiary record,

and considering Planet's submissions. The application judge also held that Planet failed to provide proof that it was unable to present its case.

[38] The application judge also considered Planet's argument that the *ECPA* precluded payment of commissions for renewals effective January 1, 2017 and that the arbitrator's decision was therefore contrary to public policy. The application judge rejected this submission after considering the terms of the *ECPA* and a memorandum made out to Planet by the OEB, as well as the principles of contract interpretation. On the contrary, he upheld the arbitrator's assessment that the Agreement was clear and unambiguous on gross margin payments as negotiations revealed "a consistent and uniform course of conduct with respect to ACN's entitlement to commissions from renewals".

## **ANALYSIS OF THE ISSUES UNDER APPEAL**

### **1. Standard of Review where a Party Claims it was Unable to Present its Case**

[39] The first issue raised on this appeal is the standard of review to be applied to the application judge's analysis of whether Planet was unable to present its case.

[40] Planet does not challenge the arbitrator's jurisdiction to hear the case; rather, Planet challenges the arbitrator's decisions regarding document production, time for cross-examination, and opportunity to prepare closing

submissions to the arbitration that Planet claims resulted in its inability to properly present its case at the arbitration.

[41] Planet claims that the application judge was required to conduct a *de novo* hearing to determine whether Planet was able to present its case, and that he erred by failing “to independently assess the importance of document discovery and the prejudicial effect” of ACN’s failure to comply with its obligations to Planet, and instead, deferred to the arbitrator. Planet claims that, had the application judge conducted a *de novo* hearing, he would have concluded that Planet was unable to present its case.

[42] The onus on a party seeking to set aside an arbitral award on the basis of a failure of due process, is high. “Judicial intervention for alleged violations of the due process requirements of the Model Law will be warranted only when the Tribunal’s conduct is so serious that it cannot be condoned under the law of the enforcing State”: *Consolidated Contractors Groups S.A.L. (Offshore) v. Ambatovy Minerals S.A.*, 2017 ONCA 939, 70 C.L.R. (4th) 51, at para. 65, leave to appeal refused, 2018 CanLII 99661 (SCC), citing Lax J. in *Corporacion Transnacional de Inversiones, S.A. de C.V. v. STET International, S.p.A.*, [1999] O.J. No. 3573, at para. 34 (Sp. Ct.), *aff’d* (2000) 49 O.R. (3d) 414 (C.A.), leave to appeal refused, [2000] S.C.C.A. No. 581.

[43] The only authority cited by Planet in support of its claim that a *de novo* hearing should have been conducted by the application judge to determine whether this high threshold has been met, was *lululemon athletica Canada inc. v. Industrial Color Productions Inc.*, 2021 BCCA 428.

[44] In my view, *lululemon* is distinguishable.

[45] In *lululemon*, the appellant challenged the *jurisdiction* of the arbitral decision. *Lululemon* invoked s. 34(2)(a)(iv) of British Columbia's legislation which, like the wording in s. 34(2)(a)(iii) of the Ontario Act, concerns "disputes not contemplated by or not falling within the terms of the submission to arbitration: see s. 34(2)(a)(iv) of British Columbia's *International Commercial Arbitration Act*, R.S.B.C. 1996, c. 233.

[46] In this case by contrast, the appellant challenges the procedural fairness of the proceeding.

[47] Moreover, as was made clear by this court in *United Mexican States v. Cargill, Inc.*, 2011 ONCA 622, 107 O.R. (3d) 528, at para. 47, leave to appeal refused, [2011] S.C.C.A. No. 528, even in appeals of pure jurisdictional questions,

[C]ourts are to be circumspect in their approach to determining whether an error alleged under art. 34(2)(a)(iii) properly falls within that provision and is a true question of jurisdiction. They are obliged to take a narrow view of the extent of any such question. And when they do identify such an issue, they are to

carefully limit the issue they address to ensure that they do not, advertently or inadvertently, stray into the merits of the question that was decided by the tribunal.

[48] The correct test is whether the arbitrator's decisions respecting document production, cross-examination of witnesses, and closing submissions, "offend our most basic notions of morality and justice" such that the arbitrator committed a breach of procedural fairness: *Consolidated Contractors*, at para. 65.

[49] It was incumbent on Planet to demonstrate that it was unable to present its case. In the absence of evidence to demonstrate how the arbitrator erred in making her findings in respect of the documents, and why more time was needed to prepare cross-examinations and make closing submissions, the application judge was entitled to rely on the findings of the arbitrator. Even if a *de novo* hearing were conducted, as the application judge said, "Planet's submissions ... repeat the same submissions that were made to the Arbitrator", Planet has not challenged the finding that only eight of the 400 Xoom Documents were relevant, and no new evidence has been adduced to demonstrate how it has been deprived of its ability to present its case. As such, this would not have changed the result.

[50] For these reasons, I find that the application judge applied the correct test and invoked the correct standard of review. I would therefore dismiss this first ground of appeal.



## 2. Was Planet denied the Opportunity to Present its Case?

[51] Planet's second ground of appeal is that it was "arbitrarily denied reasonable discovery rights" because ACN failed to produce all relevant documents as "Xoom's rushed but significant production of over 400 documents was not delivered until after the evidentiary hearing and 4 days before closing submissions". They included documents that the arbitrator acknowledged were "highly relevant" to Planet's case. Planet claims it was thereby denied the right to cross-examine witnesses or make closing submissions on a complete evidentiary record.

[52] Natural justice requires that an arbitrator act with procedural fairness, the requirements of which depend on the subject-matter of the dispute, the circumstances of each case, the nature of the inquiry, and the rules under which the parties have agreed to arbitrate their dispute: *0927613 B.C. Ltd. v. 0941187 B.C. Ltd.*, 2015 BCCA 457, 392 D.L.R. (4th) 541, at para. 60 (citations omitted).

[53] The failure to give a party the opportunity to present its case by ordering production of necessary documents, refusing to admit relevant evidence, or failing to deal with all issues for determination, may constitute a breach of the rules of procedural fairness and natural justice: *Arbutus Software Inc. v. ACL Services Ltd.*, 2012 BCSC 1834, at para. 81. See also: *Williston Navigation Inc. v. BCR Finav No. 3*, 2007 BCSC 190, 69 B.C.L.R. (4th) 187, at paras. 45-53;

*Amos Investments Ltd. v. Minou Enterprises Ltd.*, 2008 BCSC 332, 45 B.L.R. (4th) 258, at paras. 26-39.

[54] The question for the application judge was whether the arbitrator breached Planet's right to procedural fairness, and if so, whether the breach was "sufficiently serious to offend our most basic notions of morality and justice" such that it "cannot be condoned": *Consolidated Contractors*, at para. 65.

[55] In his thorough and careful reasons, the application judge recognized that "a tribunal has the obligation to ensure equal treatment of the parties, and that minimum procedural standards are observed".

[56] He noted that Xoom's entry into the Ontario market was an important issue and that Planet sought production of documents it believed would demonstrate improper conduct concerning Xoom's entry into Ontario and efforts by ACN to assist Xoom contrary to the terms of its agreement with Planet. He noted that the arbitrator specifically adverted to Planet's argument that ACN's intertwined relationship with Xoom created a conflict of interest with ACN's obligations under the agreement, ACN shared Planet's confidential information with Xoom, it abdicated its responsibilities to Planet in favour of Xoom, and it deliberately omitted a transition plan required for an orderly wind down.

[57] The application judge noted the arbitrator's findings that,



- i. although Planet sought and obtained 400 documents from Xoom, only three were “highly relevant”, “they are all part of the same e-mail chain and concern the same subject [and do not] put any different light on the evidence that was presented at the hearing”;
- ii. “[t]o the extent that ACN disputes alleged deficiencies raised by Planet, such deficiencies will be appropriate subjects for the Parties’ pre-hearing submissions and/or cross-examination at the evidentiary hearing”; and
- iii. Planet had experienced legal counsel.

[58] The application judge also found that,

The Arbitrator set out the procedural history in respect of these documents including her rulings in the June 19, 2020 email. The Arbitrator referred to Planet’s proposal that 122 Xoom documents be admitted into the record from among 400+ documents produced by Xoom. The Arbitrator referenced her confirmation that the proposed exhibits were admitted into the record and that oral closings would take place on June 26, 2020. The Arbitrator recorded in the Award, at para. 101, that “[a]t no time before or after the Arbitrator admitted the Xoom Documents into the record did either Party ever argue that they should be permitted to recall one or more witnesses to testify or to seek the appearance of any new witness”.

...

The Arbitrator had the benefit of hearing all of the evidence and of considering Planet’s submissions about relevance of documents, prejudice from late production, and the appropriateness of drawing adverse inferences against ACN, in the context of a full understanding of the evidentiary record.

[59] The application judge therefore correctly concluded that,

It was open to counsel to request the right to cross-examine one or more witnesses on the Xoom documents. A decision was taken not to do so. It is not open to Planet, having taken this decision, to now argue that its ability to conduct further cross-examination was unfairly denied.

...

The record shows that the Arbitrator considered the arguments made by Planet and, for reasons given in the Award, she did not accept them. Planet is asking this Court to consider the evidentiary record anew and substitute new findings for those made by the Arbitrator. This is not the proper role of the Court on this application.

[60] I therefore see no error in the application judge's finding that Planet was given the opportunity to adduce the documents necessary and present its case.

[61] Moreover, although the application judge did not specifically advert to the two missing attachments to emails identified on this appeal, ACN furnished one attachment (an Excel spreadsheet) one week before the final submissions in the application, and has confirmed that the other is no longer available. The content of the attachments is clear from the description provided in the emails to which they are attached.

[62] I therefore see no error in the application judge's conclusion that, although "Planet clearly disagrees with the Arbitrator's findings and conclusions, ... it has failed to furnish proof that it was unable to present its case because of the

Arbitrator's decisions with respect to ACN's document production obligations." Moreover, at no time during the arbitration or since, has Planet articulated what additional documents it would have adduced and what prejudice was suffered by the failure to do so.

[63] The application judge also rejected Planet's argument that the arbitrator erred by ignoring Planet's evidence about ACN's audit conducted pursuant to the Agreement and, instead, relied exclusively on the evidence of the ACN's expert, which Planet says was inconsistent with the evidence as a whole and undermined on cross-examination. He noted that the auditor gave extensive reasons for his opinion. After studying the expert reports of each party, the arbitrator noted that Planet's auditing expert largely adopted Planet's representations with only limited attempts at verification. For this reason, she concluded that Planet's auditing expert's evidence should be accorded little weight.

[64] I see no error in the application judge's conclusion that the arbitrator did not ignore the evidence of Planet's expert.

[65] For these reasons, I would dismiss Planet's claim that it was unable to present its case.

### **3. The Arbitrator's Approach to the *ECPA* Issue**

[66] Planet argued before the arbitrator that ordering it to make commission payments to ACN is illegal under the *ECPA* and would expose Planet to penalties.

[67] Planet claimed that the amendment to the *ECPA* on January 1, 2017 (at s. 9.3, along with Regulation O. Reg. 389/10) provides that the remuneration to salespersons selling electricity or gas to consumers must not include any remuneration based on a commission or the value or volume of sales. Planet also relied on a memorandum from staff of the OEB (the "OEB Memorandum") which expressed the view that "a salesperson may not be remunerated for any new, renewed or extended contract based on a commission...including the renewal/extension of contracts entered on or before January 1, 2017."

[68] Planet argued that according to the plain language of the Agreement, ACN was only entitled to commissions on sales to ACN's customers with the amount of such commissions to be calculated based on these customers' usage across all products. In short, payment of the arbitral award would put Planet in breach of the *ECPA*. Planet submitted that the arbitrator "rewrote" the terms by ordering Planet to pay over \$19 million of commissions to ACN after improperly relying on extrinsic evidence of ACN's witness who was involved in the negotiation of the Agreement.

[69] ACN claimed that its entitlement to commissions arose from the acquisition of the customer, not the marketing and signing of new customer contracts and that, as such, there was no breach of the *ECPA*.

[70] The arbitrator considered the relevant provisions of the *ECPA*, along with submissions of both parties and concluded that the *ECPA does not* preclude payment of commissions for renewals that became effective on/after January 1, 2017. She also considered that the Agreement provides that customer contact rests exclusively with Planet, and that the OEB Memorandum was written on the understanding that ACN would be doing the retail sales for Planet and did not consider that Planet could directly contact its customers.

[71] In so doing, the arbitrator addressed the language of the statute and regulation, the submissions of the parties, the OEB Memorandum, and the fact that the statute is consumer protection legislation. She disagreed with the Planet's interpretation of the Agreement in light of her factual findings to which deference is owed. She found that the Agreement was clear and unambiguous on gross margin payments and the negotiation history of the Agreement showed "a consistent and uniform course of conduct with respect to ACN's entitlement to commissions from renewals." The arbitrator concluded that for any customer referred by ACN to Planet through their online portal, ACN was entitled to continue receiving commissions for as long as that customer remained with

Planet, regardless of the means by which the relationship with Planet was renewed.

[72] The application judge noted that the public policy defence should be invoked “only if the judgment involves an act that is illegal in the forum or if the action involves acts repugnant to the orderly functioning of the social or commercial life of the forum”: *Depo Traffic v. Vikeda International*, 2015 ONSC 999, at para. 47. The public policy defence is a high standard, and the onus is on the claimant to demonstrate that such enforcement “offends our local principles of justice and fairness in a fundamental way”: *Consolidated Contractors*, at para. 99, citing *Schreter v. Gasmac Inc.* (1992), 7 O.R. (3d) 608 (Sup. Ct., at p. 623).

[73] The application judge correctly observed that the arbitrator addressed the issues raised by Planet in relation to the claim for unpaid commissions and directed her mind to the arguments raised by experts and the weight to be given to their evidence. He also correctly held that the arbitrator did not disregard the *ECPA*; rather, she considered the statutory provision and its purpose and applied it to the evidence available. He held that,

The Arbitrator’s interpretation of the *ECPA* and the regulation in this context is a reasonable one. Planet has not shown that the Arbitrator made an error in her factual findings with respect to the basis for the views of OEB staff. Planet has not shown that as a result of the Arbitrator’s decision, the Award fundamentally offends the principles of justice and fairness in Ontario. The



Arbitrator's decision on the question of statutory interpretation is entitled to deference.

[74] For the reasons set out above, I see no error in the application judge's conclusion. As such, I would dismiss this ground of appeal.

### CONCLUSION

[75] For these reasons, I would dismiss Planet's appeal. On the agreement of both parties, I would award costs of this appeal to the respondent in the amount of \$25,000 all inclusive.

Released: May 8, 2023 PDL

Thabsem J.A.

I agree. Phauwers J.A.

I agree - [Signature] J.A.

This is **Exhibit "B"**  
Referred to in the Affidavit of Tom Ulry  
Affirmed remotely before me this 21<sup>st</sup> day of September, 2023

DocuSigned by:

*Catherine Dunne*

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A Commissioner for Taking Affidavits (or as may be)





**Second Report to Court of  
KSV Restructuring Inc. as  
Interim Receiver of  
Planet Energy (Ontario) Corp.**

August 14, 2023

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## **Appendices**

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COURT FILE NO.: 31-2943175

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.

SECOND REPORT OF KSV RESTRUCTURING INC.  
AS INTERIM RECEIVER OF  
PLANET ENERGY (ONTARIO) CORP.

August 14, 2023

## 1.0 Introduction

1. On May 11, 2023, 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. ("**Richter**") 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 dated 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. A copy of the Interim Receivership Order is attached as Appendix "A".
3. On June 8, 2023, the Court also made an order which, among other things: (a) 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 (b) administratively consolidated the Companies' NOI proceedings.
4. On July 4, 2023, the Court made an order which, among other things: (a) extended PEONT's stay of proceedings and the deadline to file a Proposal to August 18, 2023; and (b) approved the sale process (the "**Sale Process**") detailed in the Interim Receiver's First Report to Court dated June 27, 2023 (the "**First Report**"), which was to commence upon the filing of a certificate with the Court (the "**Sale Process Certificate**"). The Sale Process Certificate was filed by the Interim Receiver on July 5, 2023.

5. PEBC did not seek an extension to its NOI proceedings on July 4, 2023. Accordingly, PEBC was deemed to have filed an assignment in bankruptcy on July 5, 2023. Richter's appointment as PEBC's licensed insolvency trustee was affirmed at PEBC's first meeting of creditors convened on July 26, 2023.
6. The principal purpose of these proceedings is to maximize value for PEONT's creditors either through the Sale Process or an orderly wind-down of PEONT's business.
7. 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 results of the Sale Process and the Interim Receiver's anticipated next steps in these proceedings;
  - c) provide the Interim Receiver's rationale for its recommendation that the Court issue an order extending the time for PEONT to file a Proposal from August 18 to October 2, 2023; and
  - d) recommend that this Court issue an order:
    - extending the date by which PEONT is required to file a Proposal from August 18 to October 2, 2023; and
    - approving the Interim Receiver's activities from the date of the First Report to the date of this Report, as summarized herein.

## 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 PEONT's employees and the Proposal Trustee, PEONT's books and records 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 Companies' financial information presented herein.

## 1.4 Court Materials

1. Court materials filed in these proceedings are available on the Interim Receiver's website at: <https://www.ksvadvisory.com/experience/case/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 Ontario Energy Board ("**OEB**"). At the commencement of these proceedings, PEBC was inactive. On July 5, 2023, PEBC was deemed to have made an assignment in bankruptcy.
3. PEONT is also 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 were inactive.
4. PEONT leases office space located at 5775 Yonge Street, Suite 1202, Toronto, Ontario.
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. ACN is owed approximately \$35.2 million, including the amount of the judgement, costs and interest to the beginning of June 2023.
7. As at the date of this Report, there is cash on deposit in the Interim Receiver's bank account of approximately \$8.7 million, plus approximately \$933,000 being held by Scotiabank in respect of a letter of credit.

8. Further information regarding the Companies and these proceedings was provided in the First Report, a copy of which is attached as Appendix “B”, without appendices.

### 3.0 Sale Process

1. The Sale Process was detailed in the First Report, and accordingly, is not repeated in this Report.
2. On July 5, 2023, the Interim Receiver filed the Sale Process Certificate and served it on the Service List in these proceedings and the NOI proceedings. A copy of the Sale Process Certificate is attached as Appendix “C”.
3. A summary of the Sale Process milestones and timelines 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

4. Since the filing of the Sale Process Certificate, the Interim Receiver:
  - a) prepared and disseminated a “teaser” and a process letter to all parties on its buyers list (the “Potential Bidders”), including a form of non-disclosure agreement (an “NDA”);
  - b) provided access to a virtual data room containing information about the Companies’ business, including financial information, customer contracts, supply agreements and other matters. Potential Bidders were required to execute the NDA in order to obtain access to the virtual data room;
  - c) facilitated due diligence by Potential Bidders; and
  - d) prepared, with the assistance of its legal counsel, a template asset purchase agreement that was placed in the virtual data room.
5. The Interim Receiver marketed the opportunity to 51 strategic parties and published a notice regarding the Sale Process in the July 6<sup>th</sup> edition of *Energy Choice Matters*, an industry publication. In total, six parties executed NDAs and performed due diligence. No acceptable offers were submitted in the process.
6. Given the results of the Sale Process, the Interim Receiver will be taking steps to immediately wind-down the business and operations of PEONT on an orderly but expeditious basis. The Interim Receiver will be speaking with the OEB and its counsel to coordinate the customer transition process.

## 4.0 Extension of the NOI Proceeding

1. On July 4, 2023, the Court approved an extension of PEONT's NOI proceedings to August 18, 2023. The Interim Receiver, on behalf of PEONT, is now seeking an extension of the time to file a Proposal to October 2, 2023.
2. Further information regarding the extension of the stay of proceedings is included in the Proposal Trustee's Third Report to Court, to be filed.
3. The Interim Receiver is supportive of the extension being sought of PEONT's NOI proceedings. At this time, it appears that the net proceeds available for distribution to PEONT's creditors will likely be distributed pursuant to a Proposal to be filed in due course.

## 5.0 Overview of the Interim Receiver's Activities

1. The Interim Receiver's activities from the commencement of these proceedings to the date of the First Report were approved pursuant to a Court Order dated July 4, 2023. Since that time, the Interim Receiver's activities have included, among other things, the following:
  - corresponding on a near daily basis on operational issues with PEONT's management team and Tom Ulry, a representative of ACN engaged by the Interim Receiver as a consultant<sup>1</sup> to oversee PEONT's operations during the interim receivership proceedings;
  - arranging for the Sale Process Certificate to be filed and served on the Service List in these proceedings and the NOI proceedings;
  - conducting the Sale Process in accordance with a Court order dated July 4, 2023, including the steps set out in Section 3(3) of this Report;
  - corresponding extensively with the Interim Receiver's legal counsel, DLA Piper (Canada) LLP ("DLA"), concerning all matters in these proceedings;
  - dealing with DLA and DLA Piper LLP (U.S.) concerning the PEPC letter of credit posted by PEONT and U.S. litigation involving PEPC, the Commonwealth of Pennsylvania and the Pennsylvania Public Utilities Commission, as summarized in the First Report;
  - dealing with cash management issues, including paying vendors for post-filing supply and transferring funds from PEONT's bank accounts at Scotiabank to the Interim Receiver's accounts;
  - reviewing and processing employee payroll and benefit payments;
  - corresponding with stakeholders or their legal counsel, including ACN, OEB, Shell USA, Inc. and Scotiabank;

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<sup>1</sup> Mr. Ulry's consulting agreement was approved pursuant to a Court order dated July 4, 2023.



- maintaining the Interim Receiver Website; and
- dealing with all other matters in this proceeding not specifically addressed above.

## 6.0 Conclusion and Recommendation

1. Based on the foregoing, the Interim Receiver respectfully recommends that this Court make an order granting the relief set out in Section 1.1(1)(d) 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 NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

Court /Estate Nos. 31-2943175  
and 31-2943168

**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**

Court File No. 31-2943168  
Estate No. 31-2943168

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

**ORDER**

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

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## **Appendix “B”**



**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.

\* \* \*

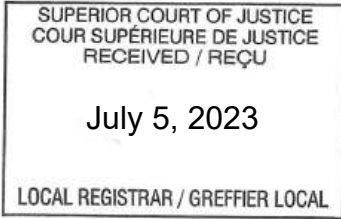
All of which is respectfully submitted,

*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 “C”**



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.**

**SALE PROCESS CERTIFICATE**

**RECITALS**

I. Pursuant to the Order of the Honourable Madam Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated June 8, 2023, KSV Restructuring Inc. was appointed as the interim receiver (in such capacity, the “**Interim Receiver**”), without security, of the property, assets and undertakings of Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. (together, “**Planet Energy**”).

II. Pursuant to the Order of the Honourable Justice Osborne dated July 4, 2023 (the “**Sale Process Approval Order**”), the Court approved a sale process in respect of Planet Energy’s business and assets to be conducted by the Interim Receiver (the “**Sale Process**”), which process shall commence upon the filing of a sale process certificate and upon serving the sale process certificate on the service list in these proceedings and the NOI proceedings commenced by Planet Energy under the *Bankruptcy and Insolvency Act* (Canada).

**THE INTERIM RECEIVER HEREBY GIVES NOTICE** of the following:

1. in accordance with the Sale Process Approval Order, upon filing this Certificate with the Court and serving it upon the above-noted parties, the Interim Receiver shall commence the Sale Process; and

2. this Certificate was filed by the Interim Receiver at 11:30am on July 5, 2023.

**KSV Restructuring Inc.**, in its capacity as Court-appointed Interim Receiver of Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. and not in its personal or corporate capacity.



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Name: David Sieradzki  
Title: Managing Director

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

**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**

**SALE PROCESS CERTIFICATE**

**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

This is **Exhibit "C"**  
Referred to in the Affidavit of Tom Ulry  
Affirmed remotely before me this 21<sup>st</sup> day of September, 2023

DocuSigned by:

*Catherine Dunne*

2A74777EB93546F

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A Commissioner for Taking Affidavits (or as may be)





## SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: BK-23-02943175-0031

DATE: August 17, 2023

NO. ON LIST: 10

**TITLE OF PROCEEDING: Notice of Intention to Make a Proposal of Planet Energy (Ontario) Corp.**  
**BEFORE: JUSTICE CONWAY**

**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Edmond Lamek	Interim Receiver (KSV Restructuring)	<a href="mailto:Edmond.lamek@dlapiper.com">Edmond.lamek@dlapiper.com</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Laura Culleton	Proposal Trustee (Richter Inc.)	<a href="mailto:laurac@chaitons.com">laurac@chaitons.com</a>
Evan Snyder	All Communications Network of Canada	<a href="mailto:Evan.snyder@paliareroland.com">Evan.snyder@paliareroland.com</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Patrick Corney	Ontario Energy Board	<a href="mailto:pcorney@millerthomson.com">pcorney@millerthomson.com</a>

**ENDORSEMENT OF JUSTICE CONWAY:**

- [1] The Interim Receiver brings this motion for an order extending the time to make a proposal. The extension sought is to October 2, 2023. The Proposal Trustee supports the extension as does the largest creditor ACN. No one opposes.

- [2] The extension will give an opportunity for the company to continue work on an orderly wind-down of the business and determine if a distribution proposal or a bankruptcy is most advantageous for stakeholders. The extension is acceptable to me, as is the balance of the relief sought.
- [3] Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is positioned below the text of the second list item.

Court File No. 31-2943175

Estate No. 31-2943175

**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**

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF TOM ULRYS**

**Paliare Roland Rosenberg Rothstein LLP**

155 Wellington Street West 35th Floor  
Toronto ON M5V 3H1  
Tel: 416.646.4300

**Kris Borg-Olivier (LSO# 53041R)**

Tel: 416.646.7490  
Email: Kris.Borg-Olivier@paliareroland.com

**Massimo Starnino (LSO#41048G)**

Tel: 416.6467431  
Email: Max.Starnino@paliareroland.com

**Evan Snyder (LSO# 82007E)**

Tel: 416.646.6320  
Email: evan.snyder@paliareroland.com

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

# TAB 3

**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 PLANET ENERGY (B.C.) CORP.**

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

**AFFIDAVIT OF DAVID SIERADZKI  
(Sworn September 20, 2023)**

I, David Sieradzki, of the City of Toronto, in the Province of Ontario, MAKE OATH AND  
SAY:

1. I am a Managing Director of KSV Restructuring Inc. ("KSV").
2. Pursuant to an application filed by All Communications Network of Canada Co. ("ACN"), the Ontario Superior Court of Justice (Commercial List) ("Court") made an order on June 8, 2023 appointing KSV as interim receiver (the "Interim Receiver"), under section 47.1 of the *Bankruptcy and Insolvency Act*, of all of the property, assets and undertaking acquired for, or used in relation to, the business carried on by Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.
3. I have been involved in the management of this mandate since the proceedings commenced. As such, I have knowledge of the matters to which I hereinafter depose.
4. I hereby confirm that attached as Exhibit "A" hereto are true copies of the accounts of KSV for the period ended August 31, 2023 and confirm that these accounts accurately reflect the services provided by KSV and the fees and disbursements claimed by it.

5. Additionally, attached hereto as Exhibit "B" is a summary of additional information with respect to all members of KSV who have worked on this matter, including their roles, hours and rates, and I hereby confirm that the list represents an accurate account of such information.

6. I consider the accounts to be fair and reasonable considering the circumstances connected with this administration.

7. I also confirm that the Interim Receiver has not received, nor expects to receive, nor has the Interim Receiver been promised any remuneration or consideration other than the amount claimed in the accounts.

**SWORN BEFORE ME** at the City of Toronto, on September 20, 2023.



Catherine Anne Stuyck-Therault, A Commissioner, etc.,  
Province of Ontario for KSV Advisory Inc. and  
KSV Restructuring Inc.  
Expires February 19, 2025



David Sieradzki



This is Exhibit "A" referred to in the  
Affidavit of David Sieradzki sworn before  
me, this 20th day of September, 2023

A handwritten signature in blue ink, appearing to read "Chalk", is positioned above a horizontal dotted line.

.....  
Catherine Anne Stuyck-Therault, a Commissioner, etc.,  
Province of Ontario, for KSV Advisory Inc. and KSV Restructuring Inc.  
Expires February 19, 2025



**ksv advisory inc.**

220 Bay Street, Suite 1300

Toronto, Ontario, M5J 2W4

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ksvadvisory.com

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**INVOICE**

Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

July 10, 2023

Invoice No: 3179

HST #: 818808768RT0001

**Re: Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. (jointly, the “Company”)**

For professional services rendered during June 2023 by KSV Restructuring Inc. (“KSV”) in its capacity as court-appointed interim receiver (“Interim Receiver”) of the Company, including:

- corresponding with Paliare Roland Rosenberg Rothstein LLP (“Paliare”), legal counsel to All Communications Network of Canada Co. (“ACN”), and DLA Piper (Canada) LLP (“DLA”) concerning all matters in these proceedings, including ACN’s interim receivership application materials filed in connection with the hearing of the application on June 8, 2023 (the “IR Application”);
- reviewing and commenting on multiple versions of ACN’s draft interim receivership application materials, including the appointment order, and discussing same with Paliare and DLA;
- corresponding with representatives of Richter Inc. (the “Proposal Trustee”), the proposal trustee under the Company’s notices of intention to make a proposal (the “NOI Proceedings”), and Chaitons LLP (“Chaitons”), the Proposal Trustee’s legal counsel;
- planning for the interim receivership proceedings, including drafting letters to the Company’s employees, landlord, bank, insurance providers and other stakeholders;
- attending at the IR Application on June 8, 2023;
- reviewing Justice Steele’s endorsement dated June 8, 2023;
- corresponding extensively with legal counsel to the Ontario Energy Board (“OEB”) and OEB representatives in respect of the ongoing operations of the Company during the interim receivership proceedings;

- arranging with representatives of Scotiabank to place a freeze on the Company's bank accounts and to transfer the funds on deposit into the Interim Receiver's bank account;
- corresponding with Nino Sylvestri, including regarding his resignation from the Company;
- convening an employee meeting on June 15, 2023;
- drafting a letter provided to all employees following the townhall meeting on June 15, 2023;
- drafting the statement and notice of the interim receiver as required under Subsections 245 and 246 of the *Bankruptcy and Insolvency Act* and arranging for same to be sent to the Company's creditors and filed with the Office of the Superintendent of Bankruptcy;
- engaging with the Company's management team on all operational issues and discussing the engagement of Tom Ulry, a representative of ACN, to oversee the Company's operations during the interim receivership proceedings;
- reviewing and commenting on a consulting agreement dated June 20, 2023 (the "Consulting Agreement") between Mr. Ulry and the Interim Receiver;
- attending at numerous meetings on a near daily at the outset of these proceedings between Mr. Ulry and the Company's management team;
- developing a key employee retention plan ("KERP") for certain of the Company's employees;
- drafting a letter setting out the terms of the KERP and providing same to the four KERP employees;
- drafting a notice and sending same to the Company's utility providers;
- drafting a notice for the Company's customers and posting same on the Interim Receiver's website;
- reviewing multiple versions of the Company's normalized operating results and discussing same with management and Mr. Ulry to, *inter alia*, determine the Company's profitability and viability;
- reviewing extensive correspondence in connection with litigation involving the Company's US subsidiary in Pennsylvania and considering issues with DLA involving a letter of credit posted by the Company;
- reviewing correspondence between DLA and Scotiabank's legal counsel in connection with the Pennsylvania letter of credit;
- corresponding with Jordan Small, the Company's US based employee who oversees regulatory matters, regarding the Pennsylvania litigation matter;

- processing payments for operational matters from the Interim Receiver's bank account following daily meetings with the Company's controller to deal with cash management issues;
- developing a sale process for the Company's business and assets (the "Sale Process") for which Court approval was sought on July 4, 2023 (the "July 4<sup>th</sup> Motion");
- drafting a "teaser" to be used in the Sale Process and discussing same with Mr. Ulry;
- preparing a buyer's list and a confidentiality agreement for the Sale Process;
- compiling information for a data room for prospective purchasers to perform diligence;
- drafting the Interim Receiver's First Report to Court dated June 27, 2023 (the "First Report") filed in connection with the July 4<sup>th</sup> Motion, the purpose of which, inter alia, is to recommend Court approval of the Sale Process and the KERP;
- discussing the First Report with DLA, Mr. Ulry and Paliare before finalizing same on June 27, 2023;
- reviewing and commenting on draft Court materials filed in connection with the July 4<sup>th</sup> Motion, including a notice of motion and order;
- reviewing the Proposal Trustee's report to Court dated June 28, 2023 and discussing same with DLA, Chaitons and the Proposal Trustee;
- reviewing the cash flow forecast that was appended to the Proposal Trustee's report;
- drafting the Supplement to the First Report dated June 29, 2023, the purpose of which was to recommend the Court grant certain protections to Mr. Ulry in his capacity as consultant to the Interim Receiver pursuant to the Consulting Agreement;
- corresponding with Mr. Sylvestri in order to transfer cash in the Company's bank accounts at JP Morgan to the Interim Receiver's bank accounts;
- responding to creditor enquiries regarding the status of their claims against the Company; and
- to all other meetings, correspondence, etc. pertaining to this matter.

Total fees and disbursements per attached time summary	\$ 125,193.33
HST	16,275.13
Total Due	\$ <u>141,468.46</u>

KSV Restructuring Inc.  
Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.

**Time Summary**

For the period ended June 30, 2023

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Bobby Kofman	800	54.55	43,640.00
David Sieradzki	700	41.00	28,700.00
Eli Brenner	535	17.75	9,496.25
Jordan Wong	525	46.50	24,412.50
Ali Manji	250	13.25	3,312.50
Catherine Theriault	225	41.25	9,281.25
Other Staff and Administration			4,758.75
Total Fees			<u>123,601.25</u>
Add: Out-of-Pocket Disbursements			
Firmex fee			1,000.00
Ascend fee			550.00
Postage			25.98
Photocopies			16.10
Total Out of Pocket Disbursements			<u>1,592.08</u>
<b>Total Fees and Disbursements</b>			<u><u>125,193.33</u></u>



**ksw advisory inc.**

220 Bay Street, Suite 1300

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**INVOICE**

Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

August 10, 2023

Invoice No: 3219

HST #: 818808768RT0001

**Re: Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. (jointly, the “Company”)**

For professional services rendered during July 2023 by KSV Restructuring Inc. (“KSV”) in its capacity as court-appointed interim receiver (“Interim Receiver”) of the Company, including:

- corresponding on a near daily basis on operational issues with the Company’s management team and Tom Ulry, a representative of All Communications Network of Canada Co. (“ACN”) engaged as a consultant to oversee the Company’s operations during the interim receivership proceedings;
- corresponding extensively with DLA Piper (Canada) LLP (“DLA”) concerning all matters in these proceedings;
- corresponding periodically with representatives of Richter Inc. (the “Proposal Trustee”), the proposal trustee under the Company’s notices of intention to make a proposal (the “NOI Proceedings”), and Chaitons LLP (“Chaitons”), the Proposal Trustee’s legal counsel, particularly in respect of a motion heard July 4, 2023 to extend the deadline for the Company to file a proposal;
- attending at Court virtually on July 4, 2023;
- filing the Interim Receiver’s Sale Process Certificate on July 5, 2023 in order to commence the Court-approved sale process (the “Sale Process”);
- carrying out the Sale Process in accordance with a Court order dated July 4, 2023, including:
  - drafting and finalizing a “teaser” to be used in the Sale Process and discussing same with Mr. Ulry;
  - preparing a buyer’s list and a confidentiality agreement for the Sale Process;



- compiling Company financial, contract and other information to be placed into a data room for prospective purchasers to perform diligence;
  - working with DLA to prepare a template Asset Purchase Agreement and placing same in the data room;
  - corresponding with numerous interested parties;
  - negotiating revisions to confidentiality agreements proposed by prospective purchasers;
  - facilitating due diligence requests submitted by prospective purchasers;
  - attending calls with prospective purchasers, management and/or Mr. Ulry to respond to information requests submitted by prospective purchasers;
- corresponding on July 7, 10, 13 and 24, 2023 with legal counsel to the Ontario Energy Board (“OEB”) and OEB representatives in respect of the ongoing operations of the Company during the interim receivership proceedings;
  - arranging with representatives of Scotiabank for weekly transfers of funds on deposit in the Company’s accounts into the Interim Receiver’s bank account;
  - corresponding on July 4, 6, 10, 18 and 21, 2023 with Nino Sylvestri regarding various issues, including arranging for access to the Company’s accounts with JP Morgan;
  - reviewing multiple versions of the Company’s normalized operating results and discussing same with management and Mr. Ulry to, *inter alia*, determine the Company’s profitability and viability;
  - reviewing correspondence in connection with litigation involving the Company’s US subsidiary in Pennsylvania and considering issues with DLA involving a letter of credit posted by the Company;
  - reviewing correspondence between DLA and Scotiabank’s legal counsel in connection with the Pennsylvania letter of credit;
  - attending videoconference meetings with DLA regarding the Pennsylvania litigation matter, including a meeting on July 25, 2023 to discuss a settlement offer;
  - reviewing and commenting on a settlement offer dated July 26, 2023;
  - corresponding with Jordan Small, the Company’s US based employee who oversees regulatory matters, regarding the Pennsylvania litigation matter;
  - processing payments for operating expenses from the Interim Receiver’s bank account following daily meetings with the Company’s controller to deal with cash management issues;
  - corresponding with Mr. Ulry and Shell regarding the continued gas supply following October 1, 2023;

- corresponding with the Proposal Trustee concerning the bankruptcy proceedings of Planet Energy (B.C.) Corp. ("PEBC") and attending the First Meeting of Creditors on July 26, 2023;
- corresponding with Mr. Ulry and ACN's legal counsel in connection with the filing of a proof of claim by ACN and the appointment of Mr. Ulry as an inspector in PEBC's bankruptcy proceedings;
- responding to creditor enquiries regarding the status of their claims against the Company; and
- to all other meetings, correspondence, etc. pertaining to this matter.

Total fees and disbursements per attached time summary	\$ 93,764.59
HST	12,189.40
Total Due	<u>\$ 105,953.99</u>

KSV Restructuring Inc.  
Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.

**Time Summary**

For the period ended July 31, 2023

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Bobby Kofman	800	28.95	23,160.00
David Sieradzki	700	22.00	15,400.00
Eli Brenner	535	47.75	25,546.25
Jordan Wong	525	26.75	14,043.75
Catherine Theriault	225	36.85	8,291.25
Other Staff and Administration			3,671.00
Total Fees			<u>90,112.25</u>
Add: Out of Pocket Disbursements			
Dropbox, Microsoft			3,580.95
Postage			71.39
Total Disbursements			<u>3,652.34</u>
Total Fees and Disbursements			<u><u>93,764.59</u></u>



**ksv advisory inc.**

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**INVOICE**

Planet Energy (Ontario) Corp.  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

September 14, 2023

Invoice No: 3267

HST #: 818808768RT0001

**Re: Planet Energy (Ontario) Corp. (the “Company”)**

For professional services rendered during August 2023 by KSV Restructuring Inc. (“KSV”) in its capacity as court-appointed interim receiver (the “Interim Receiver”) of the Company, including:

- corresponding regularly on operational issues with the Company’s management team and Tom Ulry, a representative of All Communications Network of Canada Co. (“ACN”) who was engaged as a consultant to oversee the Company’s operations during the interim receivership proceedings, including email correspondence dated August 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, and 29, 2023;
- corresponding extensively with DLA Piper (Canada) LLP (“DLA”) concerning all matters in these proceedings;
- corresponding periodically with representatives of Richter Inc. (the “Proposal Trustee”), the proposal trustee under the Company’s notices of intention to make a proposal (the “NOI Proceedings”), and Chaitons LLP (“Chaitons”), the Proposal Trustee’s legal counsel, particularly in respect of a motion heard August 17, 2023 to extend the deadline for the Company to file a proposal;
- drafting the Interim Receiver’s Second Report to Court dated August 14, 2023 in support of the extension motion;
- reviewing the Proposal Trustee’s motion materials and corresponding with Chaitons and the Proposal Trustee regarding same;
- attending at Court virtually on August 17, 2023;
- carrying out and completing the Court-approved sale process, including corresponding with prospective bidders on diligence items until the bid deadline of August 10, 2023;

- working with management to plan and initiate the customer transition and orderly wind-down process, including drafting notices to customers and utilities (the “Notices”);
- reviewing and commenting on multiple versions of the Notices, including to address comments received on the Notices from the Ontario Energy Board (“OEB”) and its legal counsel;
- attending a videoconference with OEB and its legal counsel on August 14, 2023 to discuss the wind-down process;
- negotiating an extension to the Company’s gas supply contract with Shell and corresponding with Shell’s representatives to confirm certain terms and conditions of supply in the event gas supply is required during October 2023;
- corresponding with Mr. Ulry regarding the terms of Shell’s supply agreement;
- reviewing correspondence in connection with litigation involving the Company’s US subsidiary in Pennsylvania and considering issues with DLA involving a letter of credit posted by the Company;
- reviewing correspondence between DLA and the Pennsylvania Utilities Commission in connection with the litigation and potential settlement thereof;
- attending videoconference meetings with DLA regarding the Pennsylvania litigation matter;
- corresponding with Jordan Small, the Company’s US based employee who oversees regulatory matters, regarding the Pennsylvania litigation matter;
- preparing, at ACN’s request, an estimated recovery analysis and circulating same on or around August 9, 2023;
- arranging with representatives of Scotiabank for weekly transfers of funds on deposit in the Company’s accounts into the Interim Receiver’s bank account;
- processing payments for operating expenses from the Interim Receiver’s bank account following daily meetings with the Company’s controller to deal with cash management issues;
- responding to creditor enquiries regarding the status of their claims against the Company; and
- to all other meetings, correspondence, etc. pertaining to this matter.

Total fees and disbursements per attached time summary	\$ 64,247.09
HST	8,352.12
Total Due	\$ <u>75,599.21</u>

KSV Restructuring Inc.  
Planet Energy (Ontario) Corp.

**Time Summary**

For the period ended August 31, 2023

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Bobby Kofman	800	26.45	21,160.00
David Sieradzki	700	29.00	20,300.00
Eli Brenner	535	3.50	1,872.50
Jordan Wong	525	16.50	8,662.50
Catherine Theriault	225	29.45	6,626.25
Other Staff and Administration			5,550.50
Total Fees			64,171.75
Disbursements (postage)			75.34
Total Fees and Disbursements			64,247.09



This is Exhibit "B" referred to in the  
Affidavit of David Sieradzki sworn before  
me, this 20th day of September, 2023



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Catherine Anne Stuyck-Therault, a Commissioner, etc.,  
Province of Ontario, for KSV Advisory Inc. and KSV Restructuring Inc.  
Expires February 19, 2025

**Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.**  
**Schedule of Professionals' Time and Rates**  
**For the Period of June 1, 2023 to August 31, 2023**

Exhibit "B"

<u>Name</u>	<u>Role</u>	<u>Hours</u>	<u>Billing Rate (Per Hour)</u>	<u>Total Fees by Professional (\$)</u>
Robert Kofman	Overall responsibility	109.95	\$ 800	87,960.00
David Sieradzki	All aspects of mandate	92.00	\$ 700	64,400.00
Eli Brenner	Sale process	69.00	\$ 535	36,915.00
Jordan Wong	All aspects of mandate	89.75	\$ 525	47,118.75
Ali Manji	Sale process	13.25	\$ 250	3,312.50
Catherine Theriault	Payment process	107.55	\$ 225	24,198.75
Other staff and administrative		66.10	\$ 175 - 250	13,980.25
<b>Total</b>		<b>547.60</b>		<b>277,885.25</b>
Average hourly rate				<b>507.46</b>

# TAB 4

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

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

**FEE AFFIDAVIT OF EDMOND F.B. LAMEK  
(sworn September 20, 2023)**

I, EDMOND F. B. LAMEK, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a partner in the law firm of DLA Piper (Canada) LLP (“DLA”), the solicitors to the Interim Receiver, KSV Restructuring Inc. (the “Interim Receiver”). I have knowledge of the matters hereinafter deposed to.

2. Attached hereto as **Exhibit “A”** are copies of the Statements of Account of DLA in respect of services rendered to the Interim Receiver during the period from May 11, 2023 to August 31, 2023 (the “Billing Period”). During the Billing Period, the total fees billed by DLA were \$90,159, plus disbursements in the amount of \$122.21 and applicable taxes in the amount of \$11,736.58.

3. As set out in the following table, 111.2 hours were billed by DLA personnel during the Billing Period, resulting in an average hourly rate of \$810.78 (exclusive of applicable taxes):

<b>Lawyers/Clerks</b>	<b>Hours</b>	<b>Rate/Hr.</b>
Edmond Lamek	73.9	\$885
Danny Nunes	28.1	\$675
Michael Styczen	9.2	\$650
<b>TOTAL</b>	<b>111.2</b>	<b>Avg. Rate/Hr: \$810.78</b>

4. The activities detailed in the Statements of Account attached as Exhibit "A" accurately reflect the services provided by DLA and the rates charged are the standard hourly rates of those individuals at DLA at the time they were incurred.

5. Based on my review of the work in process on the DLA accounting system and my estimate of work to be done for the Interim Receiver up to September, 26, 2023, I verily believe that DLA's fees for the period September 1, 2023 to September 26, 2023 will not exceed \$20,000 inclusive of disbursements and applicable taxes.

6. I swear this affidavit in support of a motion for, *inter alia*, approval of the fees and disbursements of DLA set out above and for no other or improper purpose.

Sworn before me at the  
City of Toronto, in the  
Province of Ontario, this  
26<sup>th</sup> day of September, 2023.

  
A Commissioner for taking affidavits, etc.

DANNY NUNES



EDMOND F.B. LAMEK

This is Exhibit <sup>2 u</sup> A referred to in the  
affidavit of... EDMOND LAMEK  
sworn before me, this... 20<sup>th</sup>  
day of... SEPTEMBER... 20... 23

  
A COMMISSIONER FOR TAKING AFFIDAVITS

DANNY JONES





**DLA Piper (Canada) LLP**  
 Suite 6000, 1 First Canadian Place  
 PO Box 367, 100 King St W  
 Toronto ON M5X 1E2  
 www.dlapiper.com  
 T 416.365.3500  
 F 416.365.7886

KSV Restructuring Inc.  
 220 Bay Street  
 13th Floor, PO Box 20  
 Toronto, ON M5J 2W4 Canada

July 20, 2023

Attention: Bobby Kofman

INVOICE NUMBER: 2209686  
 FILE NUMBER: 103454-00008  
 BUSINESS NUMBER: REG # 110 152 824  
 FROM THE OFFICE OF: Edmond Lamek  
 DIRECT LINE: 416.365.3444

For Professional Services rendered and/or disbursements advanced through June 30, 2023.

Total Fees:	\$	50,019.50
Total Disbursements:	\$	122.21
Total HST:	\$	6,518.44
<b>Total Current Invoice Due:</b>	<b>CAD \$</b>	<b>56,660.15</b>

*Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.*

**Remittance Advice:**

Invoice No: 2209686

**Cheque Payments To:**  
 DLA Piper (Canada) LLP

1133 Melville St, Suite 2700  
 Vancouver, BC  
 V6E 4E5 Canada

*Please return remittance advice with cheque.*

**Credit Card Payments:**

<https://payments.dlapiper.ca>

Tel: 604.643.2955  
 Toll free: 1.833.299.9022

**Please be sure to indicate invoice number on all payments**

File No: 103454-00008

Amount: **CAD 56,660.15**

**Canadian Dollar EFT Payments To:**  
 DLA Piper (Canada) LLP

Bank: 010  
 Transit: 00010  
 Account Number: 2901315

**Canadian Dollar Wire Payments To:**

DLA Piper (Canada) LLP  
 Beneficiary Acc#: 000102901315  
 Bank: CANADIAN IMPERIAL  
 BANK OF COMMERCE  
 Canadian clearing code: //CC001000010  
 Swift Code: CIBCCATT  
 Bank Address: 400 Burrard Street  
 Vancouver, BC V6C 3A6

**US Dollar Wire Payments To:**  
 DLA Piper (Canada) LLP

Beneficiary Acc#: 000100368016  
 Bank: CANADIAN IMPERIAL  
 BANK OF COMMERCE  
 Swift Code: CIBCCATT  
 Bank Address: 400 Burrard Street  
 Vancouver, BC V6C 3A6

Intermediary Bank: Wells Fargo Bank, N.A.  
 New York, NY, US

Swift Code: PNBPU3NNYC  
 ABA#: 026005092



DLA Piper (Canada) LLP  
Suite 6000, 1 First Canadian Place  
PO Box 367, 100 King St W  
Toronto ON M5X 1E2  
www.dlapiper.com  
T 416.365.3500  
F 416.365.7886

KSV Restructuring Inc.  
220 Bay Street  
13th Floor, PO Box 20  
Toronto, ON M5J 2W4 Canada

Attention: Bobby Kofman

Our File No: 103454-00008

KSV Restructuring Inc.  
Re: Planet Energy Group Receivership Proceedings

Date: July 20, 2023  
Invoice Number: 2209686

### PROFESSIONAL SERVICES

For Professional Services rendered and/or disbursements advanced through June 30, 2023.

<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
05/11/23	Edmond Lamek	Email discussion with KSV regarding NOI filings by Planet Energy companies and responding strategies;	0.50	347.50
05/12/23	Edmond Lamek	Reviewing and commenting on draft ACN Affidavit and emails with B. Kofman re same;	0.50	347.50
06/02/23	Edmond Lamek	Reviewing and emails re draft factum and BIA tests for NOI extension;	0.50	442.50
06/05/23	Edmond Lamek	Reviewing and commenting on latest draft Planet Energy IR Order; emails with B. Kofman;	0.30	265.50
06/08/23	Edmond Lamek	Reviewing Planet Energy Endorsement, call with KSV, Teams call with Paliare and KSV, emails with Stikeman's, review revised order, follow up emails;	2.00	1,770.00
06/08/23	Danny Nunes	Correspondence with E. Lamek regarding new matter and review reasons of J. Steele appointing interim receiver;	0.40	270.00
06/09/23	Edmond Lamek	8:00am call and 11:30am call with KSV, PE, SE regarding terms of Interim Receiver Order; follow up call with KSV; reviewing and commenting on updated drafts;	1.80	1,593.00
06/09/23	Danny Nunes	Review correspondence regarding interim receivership order;	0.10	67.50
06/14/23	Edmond Lamek	2:30pm MST Call with KSV and Stikemans regarding Email protocol for IR to protect	2.60	2,301.00



<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		privilege; emails re ACN data requests; emails re stay extension motion and related relief and logistics; emails re Nino resignation response; reviewing updated Pennsylvania complaint response;		
06/14/23	Danny Nunes	Correspondence with E. Lamek regarding scheduling motion to extend deadline to file proposal; review correspondence regarding same; review J. Steele orders;	0.90	607.50
06/15/23	Edmond Lamek	Email discussions with KSV e Nino Resignation; Pennsylvania PUC response; revising PUC response to explain IR role and clarify insolvency filings; emails with Nunes re stay extension motion; emails and call; with counsel to BNS re Letters of Credit; emails with Mike Styczen re LC and Pennsylvania response;	2.70	2,389.50
06/15/23	Michael J. Styczen	Review PUC response and LOCs; Email to client re PUC response; Revise LOC and email to clients;	2.60	1,690.00
06/15/23	Danny Nunes	Correspondence to commercial court regarding scheduling motion for deadline to file proposal; correspondence with E. Lamek regarding same;	0.50	337.50
06/16/23	Edmond Lamek	10:30am status call with ACN and Paliare; email exchanges re Pennsylvania response and BNS LC; Nino resignation; 2:30pm call with OEB and follow up emails with Mike Styczen re unfair practices under regulations and related input from OEB;	2.40	2,124.00
06/16/23	Michael J. Styczen	Email to client re: fair trading rules; Email to client re: insurance disclosure;	1.60	1,040.00
06/16/23	Danny Nunes	Correspondence with commercial court regarding proposal deadline extension; correspondence with E. Lamek regarding same; review correspondence regarding relief sought on motion;	0.70	472.50
06/19/23	Danny Nunes	Attend call with E. Lamek and G. Benchetrit to discuss motion;	0.40	270.00
06/19/23	Edmond Lamek	Drafting notice to utilities, script for customer interactions, Tom Ulry consulting agreement; many relates emails with KSV; call with Chaitons re call for claims process and related priorities and implications; emails with lawyer for OEB; discussing July 4 motion relief with Danny Nunes;	4.70	4,159.50



<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
06/19/23	Michael J. Styczen	Review notice to utilities; Comments to E. Lamek;	0.50	325.00
06/20/23	Michael J. Styczen	Email clients re: replacement of offices; telephone E. Lamek;	0.40	260.00
06/20/23	Edmond Lamek	Reviewing and revising KERP Letter; reviewing and revising Consultant Agreement; emails re PE Office lease disclaimer claim amount; emails re former PE Staff names on regulatory registers and OEB requirements;	1.70	1,504.50
06/20/23	Danny Nunes	Review KERP letter;	0.20	135.00
06/21/23	Michael J. Styczen	Revise correspondence re: letter of credit; Email clients;	0.30	195.00
06/21/23	Edmond Lamek	Discussion with BK re OEB requirements for PE Contact persons; emails with KSV re my proposed correspondence to counsel to BNS re Letter of Credit; emails re PE Pennsylvania and other PE US entities;	1.60	1,416.00
06/22/23	Edmond Lamek	Calls and email discussions with KSV re BNS LC, KERP, SISP, Shell; email to T Hogan, lawyer for BNS re Pennsylvania PUC Letter of Credit; emails with DLA Philadelphia re Penn PUC dispute; many follow up emails re July 4 motion relief and PE Ont. contract portfolio value/realization. Emails with D Nunes.	2.20	1,947.00
06/22/23	Danny Nunes	Review correspondence from E. Lamek regarding relief being sought on motion;	0.20	135.00
06/23/23	Edmond Lamek	Email and phone discussions with B. Kofman re calling for claims; call with Tim Hogan re BNS position on Penn PUC Letter of Credit; emails with Jordan Small and DLA Philadelphia re PUC proceeding; MST update call with KSV and Shell US lawyer; email discussion with D Nunes and D Sieradzki re July 4 motion and KERP sealing;	2.70	2,389.50
06/23/23	Danny Nunes	Correspondence with E. Lamek regarding relief sought on motion; correspondence with D. Sieradzki, B. Kofman and E. Lamek regarding same;	0.90	607.50
06/24/23	Danny Nunes	Review correspondence from E. Lamek regarding relief sought on motion; draft motion materials and circulate same;	1.90	1,282.50
06/25/23	Edmond Lamek	Revising NoM, Order, IR Report for July 4 motion; related emails with KSV and D	1.50	1,327.50



Matter: 103454-00008  
Invoice: 2209686  
Page : 4

<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		Nunes;		
06/25/23	Danny Nunes	Correspondence with E. Lamek regarding draft motion materials; review draft interim receiver's report and revise same; revise motion materials; correspondence regarding same;	2.30	1,552.50
06/26/23	Edmond Lamek	Reviewing and revising draft July 4 court materials and draft Interim Receiver Report; emails re WEPPA, SISF, PE BC Bankruptcy, BNS position on Letter of Credit, emails with DLA Pennsylvania re Penn PUC complaint status;	1.80	1,593.00
06/26/23	Danny Nunes	Review correspondence from B. Kofman regarding draft motion materials; discuss same with E. Lamek; review correspondence regarding service of same; review draft interim receiver's report; revise draft motion materials and circulate for comment; review correspondence regarding BNS position on LOC as well as US accounts;	2.50	1,687.50
06/27/23	Edmond Lamek	Reviewing and commenting on latest versions of Court materials for July 4; emails with DLA Philadelphia regarding Penn PUC complaint status; emails re BNS Travelers Letter of Credit demand;	1.80	1,593.00
06/27/23	Danny Nunes	Review draft proposal trustee's report; correspondence regarding finalizing motion materials; revise same; finalize motion materials and serve same;	3.00	2,025.00
06/28/23	Edmond Lamek	Drafting Supplemental Report and Order to provide protections to IR's consultant; emails and calls re same; revising, circulating, emails with counsel to ACN; emails re Travellers LoC, evening emails re Consultant Order; emails re Penn PUC issues;	4.80	4,248.00
06/28/23	Danny Nunes	Review proposal trustee's second report; review correspondence from B. Kofman regarding draft supplemental report; review draft report and consultant protections order; draft amended notice of motion; review correspondence with ACN counsel regarding consultant protections order;	1.60	1,080.00
06/29/23	Edmond Lamek	Call with Max Starnino re Consultant Order; noon call with DLA Philadelphia regarding Penn PUC Complaint and Letter of Credit;	1.40	1,239.00
06/29/23	Danny Nunes	Review correspondence regarding Planet Energy bank accounts; review	3.10	2,092.50



<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		correspondence regarding draft consultant protections order; finalize supplemental motion materials; review revised supplemental report; finalize and serve supplemental motion materials and see to service and filing of same; correspondence to J. Osborne regarding confidential appendices;		
06/30/23	Edmond Lamek	Letter from OEB, emails re same; emails re Penn AG Investigation and interplay with Penn PUC Complaint;	0.70	619.50
06/30/23	Danny Nunes	See to service of supplemental motion materials and filing of same;	0.40	270.00
<b>Total Hours and Fees:</b>			<b>62.70</b>	<b>\$50,019.50</b>

**PROFESSIONAL SERVICES SUMMARY**

<u>Professional</u>	<u>Title</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Edmond Lamek	Partner	880.03	38.20	33,617.00
Danny Nunes	Counsel/Contrct	675.00	19.10	12,892.50
Michael J. Styczen	Counsel/Contrct	650.00	5.40	3,510.00
<b>Total Fees:</b>				<b>\$50,019.50</b>

**DISBURSEMENT SUMMARY**

Disbursements

Taxable Disbursements

<u>Description</u>	
Binding	\$4.25
Printing	\$24.50
Courier	\$93.46
<b>Taxable Disbursements:</b>	<b>\$122.21</b>

**BILL SUMMARY**

	Total Fees:	\$	50,019.50
	Total Disbursements:	\$	122.21
REG # 110 152 824	Total HST:	\$	6,518.44
	<b>Total Current Invoice Due:</b>	<b>CAD \$</b>	<b>56,660.15</b>





Matter: 103454-00008  
Invoice: 2209686  
Page : 6

This is our account.

**DLA Piper (Canada) LLP**

Per:

A handwritten signature in black ink, appearing to read 'Edmond Lamek', written over a horizontal line.

Edmond Lamek

*Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.*



DLA Piper (Canada) LLP  
 Suite 6000, 1 First Canadian Place  
 PO Box 367, 100 King St W  
 Toronto ON M5X 1E2  
 www.dlapiper.com  
 T 416.365.3500  
 F 416.365.7886

KSV Restructuring Inc.  
 220 Bay Street  
 13th Floor, PO Box 20  
 Toronto, ON M5J 2W4 Canada

August 15, 2023

Attention: Bobby Kofman

INVOICE NUMBER: 2215702  
 FILE NUMBER: 103454-00008  
 BUSINESS NUMBER: REG # 110 152 824  
 FROM THE OFFICE OF: Edmond Lamek  
 DIRECT LINE: 416.365.3444

For Professional Services rendered and/or disbursements advanced through July 31, 2023.

Total Fees:	\$	18,673.50
Total HST:	\$	2,427.56
<b>Total Current Invoice Due:</b>	<b>CAD \$</b>	<b>21,101.06</b>

Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.

**Remittance Advice: Please be sure to indicate invoice number on all payments**

Invoice No: 2215702

File No: 103454-00008

Amount: **CAD 21,101.06**

**Cheque Payments To:**  
 DLA Piper (Canada) LLP  
 1133 Melville St, Suite 2700  
 Vancouver, BC  
 V6E 4E5 Canada

Please return remittance advice with cheque.

**Credit Card Payments:**

<https://payments.dlapiper.ca>

Tel: 604.643.2955  
 Toll free: 1.833.299.9022

**Canadian Dollar EFT Payments To:**  
 DLA Piper (Canada) LLP

Bank: 010  
 Transit: 00010  
 Account Number: 2901315

**Canadian Dollar Wire Payments To:**  
 DLA Piper (Canada) LLP

Beneficiary Acc#: 000102901315  
 Bank: CANADIAN IMPERIAL  
 BANK OF COMMERCE  
 Canadian clearing code: //CC001000010  
 Swift Code: CIBCCATT  
 Bank Address: 400 Burrard Street  
 Vancouver, BC V6C 3A6

**US Dollar Wire Payments To:**  
 DLA Piper (Canada) LLP

Beneficiary Acc#: 000100368016  
 Bank: CANADIAN IMPERIAL  
 BANK OF COMMERCE  
 Swift Code: CIBCCATT  
 Bank Address: 400 Burrard Street  
 Vancouver, BC V6C 3A6

Intermediary Bank: Wells Fargo Bank, N.A.  
 New York, NY, US

Swift Code: PNBPU3NNYC  
 ABA#: 026005092



DLA Piper (Canada) LLP  
Suite 6000, 1 First Canadian Place  
PO Box 367, 100 King St W  
Toronto ON M5X 1E2  
www.dlapiper.com  
T 416.365.3500  
F 416.365.7886

KSV Restructuring Inc.  
220 Bay Street  
13th Floor, PO Box 20  
Toronto, ON M5J 2W4 Canada

Attention: Bobby Kofman

Our File No: 103454-00008

KSV Restructuring Inc.  
Re: Planet Energy Group Receivership Proceedings

Date: August 15, 2023  
Invoice Number: 2215702

### PROFESSIONAL SERVICES

For Professional Services rendered and/or disbursements advanced through July 31, 2023.

<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
07/01/23	Edmond Lamek	Revising SISP Confidentiality Agreement; emails with B. Kofman;	0.30	265.50
07/03/23	Danny Nunes	Correspondence with E. Lamek regarding motion to extend deadline for filing proposal and KERP;	0.20	135.00
07/04/23	Danny Nunes	Correspondence regarding sale certificate and draft same;	0.50	337.50
07/04/23	Edmond Lamek	Reviewing all Caselines materials for, and attend 9:00am hearing before Osborne J. regarding PEONT stay extension, SISP, KERP, Consultant protection; emails during the day re corporate records, resignation, BNS debiting USD account;	1.80	1,593.00
07/05/23	Danny Nunes	Review correspondence regarding sale process certificate; correspondence to court filing same;	0.20	135.00
07/05/23	Edmond Lamek	12pm update call with KSV and Jordan Small re OEB letter and response; 1pm call with DLA Philadelphia re Penn PUC and Penn AG situations;	1.70	1,504.50
07/06/23	Danny Nunes	Correspondence regarding sale process certificate filing;	0.20	135.00
07/06/23	Edmond Lamek	Email to counsel to BNS regarding U.S.\$50,263 debited from PE Operating account instead of funds held by BNS and follow up emails with him; drafting letter to	2.80	2,478.00



<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		counsel to OEB; begin reviewing Template APA, numerous emails with KSV and Jordan Small;		
07/07/23	Edmond Lamek	Reviewing and revising template Asset Purchase Agreement; OEB letter, various emails with KSV re BNS, Penn PUC, Travellers, SISP;	3.30	2,920.50
07/09/23	Edmond Lamek	Reviewing and revising Template APA from BK and discussion re OEB approvals, email with Michael Styczen re same;	0.60	531.00
07/10/23	Michael J. Styczen	Email to E. Lamek re: OEB approval;	0.90	585.00
07/10/23	Edmond Lamek	Email discussion with KSV re Template APA; revising and circulating same; emails with counsel to OEB for their comments on template;	2.00	1,770.00
07/12/23	Edmond Lamek	3pm call with DLA Philly and KSV re Penn PUC issues and next steps;	0.70	619.50
07/14/23	Edmond Lamek	2:30pm call with OEB regarding draft Asset Purchase Agreement terms and possible RVO strictures for sale of PE; related email discussion re memo for data room;	1.20	1,062.00
07/17/23	Edmond Lamek	Considering possible RVO issues in the context of a BIA Proposal and working on data room memorandum;	1.70	1,504.50
07/21/23	Edmond Lamek	Emails re forms of offers for share purchase scenarios, drafting memo for data room; emails re Penn PUC issues;	1.50	1,327.50
07/25/23	Edmond Lamek	Emails with B. Kofman re OEB transfer restrictions; 10:30am call re Penn PUC and AG claims; emails re sale process and customer contract claims;	1.50	1,327.50
07/26/23	Edmond Lamek	Emails with KSV regarding termination of customer contracts and nature of damages claims that may ensue; and status of Sale Process.	0.50	442.50
<b>Total Hours and Fees:</b>			<b>21.60</b>	<b>\$18,673.50</b>

**PROFESSIONAL SERVICES SUMMARY**

<u>Professional</u>	<u>Title</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Edmond Lamek	Partner	885.00	19.60	17,346.00
Danny Nunes	Counsel/Contrct	675.00	1.10	742.50
Michael J. Styczen	Counsel/Contrct	650.00	0.90	585.00



Matter: 103454-00008  
Invoice: 2215702  
Page : 3

<u>Professional</u>	<u>Title</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Total Fees:				<u>\$18,673.50</u>

**BILL SUMMARY**

	Total Fees:	\$	18,673.50
REG # 110 152 824	Total HST:	\$	<u>2,427.56</u>
	<b>Total Current Invoice Due:</b>	<b>CAD \$</b>	<b>21,101.06</b>

This is our account.

**DLA Piper (Canada) LLP**

Per:

Edmond Lamek

*Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.*



DLA Piper (Canada) LLP  
 Suite 6000, 1 First Canadian Place  
 PO Box 367, 100 King St W  
 Toronto ON M5X 1E2  
 www.dlapiper.com  
 T 416.365.3500  
 F 416.365.7886

KSV Restructuring Inc.  
 220 Bay Street  
 13th Floor, PO Box 20  
 Toronto, ON M5J 2W4 Canada

September 19, 2023

Attention: Bobby Kofman

INVOICE NUMBER: 2223300  
 FILE NUMBER: 103454-00008  
 BUSINESS NUMBER: REG # 110 152 824  
 FROM THE OFFICE OF: Edmond Lamek  
 DIRECT LINE: 416.365.3444

For Professional Services rendered and/or disbursements advanced through August 31, 2023.

Total Fees:	\$	21,466.00
Total HST:	\$	2,790.58
<b>Total Current Invoice Due:</b>	<b>CAD \$</b>	<b>24,256.58</b>

Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.

**Remittance Advice:**

Invoice No: 2223300  
**Cheque Payments To:**  
 DLA Piper (Canada) LLP  
 1133 Melville St, Suite 2700  
 Vancouver, BC  
 V6E 4E5 Canada

Please return remittance advice with cheque.

**Credit Card Payments:**

<https://payments.dlapiper.ca>

Tel: 604.643.2955  
 Toll free: 1.833.299.9022

**Please be sure to indicate invoice number on all payments**

File No: 103454-00008

Amount: **CAD 24,256.58**

**Canadian Dollar EFT Payments To:**  
 DLA Piper (Canada) LLP

Bank: 010  
 Transit: 00010  
 Account Number: 2901315

**Canadian Dollar Wire Payments To:**

DLA Piper (Canada) LLP  
 Beneficiary Acc#: 000102901315  
 Bank: CANADIAN IMPERIAL  
 BANK OF COMMERCE  
 Canadian clearing code: //CC001000010  
 Swift Code: CIBCCATT  
 Bank Address: 400 Burrard Street  
 Vancouver, BC V6C 3A6

**US Dollar Wire Payments To:**  
 DLA Piper (Canada) LLP

Beneficiary Acc#: 000100368016  
 Bank: CANADIAN IMPERIAL  
 BANK OF COMMERCE  
 Swift Code: CIBCCATT  
 Bank Address: 400 Burrard Street  
 Vancouver, BC V6C 3A6

Intermediary Bank: Wells Fargo Bank, N.A.  
 New York, NY, US

Swift Code: PNBPU3NNYC  
 ABA#: 026005092





DLA Piper (Canada) LLP  
Suite 6000, 1 First Canadian Place  
PO Box 367, 100 King St W  
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T 416.365.3500  
F 416.365.7886

KSV Restructuring Inc.  
220 Bay Street  
13th Floor, PO Box 20  
Toronto, ON M5J 2W4 Canada

Attention: Bobby Kofman

Our File No: 103454-00008

KSV Restructuring Inc.  
Re: Planet Energy Group Receivership Proceedings

Date: September 19, 2023  
Invoice Number: 2223300

### PROFESSIONAL SERVICES

For Professional Services rendered and/or disbursements advanced through August 31, 2023.

<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
08/01/23	Danny Nunes	Correspondence with commercial court regarding scheduling stay extension motion; correspondence with E. Lamek regarding same; review correspondence from E. Lamek and B. Kofman regarding same;	0.50	337.50
08/03/23	Michael J. Styczen	Review emails to and from client; instructions to student (S. Roberts);	0.40	260.00
08/03/23	Edmond Lamek	Emails with KSV and M. Styczen regarding wind-up strategy contingency planning;	0.70	619.50
08/05/23	Edmond Lamek	Emails regarding Travellers Pennsylvania Surety Bond;	0.50	442.50
08/07/23	Danny Nunes	Correspondence regarding proposal deadline extension motion;	0.30	202.50
08/08/23	Michael J. Styczen	Review research on Energy Board - email client; conference call re surrender of customers;	1.00	650.00
08/09/23	Danny Nunes	Correspondence with E. Lamek regarding BIA proposal deadline extension materials; draft same; correspondence to E. Lamek regarding same;	1.80	1,215.00
08/10/23	Danny Nunes	Correspondence with E. Lamek regarding draft extension materials; revise materials; correspondence with D. Sieradzki and B. Kofman regarding same; revise materials; review correspondence from G. Benchetrit	0.90	607.50



<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		regarding same;		
08/11/23	Danny Nunes	Correspondence with D. Sieradzki and B. Kofman regarding motion materials; call with G. Benchetrit regarding same; review draft proposal trustee's report; correspondence with D. Sieradzki regarding same; finalize and serve motion materials;	2.00	1,350.00
08/12/23	Danny Nunes	Review correspondence from D. Sieradzki attaching draft interim receiver's report;	0.50	337.50
08/13/23	Danny Nunes	Correspondence regarding revisions to interim receiver's draft report;	0.20	135.00
08/14/23	Edmond Lamek	Afternoon update call with OEB regarding sale process and intended orderly wind up, emails from ACN and Paliare re need for BIA Extension in context of a wind down of operations; reviewing and commenting on KSV comparison memo (IR/Proposal v Bankruptcy);	2.50	2,212.50
08/14/23	Danny Nunes	Finalize and serve interim receiver's report;	0.50	337.50
08/15/23	Danny Nunes	Correspondence with bankruptcy court regarding filing motion materials; see to filing of same; revise draft order and circulate same; correspondence with D. Sieradzki and E. Lamek regarding same;	1.20	810.00
08/15/23	Michael J. Styczen	Prepare notice to customers; Emails to and from client regarding notices;	1.00	650.00
08/15/23	Edmond Lamek	10:30am call with BK, DS and M. Starnino; 2:30pm call with ACN team and KSV and M. Starnino regarding wind-down scenarios in bankruptcy and by interim Receiver in Proposal extension; Email discussion with M. Styczen regarding customer notices and utility notices;	1.80	1,593.00
08/15/23	Edmond Lamek	Emails re Motion Record and changes to style of Cause; revising Notices to Customers and emails with KSV and M. Styczen re same;	1.60	1,416.00
08/16/23	Edmond Lamek	Drafting supplier notice, comments and revisions to customer notice; 1:30pm call regarding settlement discussions with Penn PUC and Penn AG; updating KSV draft timeline and related email exchanges with Starnino and Ulry;	2.30	2,035.50
08/16/23	Michael J. Styczen	Review customer notice; comments to E. Lamek;	0.50	325.00



<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
08/17/23	Edmond Lamek	Review IR and Trustee report and attend on 11:30am motion for stay extension to October 2; emails with P. Corney re OEB comments on Notices;	1.00	885.00
08/21/23	Edmond Lamek	Substantially revising consumer notices per comments receiver from OEB, related emails with Jason and Andrew regarding practicalities of customer drop implementation; related emails with KSV, Miller Thomson;	3.50	3,097.50
08/22/23	Edmond Lamek	Emails regarding OEB comments on consumer notices, implementation and logistics of customer drop process and communications with utilities;	1.30	1,150.50
08/23/23	Edmond Lamek	Emails regarding customer drops and utilities' responses and accommodations;	0.50	442.50
08/29/23	Edmond Lamek	Emails regarding terms of BIA Proposal to distribute funds to creditors on an interim and final basis;	0.40	354.00
<b>Total Hours and Fees:</b>			<b>26.90</b>	<b>\$21,466.00</b>

**PROFESSIONAL SERVICES SUMMARY**

<u>Professional</u>	<u>Title</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Edmond Lamek	Partner	885.00	16.10	14,248.50
Danny Nunes	Counsel/Contract	675.00	7.90	5,332.50
Michael J. Styczen	Counsel/Contract	650.00	2.90	1,885.00
<b>Total Fees:</b>				<b>\$21,466.00</b>

**BILL SUMMARY**

REG # 110 152 824	Total Fees:	\$	21,466.00
	Total HST:	\$	2,790.58
	<b>Total Current Invoice Due:</b>	<b>CAD \$</b>	<b>24,256.58</b>



Matter: 103454-00008  
Invoice: 2223300  
Page : 4

This is our account.

**DLA Piper (Canada) LLP**

Per:

A handwritten signature in black ink, appearing to read 'EL', written over a horizontal line.

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Edmond Lamek

*Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.*

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

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

PROCEEDINGS COMMENCED AT TORONTO

**FEE AFFIDAVIT OF EDMOND LAMEK  
(sworn September 20, 2023)**

**DLA PIPER (CANADA) LLP**  
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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.**

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

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

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

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**MOTION RECORD**

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Lawyers for the Applicant/Respondent  
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