

Estate File Number: 35-2638322
Court File No.: 35-2638322

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF KMW ENERGY INC.**

MOTION RECORD
(returnable June 22, 2020)

June 17, 2020

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TO: THE SERVICE LIST

SERVICE LIST

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF KMW ENERGY INC.**

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TAB 1

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF KMW ENERGY INC.**

NOTICE OF MOTION
(returnable June 22, 2020)

KMW ENERGY INC. (“**KMW**” or the “**Company**”) will make a motion to a Judge presiding over the Commercial List on Monday June 22, 2020 at 11:00 a.m., or as soon after that time as the motion can be heard by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as **Schedule “A”** hereto in order to attend the motion and advise if you intend to join the motion by e-mailing Sam Rappos at samr@chaitons.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) an order:
 - (i) abridging the time for service of this notice of motion and KMW’s motion record so that the motion is properly returnable on June 22, 2020;
 - (ii) approving the Transaction¹;

¹ Capitalized terms used and not otherwise defined shall have the meanings ascribed to such terms in the body of the notice of motion.

- (iii) vesting in the Purchaser the Company's right, title and interest in and to the Purchased Assets, free and clear of all liens, charges, security interests and encumbrances; and
- (b) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

1. On April 11, 2020, KMW filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"). MNP Ltd. was named proposal trustee in this proceeding (the "**Proposal Trustee**").
2. For approximately 33 years, KMW was a leading designer, developer and supplier of the components of biomass combustion system boilers and heaters.
3. KMW's financial difficulties are primarily attributable to issues related to a contract for the design and supply of a complete biomass energy system.

Stalking Horse Agreement and Sale Process

4. On May 1, 2020, the Court granted an Order, among other things:
 - (a) authorizing the Company to execute a stalking horse asset purchase agreement dated April 24, 2020 (the "**Stalking Horse Agreement**") between the Company and 2751602 Ontario Inc. ("**2751**") in its capacity as stalking horse bidder (the "**Purchaser**"), and approving the Stalking Horse Agreement; and

- (b) authorizing the Proposal Trustee to conduct a sale process for the Company's business and assets (the "**Sale Process**").
5. The Purchaser is a party related to 462673 Ontario Inc. c.o.b. as Nor-Arc Steel Fabricators ("**Nor-Arc**"). Nor-Arc was a supplier and secured creditor of KMW and assigned the Company's indebtedness and security to the Purchaser.
 6. The Sale Process provided for an expedited marketing process and a bid deadline of May 29, 2020 (the "**Bid Deadline**").
 7. As will be described in the Proposal Trustee's second report to the Court (the "**Second Report**"), the Sale Process commenced immediately following its approval and was carried out in accordance with the terms approved by the Court.
 8. No offers were submitted to the Proposal Trustee by the Bid Deadline, and accordingly, the Purchaser was determined to be the successful bidder.
 9. Pursuant to the Stalking Horse Agreement, the Purchaser will acquire substantially all of the Company's business and assets (the "**Purchased Assets**") and intends to offer employment to all of KMW's employees (the "**Transaction**").

General

10. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
11. Section 65.13 of the BIA.
12. The inherent jurisdiction of the Court.
13. Such other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Affidavit of Eric Bertil Rosen sworn June 17, 2020 and the exhibits thereto, including the Affidavit of Eric Bertil Rosen sworn April 24, 2020 and the first report of the Proposal Trustee dated April 29, 2020;
2. The Second Report and the appendices thereto; and
3. such further and other material as counsel may advise and this Honourable Court may permit.

June 17, 2020

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Lawyers for KMW Energy Inc.

TO: THE SERVICE LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF KMW ENERGY INC.

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION
(returnable June 22, 2020)

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TAB 2

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF KMW ENERGY INC.

AFFIDAVIT OF ERIC BERTIL ROSEN
(sworn June 17, 2020)

I, ERIC BERTIL ROSEN, of the City of London, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Chief Executive Officer and a director of KMW Energy Inc. (“**KMW**” or the “**Company**”). The facts set forth herein are within my personal knowledge or determined from the face of the documents attached hereto as exhibits and from information and advice provided to me by others, which I verily believe to be true.

2. On April 11, 2020, KMW filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended. MNP Ltd. was named proposal trustee in this proceeding (the “**Proposal Trustee**”).

3. On April 24, 2020, I swore an affidavit (the “**April 24 Affidavit**”) in support of KMW’s motion for, among other things, an order:

- (a) authorizing the Company to execute a stalking horse asset purchase agreement dated April 24, 2020 (the “**Stalking Horse Agreement**”) between the Company

and 2751602 Ontario Inc., in its capacity as stalking horse bidder (the “**Purchaser**”) and approving the Stalking Horse Agreement; and

(b) authorizing the Proposal Trustee to conduct a sale process (the “**Sale Process**”);

4. The terms of the Stalking Horse Agreement and the Sale Process were detailed in my April 24 Affidavit and the Proposal Trustee’s first report to the Court dated April 29, 2020 (the “**First Report**”). Copies of my April 24 Affidavit (without exhibits) and the First Report (without appendices) are respectively attached hereto and marked as **Exhibits “A”** and **“B”**.

5. On May 1, 2020, the Court granted an Order (the “**May 1 Order**”), among other things, approving the Stalking Horse Agreement and the Sale Process. A copy of the May 1 Order is attached hereto and marked as **Exhibit “C”**.

6. On May 29, 2020, the Proposal Trustee informed me by e-mail that the bid deadline for the Sale Process had expired and there were no bids received other than then Stalking Horse Agreement.

7. I have been advised by Sheldon Title that the Proposal Trustee will be submitting its second report to the Court detailing its administration of the Sale Process and its recommendation that the Court approve the sale of the Company’s assets to the Purchaser pursuant to the Stalking Horse Agreement.

8. As set out in my April 24 Affidavit the purchase price under the Stalking Horse Agreement is equal to \$500,000 plus any amounts ranking in priority to the security held by the Purchaser over the Company’s assets, including any amounts secured by charges granted by the Court under the May 1 Order. The Purchaser will be credit bidding a portion of the secured debt owed to it by

the Company to satisfy the \$500,000, together with applying the \$100,000 deposit paid by the Purchaser to the Proposal Trustee. Any amounts that may have priority over the Purchaser's security will be paid to the Proposal Trustee on closing or, with respect to amounts secured by the D&O Charge (as defined in the May 1 Order), assumed by the Purchaser.

9. I have been advised by Mario Leveille, president of the Purchaser, that in the event that the sale transaction is approved by the Court and closes, the Purchaser intends to offer employment to all of the Company's current employees on substantially the same terms. Additionally, I will be retained as an independent consultant to the Purchaser. I own 70% of the shares of KMW and I do not own any shares in the Purchaser. I have been advised by Gerry Higgins, president and owner of 30% of the shares of KMW, that he does not own any shares in the Purchaser.

Sworn before me)
via video conference call)
on the 17th day of June, 2020)



SAM RAPPOS
A commissioner, etc.



ERIC BERTIL ROSEN

TAB A

This is Exhibit "A" referred to in the Affidavit of Eric Bertil Rosen sworn June 17, 2020.

A handwritten signature in black ink, appearing to read "Sam Rappos". The signature is fluid and cursive, with the first name "Sam" and last name "Rappos" clearly distinguishable.

Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF KMW ENERGY INC.

AFFIDAVIT OF ERIC BERTIL ROSEN
(sworn April 24, 2020)

I, ERIC BERTIL ROSEN, of the City of London, in the Province of Ontario, MAKE
OATH AND SAY AS FOLLOWS:

1. I am the Chief Executive Officer and a director of KMW Energy Inc. (“KMW” or the “Company”). The facts set forth herein are within my personal knowledge or determined from the face of the documents attached hereto as exhibits and from information and advice provided to me by others, which I verily believe to be true.
2. On April 11, 2020 (the “Filing Date”), KMW filed a Notice of Intention to Make a Proposal (“NOI”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”). MNP Ltd. was named proposal trustee in the NOI proceeding (the “Proposal Trustee”). A copy of the certificate of filing of the NOI is attached hereto and marked as Exhibit “A”.
3. This affidavit is made in support of KMW’s motion for an order, among other things:

- (a) authorizing the Company to enter into an interim financing term sheet dated April 24, 2020 (the “**DIP Term Sheet**”) with 2751602 Ontario Inc. (“**2751**”), approving the DIP Term Sheet, and granting 2751 in its capacity as lender under the DIP Term Sheet (the “**DIP Lender**”) a second ranking charge on the Company’s property, assets and undertakings (collectively, the “**Property**”) as security for the Company’s obligations to the DIP Lender under the DIP Term Sheet;
- (b) authorizing the Company to execute a stalking horse asset purchase agreement dated April 24, 2020 (the “**Stalking Horse Agreement**”) between the Company and 2751, in its capacity as stalking horse bidder (the “**Stalking Horse Bidder**”), and approving the Stalking Horse Agreement;
- (c) authorizing the Proposal Trustee to conduct a sale process as described below (the “**Sale Process**”);
- (d) approving a first ranking charge over the Property in an amount not to exceed \$150,000 in favour of the Company’s legal counsel, the Proposal Trustee, and the Proposal Trustee’s legal counsel (collectively, the “**Administrative Professionals**”) to secure payment of their reasonable fees and disbursements;
- (e) approving a third ranking charge over the Property in an amount not to exceed \$50,000 in favour of the Company’s directors and officers to indemnify them against obligations and liabilities that they may incur after the Filing Date; and
- (f) approving an extension of the time for the Company to make a proposal to its creditors.

BUSINESS AND OPERATIONS

4. KMW is an Ontario corporation that carries on business in London, Ontario. I am the sole member of the board of directors. Gerry Higgins and I are the only officers of KMW. A copy of the Corporation Profile Report for KMW is attached hereto and marked as **Exhibit "B"**.

5. For approximately 33 years, KMW has been a leading designer, developer and supplier of the components of biomass combustion system boilers and heaters. Biomass is an environmentally friendly, sustainable energy source that comes from a number of resources, including plant materials, residues from forest industries, by-products from wood remanufacturing, and agricultural residues and waste products. Biomass can produce electricity, heat, liquid fuels, gaseous fuels, and a variety of useful chemicals, including those currently manufactured from fossil fuels.

6. KMW custom designs and supplies the components of complete biomass boiler systems including fuel handling, combustion systems, heat recovery boilers, and emission control systems. KMW also supplies complete Combined Heat and Power (CHP) plants including steam turbines, Organic Rankine Cycle (ORC) turbines, condensers and cooling systems.

7. KMW has supplied boiler systems to sawmills, hospitals, schools, pulp and paper mills, power utility plants, cogeneration facilities, district heating systems and greenhouses to customers in North, Central, and South America, as well as Europe and Australia. KMW works closely with its customer's project management teams, engineering staff and professional advisors to evaluate and implement biomass energy projects.

8. KMW purchases all components from third party suppliers across the globe. KMW manages the assembly and installation of the components on site for its customers. Once assembly

is complete, KMW provides training and support to its customers in the operation of the turbines and boilers.

9. KMW carries on business from a leased facility located at 275 Colborne Street, London, Ontario (the “**Premises**”). KMW is current in all payments to its landlord under its lease for the Premises, other than for April 2020.

10. As of April 11, 2020, the Company employed 12 non-unionized employees and one independent contractor project manager. KMW does not have an employer-sponsored pension plan for its employees.

11. KMW currently has six (6) ongoing projects at various stages of completion. KMW’s assets are primarily comprised of contracts, accounts receivable, work-in-progress, proprietary engineering designs and software code, and goodwill.

SECURED CREDITORS

12. KMW has no operating lender. KMW has two secured creditors, 2751, which is a party related to 462673 Ontario Inc. c.o.b. as Nor-Arc Steel Fabricators (“**Nor-Arc**”) that took an assignment of the debt and security owed by KMW to Nor-Arc, and Liberty Mutual Insurance Company (“**Liberty Mutual**”). Attached hereto and marked as **Exhibit “C”** is a copy of a search result obtained by the Company’s legal counsel, Chaitons LLP (“**Chaitons**”), from the Ontario Personal Property Security Registration System in respect of registrations under the *Personal Property Security Act* (Ontario) current as of April 24, 2020.

Nor-Arc and 2751

13. Nor-Arc carries on business in Earlton, Ontario as a fabricator of mining and industrial equipment. KMW and its predecessors have been a customer of Nor-Arc for over 30 years. Nor-Arc primarily supplies combustion chambers and fabrication services to KMW.

14. As at March 24, 2020, KMW was indebted to Nor-Arc in the amount of \$2,778,084.92 (the “**Secured Indebtedness**”). This amount represents the sum of outstanding invoices and interest owed by KMW to Nor-Arc from the period of April 2010 to March 2020. KMW has acknowledged that the Secured Indebtedness was owing to Nor-Arc in an Acknowledgement of Debt and Security dated April 9, 2020 that I executed on behalf of KMW, a copy of which is attached hereto and marked as **Exhibit “D”**.

15. KMW historically paid its invoices to Nor-Arc in a timely manner. However, KMW’s business was negatively impacted by the Great Recession of 2008-2010 and, as a result, by April 2011, KMW owed approximately \$538,075 to Nor-Arc in unpaid invoices. At that time, Nor-Arc requested that KMW provide security for payment of the outstanding amount.

16. Pursuant to a general security agreement dated April 12, 2011 (the “**GSA**”), KMW granted to Nor-Arc a security interest in all of its property, assets and undertaking as security for payment of all present and future debts, liabilities and obligations of KMW to Nor-Arc. A copy of the GSA is attached hereto and marked as **Exhibit “E”**.

17. By early 2019, KMW owed Nor-Arc approximately \$1.0 million. However, as is described in greater detail below, KMW’s indebtedness to Nor-Arc has increased during the past two years in connection with the GRE Project (as defined below) and other projects.

18. As noted above, the Secured Indebtedness and the GSA have been assigned by Nor-Arc to 2751 pursuant to an assignment agreement dated April 20, 2020, a copy of which is attached hereto and marked as **Exhibit "F"**.

Liberty Mutual

19. Liberty Mutual is a secured creditor of the Company as it issued a performance bond in connection with a contract dated December 6, 2016 between KMW and Georges River Energy, LLC ("**GRE**") (the "**GRE Contract**") for the design and supply of a complete biomass energy system to generate 8.5MW of electric power, including turbine, generation and cooling tower (the "**GRE Project**"). A copy of the GRE Contract is attached hereto and marked as **Exhibit "G"**.

20. GRE carries on business in Searsmont, Maine and is a subsidiary of Robbins Lumber, Inc. ("**Robbins Lumber**"). Robbins Lumber owns and manages 30,000 acres of forest and operates mills on a 40-acre site in Searsmont.

21. KMW was required to obtain a performance bond with respect to its obligations under the GRE Contract. On December 13, 2016, Liberty Mutual, as surety, issued a Performance Bond for Procurement Contracts in the amount of \$6,412,500 in favour of GRE (the "**Performance Bond**"). A copy of the Performance Bond is attached hereto and marked as **Exhibit "H"**.

22. In connection with the Performance Bond, KMW, myself, Gerry and Nor-Arc (collectively, the "**Indemnitors**") executed two agreements in favour of Liberty Mutual: an Indemnity and Security Agreement dated December 16, 2016 (the "**Indemnity and Security Agreement**"); and a General Indemnity Agreement dated December 16, 2016 (collectively, the "**Indemnity Agreements**"). Copies of the Indemnity Agreements are collectively attached hereto and marked as **Exhibit "I"**.

23. Pursuant to the Indemnity Agreements, each of the Indemnitors agreed to indemnify Liberty Mutual with respect to any liabilities it may incur in connection with the Performance Bond.

24. Pursuant to the Indemnity and Security Agreement, the Company granted to Liberty Mutual a security interest in all of its property, assets and undertaking as security for its obligations to Liberty Mutual.

25. Nor-Arc executed the Indemnity Agreements as it was to supply components to KMW with respect to the GRE Contract and was to receive a share of KMW's net profits from the GRE Contract.

OTHER CREDITORS

Government Remittances and Amounts Owed to Employees

26. As at April 6, 2020, KMW was current with respect to all amounts owed for government remittances and all amounts owed to its employees, excluding certain employee expense reports.

Unsecured Creditors

27. As at April 6, 2020, KMW owed its trade creditors approximately \$4.3 million. This amount does not include any claims that parties may have in relation to the Performance Bond and the Indemnity Agreements (as defined below).

FINANCIAL DIFFICULTIES

28. KMW's financial difficulties are primarily attributable to the GRE Contract.

29. At GRE's request, KMW sought out new suppliers of turbines to reduce the cost of the GRE Project. As a result, KMW contracted with a company Buffalo Turbine based in Brampton,

Ontario for the supply of a turbine manufactured in India to be used for the GRE Project. KMW had no existing relationship with this manufacturer.

30. The turbine was delivered in April 2018 and the biomass energy system was assembled through the spring, summer and fall of 2018. The turbine did not function as required by GRE. From July 2018 to March 2020, KMW spent approximately US\$1.688 million of its working capital in attempting to repair the turbine.

31. Notwithstanding the significant time and money expended by KMW, the turbine still does not function properly. As a result, GRE has threatened litigation against KMW and has not paid to KMW the remaining US\$2,463,907 million owed to it under the GRE Contract. GRE has also notified Liberty Mutual that it may declare KMW to be in default under the GRE Contract and make a demand under the Performance Bond. GRE has not done so to date.

32. GRE and KMW have engaged in settlement discussions in an effort to resolve the issues related to the GRE Project. Notwithstanding their efforts, the parties have been unable to come to terms on an agreeable settlement.

33. As a result of the issues related to the GRE Project, the Company has faced a liquidity crisis and it was anticipated that, without receiving interim financing and protection from its creditors, it would be unable to meet its post-filing obligations by April 30, 2020.

34. On April 9, 2020, Nor-Arc demanded payment from KMW and served a Notice of Intention to Enforce Security ("NITES") pursuant to section 244(1) of the BIA. KMW agreed to waive the 10-day period under section 244 of the BIA. A copy of Nor-Arc's demand letter, NITES,

and the waiver I executed on behalf of the Company are attached hereto and marked as **Exhibit “J”**.

35. On April 11, 2020, KMW commenced the NOI proceeding under the BIA for the purpose of conducting a process for the sale of KMW’s business as a going concern. Prior to the filing, Nor-Arc had agreed to act as DIP Lender during the NOI proceeding and agreed to have a party related to it act as a stalking horse bidder in the sale process to be conducted by the Proposal Trustee.

DIP LOAN

36. KMW, with the assistance of the Proposal Trustee, prepared a cash flow forecast for the time period commencing April 6, 2020 through to July 3, 2020 (the “**Cash Flow**”). The Cash Flow demonstrates that KMW will require additional funds to enable it to carry on business during the NOI proceeding and fund the Sale Process, working capital and the costs of the proceeding. A copy of the Cash Flow is attached hereto and marked as **Exhibit “K”**.

37. Nor-Arc, in its capacity as the proposed DIP Lender, has offered to make available to KMW a debtor-in possession loan in the maximum amount of \$500,000 (the “**DIP Loan**”) pursuant to the terms of the DIP Term Sheet, substantially in the form attached hereto and marked as **Exhibit “L”**, to fund the cash shortfall anticipated in the Cash Flow.

38. It is a fundamental term of the DIP Term Sheet that the Court grant an order on terms acceptable to the DIP Lender which, among other things, grants the DIP Lender a second ranking charge over the Property in priority to all other claims and encumbrances (the “**DIP Charge**”).

39. KMW believes that the terms of the DIP Term Sheet are reasonable in the circumstances and should be approved. In the absence of the DIP Loan, KMW will not be able to conduct the Sale Process and will be forced to immediately shut down its business and file for bankruptcy. I believe that the DIP Loan enhances the Company's prospects of making a viable proposal to its creditors, and no creditor will be materially prejudiced as a result of the granting of the DIP Charge.

SALE PROCESS AND STALKING HORSE AGREEMENT

40. KMW, in consultation with the Proposal Trustee, and subject to the approval of the Court, developed the Sale Process. The Sale Process will be administered by the Proposal Trustee. As part of the Sale Process, KMW will enter into the Stalking Horse Agreement, substantially in the form attached hereto and marked as **Exhibit "M"** which establishes the floor price for KMW's business and assets.

41. The Stalking Horse Bidder is prepared to purchase the business and assets of KMW on a going-concern basis pursuant to the terms of the Stalking Horse Agreement for a purchase price equal to: (i) \$500,000; (ii) any amounts ranking in priority to the Stalking Horse Bidder's security; (iii) any amounts secured by the DIP Charge, the Administration Charge and the D&O Charge (each as defined below); and (iv) an amount of the Secured Indebtedness to be cancelled by the Stalking Horse Bidder as it deems appropriate.

42. It is anticipated that, if a sale of KMW's business and assets is completed pursuant to the Stalking Horse Agreement, the Stalking Horse Bidder will offer employment to most, if not all, of KMW's employees.

43. The following is a summary of the Sale Process and material milestones. All terms not otherwise defined herein, shall have the meaning assigned to such terms in the Stalking Horse Agreement:

- (a) The Sale Process will be commenced immediately following the date of the order approving same (the “**Sale Process Approval Date**”).
- (b) within five (5) business days after the Sale Process Approval Date, the Proposal Trustee will contact parties identified by the Company who may be interested in purchasing the business and/or assets of the Company and any other parties identified by the Company and the Proposal Trustee as potentially interested in purchasing the assets of the Company. The Proposal Trustee will provide a teaser summary of KMW’s assets in order to solicit interest. The Proposal Trustee will obtain a Non-disclosure Agreement (“**NDA**”) from interested parties who wish to receive a Confidential Information Memorandum (“**CIM**”) and undertake due diligence. Following the execution of an NDA, the Proposal Trustee will provide access to an electronic data room (“**Data Room**”) and a template asset and purchase agreement to prospective purchasers.
- (c) Within seven (7) business days of the Sale Process Approval Date, or as soon thereafter as is practical, the Proposal Trustee shall (a) publish a notice advertising the opportunity in the National Post and/or such other trade publications or other publications as the Proposal Trustee may deem appropriate or advisable, and (b) post the opportunity on its website.

- (d) The Bid deadline for prospective purchasers will be May 29, 2020, subject to the Proposal Trustee, in its discretion, extending the date for no more than 10 days not to surpass June 8, 2020 (the “**Bid Deadline**”).
- (e) A Qualified Bid must be accompanied by a cash deposit of 10% of the purchase price and must be equal to or greater than the sum of the indebtedness owed to the Stalking Horse Bidder, the DIP Loan, the amounts secured by the Administration Charge and the D&O Charge, and any other priority payable amounts.
- (f) If no Qualified Bid is received by the Bid Deadline (other than the Stalking Horse Bid), the Auction will not be held.
- (g) If more than one Qualified Bid is received by the Bid Deadline, the Proposal Trustee shall extend invitations to all bidders who submitted Qualified Bids and to the Stalking Horse Bidder to attend an Auction. The Auction shall be held at 10:00 a.m. on the second (2nd) Business Day after the Bid Deadline by teleconference, video conference or other form of electronic telecommunications, as the Proposal Trustee may deem fit.
- (h) The Proposal Trustee shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Bid and subsequently continue in multiples of \$50,000, or such other amount as the Proposal Trustee determines to facilitate the Auction. Additional consideration in excess of the amount set forth in the highest Qualified Bid must be comprised only of cash consideration (which, for clarity, may be satisfied by way of credit bid by the Stalking Horse Bidder).

The format and other procedures for the Auction shall be determined by the Proposal Trustee in its sole discretion.

- (i) The Winning Bid shall be either:
 - (i) in the event that no other Qualified Bid is received by the Bid Deadline, the Stalking Horse Bid;
 - (ii) in the event that multiple Qualified Bids are received, following the conclusion of the Auction (if applicable), the party submitting the highest and best offer through the Auction, which the Proposal Trustee is satisfied, acting reasonably, is capable of being completed as required by the Sales Process Order.
- (j) As soon as practicable after determination of the Winning Bid, the Company will make a motion to the Court for an approval and vesting order in respect of the Winning Bid and the underlying purchase agreement.

ADMINISTRATION CHARGE

44. In order to protect the fees and expenses of each of the Administrative Professionals, KMW seeks a first ranking charge on the Property in an amount of \$150,000 (the “**Administration Charge**”), ranking in priority to all claims and encumbrances.

45. I believe that no creditor will be materially prejudiced as a result of the granting of the Administration Charge

D&O CHARGE

46. As part of the NOI proceeding, KMW is seeking a third ranking charge on the Property in favour of their directors and officers in the amount not to exceed \$50,000 (the “D&O Charge”) ranking in priority to all other claims and encumbrances, with the exception of the Administration Charge and the DIP Charge, as security for the possible liabilities that may be incurred by the directors and officers of the Company after the Filing Date, including wages, vacation pay, and source deductions.

47. The Company does not have an existing insurance policy with respect to directors and officers liabilities.

48. There is a risk that without the D&O Charge, KMW’s directors and officers might resign from their positions, which would jeopardize the NOI proceeding. The Company, in consultation with the Proposal Trustee, believes that the quantum of the proposed D&O Charge is reasonable given the circumstances.

49. I believe that no creditor will be materially prejudiced as a result of the granting of the D&O Charge

STAY EXTENSION

50. I have been advised by Sam Rappos, a partner at Chaitons, that under the BIA, the period for KMW to file a proposal will expire on May 11, 2020. The Company is acting in good faith and with due diligence in seeking to preserve its business on a going concern basis for the benefit of all of its stakeholders.

51. In order to commence and advance the Sale Process, KMW is seeking an extension of time to file a proposal for 45 days or until June 25, 2020.

52. Without the extension, KMW will not be in a position to make a viable proposal to its creditors and will become bankrupt to the detriment of its stakeholders. In contrast, no creditor will be materially prejudiced if the extension applied for is granted. The extension is supported by the Proposal Trustee. If the extension applied for is granted, KMW would likely be able to make a viable proposal to its creditors following the completion of the Sale Process.

53. This affidavit is sworn in support of KMW's motion and for no other or improper reason.

Sworn before me)
via video conference call)
on the 24th day of April, 2020)



SAM RAPPOS
A commissioner, etc.



ERIC BERTIL ROSEN

TAB B

This is Exhibit "B" referred to in the Affidavit of Eric Bertil Rosen sworn June 17, 2020.

A handwritten signature in black ink, appearing to read "Sam Rappos". The signature is fluid and cursive, with the first name "Sam" and the last name "Rappos" clearly distinguishable.

Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS

Estate No.: 35-2638322
Court No.: 35-2638322

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
KMW ENERGY INC.
OF THE CITY OF LONDON,
IN THE PROVINCE OF ONTARIO

FIRST REPORT TO THE COURT
SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
KMW ENERGY INC.

APRIL 29, 2020

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I. INTRODUCTION

1. On April 11, 2020 (the “**Filing Date**”), KMW Energy Inc. (“**KMW**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). MNP Ltd. was named proposal trustee in the NOI proceeding (the “**Proposal Trustee**”). A copy of the certificate of filing of the NOI is attached as Exhibit “A” to the affidavit of Eric Bertel Rosen, sworn April 24, 2020 (the “**Rosen Affidavit**”).
2. Notice of the NOI as prescribed by the BIA was sent via email on April 17, 2020 to all of KMW’s known creditors. A copy of such notice is attached hereto and marked **Appendix “A”**.
3. Information regarding the proceedings has been posted to the Proposal Trustee’s Case website at www.mnpdebt.ca/KMWEnergy.
4. The primary purpose of these proceedings is to create a stabilized environment to allow the Company to continue operating as a going concern business while it works with the Proposal Trustee to restructure its affairs. It is contemplated that the restructuring of the Company will occur in part by way of a going concern sale transaction for the Company’s business and assets. If approved, the Proposal Trustee intends on running a Stalking Horse Sale Process (the “**Sale Process**”) to solicit bids for the Company’s assets.

II. RESTRICTIONS

5. In preparing this Report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Rosen Affidavit, KMW’s books and records, discussions with management of KMW (“**Management**”) and information from other third-party sources (collectively, the “**Information**”). Except as described in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.

6. The Proposal Trustee also bases its Report on the Company's cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice No. 9 (Cash Flow Statement). Certain of the Information referred to in this Report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. Future oriented financial Information referred to in this Report was prepared based on estimates and assumptions provided by Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material. On March 17, 2020, the Province of Ontario declared a state of emergency due to the COVID-19 pandemic. The effect of this declaration along with other federal, provincial and municipal actions regarding the COVID-19 pandemic on the Company's business and the economy in general has yet to be determined. In developing the Cash Flow Projections (as defined below), Management has reflected its current view of the potential impact of the COVID-19 pandemic on its cash flow. However, the ongoing uncertainty and instability caused by the COVID-19 pandemic and various government regulatory actions in response thereto, may cause actual results to differ from the projected amounts and these variations may be material.

III. PURPOSE OF THIS REPORT

7. The purpose of this Report is to:
 - a. Provide information to the Court with respect to the administration of KMW's proposal proceedings, including:
 - i. background information regarding the Company's operations and the circumstances leading to the filing of the NOI;
 - ii. report on the Company's actual cash flows for the period April 6, 2020 to April 26, 2020; and

- b. Provide the Court with the Proposal Trustee's support for, and observations in respect of the Company's request that the Court grant an Order, *inter alia*:
- i. approving interim financing up to a maximum of \$500M (the "**DIP Loan**") from 2751602 Ontario Inc. (the "**DIP Lender**" or "**Stalking Horse Bidder**", as usage dictates) for the purpose of funding KMW's activities and granting the DIP Charge (as defined below) over all of the Company's property, assets and undertakings (collectively, the "**Property**");
 - ii. authorizing and directing the Proposal Trustee, in consultation with the Company, to carry out the Sale Process, as described below, using the Asset Purchase Agreement dated April 24, 2020 (the "**Stalking Horse APA**") between the Company and the Stalking Horse Bidder in respect of the Property to be used as the stalking horse bid;
 - iii. approving the Administration Charge (as defined below) in favour of the Company's legal counsel, the Proposal Trustee, and the Proposal Trustee's legal counsel (collectively, the "**Administrative Professionals**") to secure payment of their reasonable fees and disbursements;
 - iv. approving a third ranking charge over the Property in an amount not to exceed \$50M in favour of the Company's directors and officers to indemnify them against obligations and liabilities that they may incur after the Filing Date (the "**D&O Charge**"); and
 - v. approving an extension of the time for the Company to make a proposal to its creditors to June 25, 2020.

IV. BACKGROUND INFORMATION

8. KMW is an Ontario corporation that carries on business out of its leased premises in London, Ontario. KMW designs, develops and supplies components of biomass combustion system boilers and heaters.

9. As of the Filing Date, the Company employed twelve (12) non-unionized employees and one (1) independent contractor whose role is as a project manager.
10. Based on, and as described in greater detail in the Rosen Affidavit, the Company attributes its financial difficulties primarily to a contract the Company entered into with Georges River Energy, LLC (“**GRE**”) dated December 6, 2016 (the “**GRE Contract**”) for the design and supply of a complete biomass energy system to generate 8.5MW of electric power, including turbine, generation and cooling tower (the “**GRE Project**”). At GRE’s request and in order to reduce the cost of the GRE Project, the Company sourced the turbines from a new supplier to the Company. The turbine, delivered in May 2018, did not function properly. Thereafter, the Company spent an additional US\$1.558MM trying to repair the turbine. To date, the turbine has not functioned to GRE’s satisfaction and GRE is asking that the Company provide it with a new turbine.
11. GRE has threatened litigation, notified the Company of its intention to make a demand under a \$6.413M Performance Bond issued by Liberty Mutual Insurance Company (“**Liberty Mutual**”) in favour of GRE (the “**Performance Bond**”) and did not pay US\$2.58MM owed to KMW under the GRE Project. GRE and KMW have engaged in settlement discussions to resolve the issues related to the GRE Project. Notwithstanding their efforts, the parties have been unable to come to terms on an agreeable settlement, which has resulted in the Company’s liquidity constraints.
12. A summary of the Company’s historical financial results¹ is set out below:

¹ Based on draft unaudited financial statements. The EBITDA calculation provided herein reflects a normalized EBITDA by removing non-recurring or extraordinary expenses.

	Year ended February 28	
	2019	2018
Currency: CAD'000		
Sales	4,542	14,585
Cost of Sales	6,383	10,310
Gross Profit	(1,841)	4,275
Expenses		
Payroll (including payroll taxes)	1,515	997
Other operating expenses	987	1,006
EBITDA	(4,344)	2,272
One time warranty costs	2,669	-
Realized (gain)/loss on foreign exchange	130	(238)
Depreciation	16	15
Interest	93	72
Net income from operations (before tax)	(7,252)	2,424
Provision for taxes	-	4
Net income from operations (after tax)	(7,252)	2,420

13. Additional information in respect of the KMW is set out in the Rosen Affidavit, filed separately in these proceedings. The Proposal Trustee has not repeated such details in this Report.

V. ASSETS

14. The assets are primarily comprised of contracts, accounts receivable, work-in-progress, proprietary engineering designs and software code, and goodwill.

VI. CREDITORS

Secured Creditors

15. A search of the Ontario *Personal Property Security Act* registry, as of April 10, 2020 and the Company's records, indicate that 462673 Ontario Inc. operating as Nor-Arc Steel Fabricators (“**Nor-Arc**”) is KMW's only secured creditor¹².

² On April 17, 2020, Liberty Mutual registered a security interest under the PPSA.

16. The Proposal Trustee understands that from or about April 2010 to and including December 2019, Nor-Arc rendered fabrication services to KMW, which invoices were to be paid within thirty (30) days. As of the Filing Date, KMW's indebtedness to Nor-Arc was approximately \$2.778MM, which indebtedness was secured via KMW executing a general security agreement in favour of Nor-Arc dated April 12, 2011 (the "**Secured Indebtedness**")³. Pursuant to an assignment agreement dated April 20, 2020, the DIP Lender, who is a party related to Nor-Arc, took an assignment of the debt and security owed by KMW to Nor-Arc.
17. Weisz Fell Kour LLP, the Proposal Trustee's counsel, has provided the Proposal Trustee with a verbal opinion confirming that, subject to certain standard assumptions and qualifications, Nor-Arc has valid and enforceable security over the Property.
18. Prior to the Filing Date, on April 9, 2020, Nor-Arc demanded payment from KMW and served a Notice of Intention to Enforce Security pursuant to subsection 244(1) of the BIA. KMW agreed to waive the 10-day period under section 244 of the BIA.

Other Creditors

19. The NOI lists creditors with claims of \$7.033MM as at April 6, 2020 including outstanding amounts due to Nor-Arc totaling \$2.778MM (as explained in paragraph 16). The NOI does not include contingent liabilities under the Performance Bond and under related Indemnity Agreements as detailed in the Rosen Affidavit.

VII. CASH FLOW PROJECTIONS

20. To date, KMW has provided the Proposal Trustee with its full co-operation and unrestricted access to its premises, and books and records.
21. In accordance with the provisions of the BIA, the Company filed with the Official Receiver a projected cash flow statement dated April 20, 2020, which was reviewed by the Proposal Trustee for reasonableness and signed by the Proposal Trustee and the Company (the

³ This amount does not include the contingent liability under the Performance Bond, plus any interest, costs and fees as may be applicable as an indemnitor of KMW under the Performance Bond.

“Cash Flow Projections”). The Cash Flow Projections cover the period starting on April 6, 2020 and ending on July 5, 2020 (the **“Projection Period”**) A copy of the Cash Flow Projection, and related reports, is attached as Exhibit “K” to the Rosen Affidavit.

22. The Proposal Trustee has implemented procedures for monitoring the Company’s receipts and disbursements and has kept in close contact with Management to ensure that operations are continuing in the normal course of business and in accordance with the Cash Flow Projections.

23. The principal assumptions of the Cash Flow Projections are that:

- a. The forecasted collection time on post-Filing Date sales is approximately 30 days and is dependent on successful completion of milestones as per the Purchase Order or contract obtained from the respective customer. In addition, existing accounts receivable will be collected within 45 days;
- b. Operating expenses are assumed to be paid on a current basis;
- c. The payroll costs (i.e. wages, benefits, government remittances, etc.) are based on the 'actual' payroll costs prior to the Filing Date, adjusted to reflect the reductions to payroll arising out of terminations and layoffs;
- d. Professional fees include charges for Company’s counsel and the Proposal Trustee’s fees and expenses, including the fees and disbursements of the Proposal Trustee’s independent legal counsel;
- e. Other disbursements are based on Management's best estimates;
- f. Opening bank balance considered in the projections is different from the bank balance as per bank statement to the extent of cheques issued but not yet cleared. Such cheques primarily pertain to a continuing critical supplier;
- g. No provision for income taxes has been made; and

- h. The Company has not considered benefits of government assistance related to the COVID-19 pandemic in the cash flow projections. The Company is currently evaluating its eligibility to apply for such relief.
24. A summary of the Company's actual receipts and disbursements as compared to the those presented in the Cash Flow Projections for the three weeks ended April 26, 2020 are as follows:

KMW Energy Inc.			
Actual Receipts and Disbursements			
For three week period ending April 26, 2020			
(Unaudited, in \$ CAD)			
	<i>Cumulative Three-Week Period Ended April 26, 2020</i>		
	Actual	Budget	Variance
Receipts	16,949	64,353	(47,404)
Disbursements			
Payment to suppliers	-	60,000	(60,000)
Payments for operating expenses	20,720	72,030	(51,310)
Payroll (inc. contractors)	42,305	42,239	66
Tax	-	11,440	(11,440)
Total Disbursements	63,025	185,708	(122,683)
Operating Net Cash Flow	(46,076)	(121,355)	75,279
Administrative Fees	-	-	-
Net Cash Flow	(46,076)	(121,355)	75,279
Beginning Cash	87,757	87,757	-
Net Cash Flow	(46,076)	(121,355)	75,279
Interim Financing/(repayment)	-	-	-
Ending Cash	41,680	(33,598)	75,279

25. Overall, KMW realized a favorable net cash flow variance of approximately \$75.28M during the 3 weeks ended April 26, 2020. The key components of the variance are as follows:
- a. Receipts: Unfavorable variance of approximately \$47.4M is attributable to: (i) delays in receiving a HST refund of approximately \$20M, which the Company

attributes to CRA's delay in processing refunds during the COVID-19 pandemic; and (ii) delay in receipt of \$39M from a customer, which the Company now expects to receive in early May, 2020. These unfavourable variances were offset by an earlier than anticipated collection of approximately \$11M from a pre-Filing Date account receivable.

- b. Payment to suppliers: The favourable variance of \$60M is timing in nature. The Company advises that it is negotiating purchase orders with the suppliers and the payments to these suppliers will now be made in May 2020.
 - c. Payment for operating expenses: The favourable variance of approximately \$51M is timing in nature, as KMW delayed reimbursing certain employee expenses totaling approximately \$44M pending receipt of funds from the DIP Lender.
 - d. Tax: The favorable variance is a timing difference and it is due to reverse in the forthcoming weeks.
26. Notwithstanding the positive variance up to April 26, 2020, the Cash Flow Projections reflect that KMW is expected to require funding of approximately \$354.2M by the end of the Projection Period. The Company had \$87.75M as at April 6, 2020, which means that during the Projection Period, the Company is projected to have a \$441.95M decrease in cash position.
27. Based on the Proposal Trustee's review of the Cash Flow Projections, there are no material assumptions which seem unreasonable in KMW's circumstances. Based on the Cash Flow Projections and the assumption that the DIP Loan will be available, KMW will have sufficient funding through to the end of the requested extension of the NOI.

VIII. INTERIM FINANCING

28. As set out in the Cash Flow Projections, absent additional financing, the Company does not have the ability to continue to fund operations and the cost of these proceedings beyond

the initial few weeks of the Projection Period. As detailed above, the Company has postponed the purchase of certain goods and supplies pending finalization of the DIP Loan.

29. In light of the contemplated Sale Process, and in order to preserve the value of the Company's business, the DIP Lender has negotiated the terms of the DIP Loan in order to fund KMW's ongoing cash flow shortfalls pursuant to a draft Term Sheet, dated April 24, 2020 (the "**Term Sheet**"). A summary of the DIP Loan's significant terms are as follows:

- a. **Principal Amount:** \$500M on a non-revolving basis;
- b. **Purpose:** (i) Fund working capital needs; (ii) DIP Lender fees and expenses; and (iii) Administrative Professionals fees and disbursements.
- c. **Term:** Repayable on the earliest of (i) Demand; (ii) occurrence of an Event of Default (as defined in the Term Sheet); (iii) the date on which the period for the Company to file a proposal in these proceeding is not extended or is terminated; (iv) the date on which the Company becomes bankrupt; (v) the date upon which a sale of substantially all of the business and assets of the Company is completed; and (vi) July 1, 2020 (such earlier date being the "**Repayment Date**").
- d. **Security and Priority:** The DIP Loan is conditional on the Court ordering a second ranking security charge on the Property (the "**DIP Charge**") in favour of the DIP Lender over all other security interests and encumbrances other than the Administration Charge (the "**DIP Approval Order**");
- e. **Interest:** shall accrue at the annual rate of 11% per annum and be repaid on the Repayment Date;
- f. **Advance:** The Facility shall be available by multiple advances ("**Advance**"), normally to be issued once a week. Notwithstanding the quantum of any Advance requested, the DIP Lender shall only be required to fund such portion thereof that is consistent with the necessary weekly funding set out in the Cash Flow Projections, plus a maximum variation thereto of ten percent (10%); and
- g. **Expenses:** Concurrently with each Advance, a Facility fee of 1.5% of the amount of such Advance, all of which fees shall accrue to and be repaid, together with all other amounts comprising the DIP Loan, on the Repayment Date. In addition, all costs and expenses of the DIP Lender incurred in connection with the DIP Loan,

the term sheet and all security documents and/or any other documents related thereto (including the fees and expenses of its legal counsel).

A copy of the Term Sheet is attached as Exhibit “L” to the Rosen Affidavit.

IX. INTERIM FINANCING RECOMMENDATION

30. The Proposal Trustee has considered the factors set out in Subsection 50.6(5) of the BIA with respect to the granting of a Court order for interim financing and the DIP Approval Order. The Proposal Trustee respectfully recommends that the Court make the order sought by the Company for the following reasons:

- a. For the reasons set out in paragraph 10 and 11, the Company is facing an imminent liquidity crisis. It will require funding in order to: (i) sustain operations and (ii) to conduct the Sale Process;
- b. No creditor of the Company appears to be materially prejudiced by the borrowings under the DIP Loan, and the DIP Approval Order; and
- c. the terms of the borrowings appear to be reasonable in the circumstances and consistent with the terms of debtor-in-possession financing facilities in similar proceedings.

X. SALE PROCESS

Stalking Horse APA

31. The Stalking Horse Bidder has submitted an offer to purchase the right, title and interest of the Company, if any, in and to all of the Property (collectively, the “**Purchased Assets**”) for the sum equal to the aggregate of the following amounts, without duplication (the “**Purchase Price**”):

- a. the amount of \$500M;

- b. any and all amounts secured by the DIP Charge;
- c. any and all amounts secured by the Administration Charge at Closing;
- d. any and all amounts secured by the D&O Charge; and
- e. any and all other amounts and claims which rank in priority to the Purchaser Security (as defined below), if any, including, without limitation, on account of unremitted source deductions. (collectively, the "**Priority Payables**").

A copy of the Stalking Horse APA is attached as Exhibit “M” to the Rosen Affidavit.

32. The Stalking Horse APA remains subject to Court approval, if the Proposal Trustee does not receive a better offer through the Sale Process as contemplated below. The Sale Process aims to preserve the ongoing business of the Company, while seeking to identify third party bidders for amounts higher than the Purchase Price.

33. A summary of the other key terms and conditions of the Stalking Horse APA are as follows:

- a. representations and warranties are consistent with insolvency transactions, i.e. the transaction is to be completed on an “as is, where is” basis without material representations and warranties; and
- b. the only significant condition is the granting of an approval and vesting order (the “**Approval and Vesting Order**”) vesting title in and to the purchaser free and clear of all encumbrances, except any permitted encumbrances.

Sale Process

34. The Sale Process is summarized below and is described at Schedule “A” to the Stalking Horse APA. Capitalized terms used in this section and not otherwise defined have the meaning given to them in the Schedule “A” to the Stalking Horse APA.

Milestone	Deadline
Commencement of Sale Process	Not later than five (5) Business Days after the Sale Process Order (as such term is defined in the Stalking Horse APA and below) is granted

<p>Advertise for sale the Purchased Assets in The National Post and other trade publications and distribute a teaser document to potential interested parties</p>	<p>Not later than seven (7) Business Days after the Sale Process Order is granted</p>
<p>Due Diligence</p>	<p>Not later than five (5) Business Days after the Sale Process Order is granted, the Proposal Trustee shall make available to prospective purchasers (collectively, the “Prospective Participants”), upon receipt of an executed non-disclosure agreement (the “NDA”) from Prospective Participants, access to a data room containing information reasonably required by Prospective Participants to consider submitting an offer for the Purchased Assets and facilitate the conduct of due diligence by the Prospective Participants.</p>
<p>Bid Deadline</p>	<p>May 29, 2019 at 5 PM (Toronto time). May get extended by a maximum of 10 days, not to surpass June 8, 2020 if the Proposal Trustee deems it appropriate to do so. Each offer must remain open for acceptance until the June 30, 2020.</p>
<p>Qualified Bids</p>	<p>In order for a bid to qualify as a “Qualified Bid” it must, among other things, be in terms at least a favourable to and no more burdensome than, the Stalking Horse APA and provide for a purchase price of at least the sum of (i) Secured Indebtedness (ii) any and all amounts secured by the DIP Approval Order (iii) any and all amounts secured by the Administration Charge (iv) the Priority Payables and (v) any and all amounts secured by D&O Charge. The Proposal Trustee retains sole discretion to determine whether bids received are Qualified Bids.</p>
<p>Auction</p>	<p>Only if the Proposal Trustee receives one or more Qualified Bids by the Bid Deadline, the Proposal Trustee shall extend invitations by phone, fax and/or email by 10:00 a.m. (Toronto time) on the second (2nd) business day after the Bid Deadline to all bidders who submitted Qualified Bids and to the Stalking Horse Bidder to attend an auction (the “Auction”). The Auction shall be held at 10:00 a.m. on the fifth (5th) Business Day after the Bid Deadline (or such other date and time as the Proposal Trustee may in its sole discretion designate) at the offices of the Proposal Trustee or by teleconference, video conference or other form of electronic telecommunications, as the Proposal Trustee may deem fit.</p>

- a. Conduct of the Auction: The Proposal Trustee shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Bid and subsequently continue in multiples of \$50,000, or such other amount as the Proposal Trustee determines to facilitate the Auction. Additional consideration in excess of the amount set forth in the highest Qualified Bid must be comprised only of cash consideration. The format and procedure for the Auction shall be determined by the Proposal Trustee in its sole discretion.
- b. Winning Bid: In its sole discretion and based, *inter alia*, on the conduct of the Auction, the total financial and contractual terms of the Qualified Bids and various factors relevant to the speed and certainty of completing the sale of the Purchased Assets, the Proposal Trustee shall determine and accept the highest and/or best bid with respect to the Purchased Assets (the “**Winning Bid**”), subject to Court approval.
- c. Court Approval of the Winning Bid: The Company shall make a motion to the Court to obtain approval of the Winning Bid and the Approval and Vesting Order in respect of the Winning Bid and the underlying purchase agreement (the “**Final APA**”) as expeditiously as possible after the Auction.
- d. Court Approval of Agreement if no Qualified Bid: If no Qualified Bid is received by the Bid Deadline (other than the Stalking Horse APA), the Auction will not be held. Accordingly, the Stalking Horse APA will be the Winning Bid and the Company shall seek, as expeditiously as possible, approval of the Court to consummate the Transaction contemplated by that agreement.
- e. Return of Deposits: All deposits received (except such deposit forming part of the Winning Bid) shall be held by the Proposal Trustee “in trust”. All deposits submitted by Prospective Participants who did not submit the Winning Bid shall be returned, without interest, as soon as practicable following the date on which any such offers are rejected hereunder. The deposit forming part of the Winning Bid shall be dealt with in accordance with the Final APA. If the Winning Bid terminates pursuant to its terms or fails to close because of the Company’ breach or failure to perform under the terms of the Winning Bid, the Proposal

Trustee shall return the deposit submitted with such bid to the bidder that submitted the Winning Bid (the “**Winning Bidder**”) forthwith. If the Winning Bidder fails to complete the approved sale because of its breach or failure to perform under the terms of the Winning Bid, the Proposal Trustee shall not have any obligation to return the deposit submitted with the Winning Bid and such deposit shall be retained by the Proposal Trustee as liquidated damages.

f. Modifications: Subject to the Sale Process Order by the Court, the Company, in consultation with the Proposal Trustee, shall have the right to adopt such other rules for the Sale Process that, in its sole discretion, will better promote the goals of the Sale Process.

35. The Proposal Trustee believes that the Sale Process, as described above, is reasonable in the circumstances, for the following reasons:

- a. it establishes a floor value for the Purchased Assets while providing an opportunity for superior realizations to the Purchase Price contemplated in the Stalking Horse APA;
- b. provided the proposed Sale Process Order is granted, such that the Sale Process commences by no later than May 8, 2020, the Sale Process timeline appears, given the nature of the business, to provide Prospective Participants with sufficient time to complete due diligence and submit competitive bids;
- c. the timeline governing the Sale Process is fair and reasonable having regard to:
 - a) the Company’s DIP Facility being limited to \$500k, with the Cash Flow Projections indicating that the Company may utilize a significant part of the facility. While the Cash Flow Projections indicate that the Company should have sufficient liquidity to sustain its operations through to the completion of the contemplated Sale Process, there is risk that actual cash flow may negatively vary from the Cash Flow Projections, which may result in liquidity constraints; and
 - b) Without additional funding (beyond the DIP Loan) and the transition of the Company’s business to the Stalking Horse Bidder or another Prospective Participant, the Company is likely unable to fully service its existing contracts. A lengthier sale process will potentially put those customers contracts and

relationships at greater risk of being terminated. Additionally, without a smooth transition to a purchaser, it is likely that Liberty Mutual will payout on the Performance Bond;

- d. it is a commonly used method to sell distressed assets in Canadian insolvency proceedings;
 - e. with the Stalking Horse APA and a going concern transaction, the Sale Process will provide greater value/benefits and a higher return for stakeholders than a forced liquidation and/or bankruptcy sale;
 - f. the availability of the DIP Loan provides stability to the Company's cash flow and the sustainability of the businesses during the Sale Process; and
 - g. it will accelerate the realization of the Purchased Assets and, in the Proposal Trustee's view, is commercially reasonable in the circumstances.
36. The Proposal Trustee recommends that the Sale Process, as described above, be approved by this Court on the basis that it is an effective strategy to maximize the value of the Purchased Assets. In the view of the Proposal Trustee, the Stalking Horse APA will provide a benchmark for the realization of the Purchased Assets, while at the same time providing a forum and deadline to permit and encourage any serious alternative bidders to come forward with firm offers to purchase the Company's business and assets as part of a going concern transaction.

XI. ADMINISTRATION CHARGE

37. In order to protect the fees and expenses of the Administrative Professionals, the Company is seeking a first ranking charge (the "**Administration Charge**") on the Property to secure payment of the reasonable fees and expenses of the Administrative Professionals in an amount of \$150,000.
38. The Company is requesting that the Administration Charge rank in priority to the claims of all secured and unsecured creditors over the Property, including the DIP Charge and the D&O Charge.
39. The Proposal Trustee recommends the Administration Charge be approved for the following reasons:

- a. each of the professionals whose fees are to be secured by the Administration Charge has played and will continue to play a critical role in the Company's restructuring and the Sale Process;
- b. The Company intends to satisfy the fees and disbursements of the Administrative Professionals from cash flow during the NOI proceedings. The Administration Charge is sought to protect the Administrative Professionals in the event that the restructuring is not successful; and
- c. The DIP Lender has been notified of the Company's request for the Administration Charge, and the Proposal Trustee is advised that the DIP Lender does not oppose the Administration Charge.

XII. REQUEST FOR AN EXTENSION OF TIME FOR FILING A PROPOSAL

- 40. The time for filing a proposal expires on May 11, 2020.
- 41. In order to allow KMW sufficient time to stabilize its operations by taking the measures identified in paragraphs 28 to 34, KMW seeks a forty-five (45) day extension of the time for filing of a proposal to June 25, 2020.
- 42. In view of the foregoing, the Proposal Trustee supports KMW's request for an extension of time for filing a proposal for the following reasons:
 - a. that KMW is acting in good faith and with due diligence;
 - b. that the extension should not adversely affect or prejudice creditors as KMW is projected to have sufficient funds to pay post-filing services and supplies in the amounts contemplated in the Cash Flow Projections due to the availability of the proposed DIP Loan from the DIP Lender;
 - c. that the Sale Process could generate offers before the end of the requested extension period and allow the Company to be in a position to make a viable proposal; and

- d. that creditors would not be prejudiced by an extension of time for KMW to file its proposal.

XIII. CONCLUSION AND RECOMMENDATION

43. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief detailed in paragraph 7.

All of which is respectfully submitted on this 29th day of April 2020.

MNP LTD.,
in its capacity as Proposal Trustee under
the Notice of Intention to Make a Proposal of
KMW Inc.
Per:



Sheldon Title,
Licensed Insolvency Trustee

TAB C

This is Exhibit "C" referred to in the Affidavit of Eric Bertil Rosen sworn June 17, 2020.

A handwritten signature in black ink, appearing to read "Sam Rappos". The signature is fluid and cursive, with the first name "Sam" and the last name "Rappos" clearly distinguishable.

Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS



Estate File Number: 35-2638322
Court File No.: 35-2638322

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

THE HONOURABLE MR.)
JUSTICE HAINEY)
FRIDAY, THE 1st
DAY OF MAY, 2020

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF KMW ENERGY INC.**

ORDER

THIS MOTION, made by KMW Energy Inc. ("**Company**") for an Order:

- (a) abridging the time for service of the Company's notice of motion and motion record so that the motion is properly returnable on May 1, 2020;
- (b) authorizing the Company to enter into the DIP Term Sheet¹ with the DIP Lender, approving the DIP Term Sheet, and granting the DIP Charge as security for the Company's obligations to the DIP Lender under the DIP Term Sheet;
- (c) authorizing the Company to execute the Stalking Horse Agreement with the Stalking Horse Bidder, and approving the Stalking Horse Agreement;
- (d) authorizing the Proposal Trustee to conduct the Sale Process;

¹ Capitalized terms used in the preamble shall have the meanings ascribed to such terms in the body of the Order.

- (e) approving the Administration Charge;
- (f) approving the D&O Charge; and
- (g) extending the time for filing a proposal by the Company to June 25, 2020,

was heard this day via videoconference due to the COVID-19 crisis.

ON READING the Motion Record of the Company, including the Affidavit of Eric Bertil Rosen sworn April 24, 2020 (the "**Rosen Affidavit**"), and the exhibits thereto, and the First Report of MNP Ltd. in its capacity as proposal trustee (the "**Proposal Trustee**") dated April 29, 2020, and on hearing the submissions of counsel for the Company, the Proposal Trustee, 2751602 Ontario Inc. ("**2751**"), Liberty Mutual Insurance Company, and Georges River Energy, LLC,

SERVICE

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

DIP FINANCING

2. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to obtain and borrow under a credit facility with 2751 in its capacity as lender (the "**DIP Lender**") in order to enable the Company to carry on business during this proceeding and fund the Sale Process (as defined below), working capital and the costs of this proceeding, provided that borrowings under such credit facility shall not exceed \$500,000 unless permitted by further Order of this Court.

3. **THIS COURT ORDERS** that such facility shall be on the terms and subject to the conditions set forth in the interim financing term sheet dated April 24, 2020 (the "**DIP Term Sheet**") which is hereby approved, *nunc pro tunc*.

4. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Company is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

5. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Charge**") on all assets, rights, undertakings and properties of the Company, of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (the "**Property**"), which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 17 and 19 of this Order.

6. **THIS COURT ORDERS** that, notwithstanding any other provisions of this Order and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"):

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;

- (b) upon the occurrence of an event of default under the DIP Term Sheet, the Definitive Documents or the DIP Charge, the DIP Lender may, with leave of the Court, exercise any and all of its rights and remedies against the Company and the Property under or pursuant to the DIP Term Sheet, the Definitive Documents and the DIP Charge, including without limitation, to cease making advances to the Company and set-off and/or consolidate any amounts owing by the DIP Lender to the Company against the obligations of the Company to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim manager, or for a bankruptcy order against the Company and for the appointment of a trustee in bankruptcy of the Company; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or manager and manager of the Company or the Property.

7. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by the Company under the BIA, or any plan of arrangement or compromise filed by the Company under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "CCAA"), with respect to any advances made under the DIP Term Sheet and the Definitive Documents.

SALE PROCESS AND STALKING HORSE AGREEMENT

8. **THIS COURT ORDERS** that the sale process set out in paragraph 43 of the Rosen Affidavit (the "**Sale Process**") be and hereby is approved.

9. **THIS COURT ORDERS** that the Company and the Proposal Trustee be and are hereby authorized and empowered to take such steps as are necessary or desirable to carry out and perform their obligations under the Sale Process, provided that any definitive agreement to be executed by the Company in respect of the sale of all or part of the Property shall require further approval of the Court.

10. **THIS COURT ORDERS** that the Company is hereby authorized and directed, *nunc pro tunc*, to enter into the stalking horse asset purchase agreement dated April 24, 2020 (the "**Stalking Horse Agreement**") between the Company and 2751 in its capacity as stalking horse bidder (the "**Stalking Horse Bidder**"), and the Stalking Horse Agreement is hereby approved and accepted for the purpose of conducting the Sale Process.

11. **THIS COURT ORDERS** that in connection with the Sale Process and pursuant to clause 7(3)(c) of the *Personal Information Protection and Documents Act* (Canada), the Company may disclose personal information of identifiable individuals to prospective bidders in the Sale Process and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of such assets. Each prospective bidder to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evolution of the said assets and related business, and if it does not complete a purchase thereof, shall return all such information to the Company or in the alternative shall destroy all such information and certify such destruction to the Company. The

purchaser of the Property in the Sale Process shall be entitled to use the personal information provided to it, and related to the purchased assets, in a manner which is in all material respects identical to the prior use of such information by the Company and shall return all other personal information to the Company, or ensure that all other personal information is destroyed.

ADMINISTRATION CHARGE

12. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by the Company as part of the costs of this proceeding. The Company is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company on a bi-weekly basis.

13. **THIS COURT ORDERS** that the Proposal Trustee, counsel for the Proposal Trustee, and counsel for the Company shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which Administration Charge shall not exceed an aggregate amount of \$150,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of this proceeding. The Administration Charge shall have the priority set out in paragraphs 17 and 19 hereof.

D&O CHARGE

14. **THIS COURT ORDERS** that the Company shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Company after the commencement of the within proceeding, except to the extent that, with respect to any

officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

15. **THIS COURT ORDERS** that the directors and officers of the Company shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$50,000, as security for the indemnity provided in paragraph 14 of this Order. The D&O Charge shall have the priority set out in paragraph 17 and 19 herein.

16. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Company's directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 14 of this Order.

VALIDITY AND PRIORITY OF COURT ORDERED CHARGES

17. **THIS COURT ORDERS** that the priority of the Administration Charge, the DIP Charge and the D&O Charge (collectively, the "**Charges**"), as among them, shall be as follows:

- (a) firstly, the Administration Charge to a maximum of \$150,000;
- (b) secondly, the DIP Charge, and
- (c) thirdly, the D&O Charge to a maximum of \$50,000.

18. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register, record or perfect.

19. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the "Encumbrances"), in favour of any individual, firm, corporation, governmental body or agency or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person").

20. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Company also obtains the prior written consent of the Proposal Trustee, the DIP Lender and all other beneficiaries of the Charges, or further Order of this Court.

21. **THIS COURT ORDERS** that the Charges, the DIP Term Sheet and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by the pendency of this proceeding and the declarations of insolvency made herein; (b) any motion(s) or application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such motions or applications; (c) the filing of any assignments for the general benefit of creditors made or

deemed to have been made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, leases, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Company or the DIP Lender, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Company entering into the DIP Term Sheet and the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the DIP Term Sheet and Definitive Documents; and
- (c) the payments made by the Company pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

EXTENSION OF TIME TO FILE A PROPOSAL

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22. **THIS COURT ORDERS** that the time within which the Company must file a proposal with the Official Receiver be and is hereby extended to June 25, 2020.

SERVICE OF MATERIALS AND NOTICE

23. **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://mnpdebt.ca/en/corporate/Engagements/kmw-energy-inc>.

24. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Company and the Proposal Trustee are 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 Company's creditors or other interested parties at their respective addresses as last shown on the records of the Company 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.

25. **THIS COURT ORDERS** that the Company, the Proposal Trustee and their respective 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 Company'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).

AID AND ASSISTANCE

26. **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 Company, the Proposal Trustee and their 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 Company and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Company, Proposal Trustee and their agents in carrying out the terms of this Order.

27. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal

order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.

Hailey J

SUPERIOR COURT OF JUSTICE
ENTERED
MAY 01 2020
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COUR SUPÉRIEURE DE JUSTICE
ENTRÉ

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF KMW ENERGY INC.

Estate File Number: 35-2638322
Court File No.: 35-2638322

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

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF ERIC BERTIL ROSEN
(sworn June 17, 2020)

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Lawyers for KMW Energy Inc.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF KMW ENERGY INC.

Estate File Number: 35-2638322

Court File No.: 35-2638322

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

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(returnable June 22, 2020)

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