

COURT FILE NUMBER 2101-02279
COURT COURT OF KING'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY
MATTER IN THE MATTER OF THE RECEIVERSHIP OF ALTER
NRG CORP.



IN THE MATTER OF SECTION 85 OF THE *CIVIL ENFORCEMENT ACT*, RSA 2000, c C-15

COM
September 1, 2023
Justice Nielsen

-and-

IN THE MATTER OF SECTION 13(2) OF THE
JUDICATURE ACT, RSA 2000, c J-2



APPLICANT MNP LTD.

DOCUMENT **APPLICATION (Distribution and Discharge)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
MLT AIKINS LLP
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Fax Number: 403.508.4349
File No.: 0021752.00047

This application will be heard as shown below:

DATE: September 1, 2023
TIME: 3:00 p.m.
LOCATION: Edmonton Law Courts, 1A Sir Winston Churchill Square,
Edmonton, Alberta *via* WebEx in Virtual Courtroom 86
BEFORE WHOM: The Honourable Justice K.G. Nielsen

I. RELIEF SOUGHT

1. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Fourth Report dated August 25, 2023 (the "**Fourth Report**") of MNP Ltd., in its capacity as the court-appointed receiver and manager (the "**Receiver**" or "**MNP**") of Alter NRG Corp. ("**Alter**" or the "**Debtor**").

2. The Receiver respectfully seeks from this Honourable Court an Order substantially in the form of **Schedule “B”** hereto:
 - (a) abridging, if necessary, the time for service of this application (the “**Application**”) and supporting materials, and declaring service of the same to be good and sufficient;
 - (b) approving the Receiver’s proposed final distribution of funds to the Debtor’s creditors from the sale proceeds realized from the APA (as defined below), as outlined in paragraphs 23-28 of the Fourth Report;
 - (c) approving the actions, conduct and activities of the Receiver, as outlined in the Fourth Report;
 - (d) approving the fees and disbursements of the Receiver to date, including the fees of its legal counsel MLT Aikins LLP, as outlined in paragraph 30 and Appendix “H” of the Fourth Report;
 - (e) approving the Receiver’s statement of receipts and disbursements, as outlined in paragraph 30 and Appendix “I” of the Fourth Report;
 - (f) discharging the Receiver as receiver and manager of Alter and releasing MNP from any and all liability that has arisen or may arise with respect to its appointment as Receiver over Alter, save for any gross negligence or willful misconduct; and
 - (g) such further and other relief as may be sought by the Receiver and granted by this Honourable Court.

Background

3. On April 29, 2021, the Honourable Justice K.M. Eidsvik granted an order (the “**Receivership Order**”) appointing MNP as receiver over the Debtor’s assets, undertakings and properties (collectively, the “**Property**”).
4. On July 16, 2021, the Honourable Justice K.M. Horner granted an Order (the “**SSP Order**”) approving a sale and solicitation process (“**SSP**”) in order to facilitate a process to solicit bids for the Property.

5. On October 22, 2021, the Honourable Justice B.B. Johnson granted a Sale Approval and Vesting Order (the “**SAVO**”) approving the sale of the Debtor’s assets to Skyfuel Inc. (the “**Purchaser**”) pursuant to a purchase and sale agreement dated October 12, 2021 (the “**APA**”).
6. On October 22, 2021, Justice B.B. Johnson further granted an order approving the Receiver’s proposed claims process (the “**Claims Process**”) and an order approving the Receiver’s activities to date. The Receiver has now completed and fully administered the Claims Process. The Receiver believes it has uncovered all known claims of the creditors of the Debtor.
7. Certain of the related entities to the Debtor, Harvest and Sunshine, have agreed to fully subordinate any claims they have to the claims of the creditors who have submitted claims in the Claims Process.
8. The APA and the closing contemplated thereunder has been extended a number of times since October 22, 2021, with additional deposits being provided by the Purchaser to extend the closing for this period of time. The Third Amending Agreement extended the Closing Date to April 15, 2023.
9. On February 2, 2023, the Honourable Justice A.D. Grosse granted an interim distribution order (the “**Interim Distribution Order**”) approving the distribution of up to \$1,950,000.00 from deposit funds provided under the APA to the Debtor’s creditors on a pro rata basis (the “**Interim Distribution**”).
10. The Interim Distribution Order further approved and ratified the Receiver’s activities up to February 2, 2023.
11. The Receiver has now processed the Interim Distribution.
12. On August 8, 2023, the Purchaser and the Receiver executed the Fourth Amending Agreement to the APA, pursuant to which the following terms were modified:
 - (a) the Purchase Price was reduced from \$30,000,000.00 to \$29,851,899.55;
 - (b) the cash component of the Purchase Price was reduced from \$6,000,000.00 to \$4,247,701.00;

- (c) the credit bid portion of the Purchase Price was increased from \$24,000,000.00 to \$25,384,098.55, which represents the full amount of the Alter debt and fully extinguishes that debt; and
 - (d) closing would take place within five days after approval from this Honourable Court or at another date mutually agreed between the Purchaser and the Receiver.
13. On August 10, 2023, the Receiver received the balance of the cash component of the amended purchase price under the APA. The Receiver has now collected the total cash component of the Purchase Price, which amounts to \$4,247,701.00.

Proposed Distribution

14. As set out in paragraph 29 of the Fourth Report, the Receiver is currently holding \$2,098,183.77 in cash in its trust account. After running the Claims Process, and after making the Interim Distribution of \$1,950,000.00, the Receiver has calculated the total remaining amount of proven claims is \$1,537,961.66 and confirmed the Debtor's proven creditors are entitled to recover the full value of their remaining proven claims.
15. Due to the delay in receiving the cash portion of the Purchase Price, the Receiver is also recommending that a 5% interest distribution amount calculated to September 5, 2023 (the "**Interest Distribution Amount**") pursuant to section 143 of the BIA be applied to the proven creditors' claims and allocated to the proven creditors on a *pro rata* basis. The total Interest Distribution Amount is \$363,495.70. September 5, 2023 is the next business day following the September 1, 2023 Application date and when the Receiver will be able to make the Final Distribution.
16. The Receiver recommends that the Court approve a final distribution of \$1,901,457.36, inclusive of the Interest Distribution Amount, to the Debtor's creditors (the "**Final Distribution**"). As certain creditor payments are for severance, the Receiver is required to deduct income tax from the non-interest portion of the payment.
17. The professional fees billed by the Receiver up to the date of filing total \$203,975.60 and the fees for the Receiver's legal counsel, MLTA, total \$121,992.03, as summarized in paragraph 30 and Appendix "H" of the Fourth Report.

18. The balance of funds remaining following payment of the proven creditors' claims as outlined in the Fourth Report, and payment of the Receiver's final invoices and its legal counsel's final invoices, shall be returned to the Debtor upon completion of the Receiver's discharge.

Approval of Activities

19. The Receiver has diligently administered the Debtor's estate since the date of its appointment and since the last approval of its activities on February 2, 2023.
20. Among other activities, the Receiver has overseen the amendment, extension and closing of the APA, continued collecting the remaining balance of the cash portion of the Purchase Price and distributed funds to the Debtor's creditors pursuant to the Interim Distribution Order.
21. The Receiver's activities, conduct and actions are reasonable in the circumstances, including its fees and disbursements and the fees and disbursements of its legal counsel as outlined in paragraph 30 and Appendix "H" of the Fourth Report.

Statement of Receipts and Disbursements

22. As outlined in paragraph 30 and Appendix "I" of the Fourth Report, the Receiver has prepared a Statement of Receipts and Disbursements up to August 25, 2023 (the "R&D").
23. The amounts outlined in the R&D are reasonable and appropriate in the circumstances and the Receiver is seeking approval of these amounts by the Court.

Discharge and Release

24. The APA is scheduled to close shortly before this Application and the Receiver has received the full balance of the cash portion of the Purchase Price. Once the Receiver completes the Final Distribution and final administration of the within receivership proceedings, including the items set out in paragraph 31 of the Fourth Report, the Receiver will have fulfilled its mandate and obligations under the Receivership Order.
25. The Receiver respectfully requests this Court's approval to be discharged upon its filing of the Completion Certificate and to be released from any and all liability that has arisen

or may arise with respect to its appointment as Receiver over Alter, save for any gross negligence or willful misconduct.

26. All of the Receiver's activities in prior reports have been approved by Orders of this Honourable Court.

Affidavit or other evidence to be used in support of this application:

27. The Receiver relies on the following evidence in support of this Application:
- (a) the First Report of the Receiver dated July 5, 2021;
 - (b) the Second Report of the Receiver dated October 12, 2021;
 - (c) the Confidential Supplement to the Second Report of the Receiver dated October 12, 2021;
 - (d) the Third Report of the Receiver dated January 23, 2023;
 - (e) the Confidential Supplement to the Third Report of the Receiver dated January 23, 2023;
 - (f) the Fourth Report of the Receiver dated August 25, 2023; and
 - (g) such further information as counsel may advise and as this Honourable Court may permit.

Applicable Acts and Regulations:

28. *Alberta Rules of Court*, Alta Reg 124/2010.
29. *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3.

Any Irregularity Complained of or Objection Relied on:

30. None

How the Application is proposed to be heard or considered:

31. *Via Webex* hearing before the Honourable Justice K.G. Nielsen, ACJ pursuant to the login details attached hereto at **Appendix "A"**.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Appendix “A” – WebEx Login Details

Subject: WEBEX CONFIRMATION - 2101 02279 - GORODETSKY, ALEKSANDR v. ALTER NRG CORP - Sep 01, 2023 03:00 PM - NIELSEN, ACJ - Confirmed

Counsel: Please ensure that all relevant parties have received Webex information.

Virtual Courtroom 86 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit: <https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the "Cisco Webex Meetings" App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

Thank you,



Court of King's
Bench of Alberta

Corbyn Burik
Commercial Duty Coordinator

E: CommercialCoordinator.QBEdmonton@albertacourts.ca
Court of King's Bench of Alberta
Edmonton Law Courts
1A Sir Winston Churchill Square,

Schedule "A" – Service List

COURT FILE NUMBER 2101-02279
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
MATTER IN THE MATTER OF THE RECEIVERSHIP OF
ALTER NRG CORP.
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-and-

IN THE MATTER OF SECTION 13(2) OF THE
JUDICATURE ACT, RSA 2000, c J-2

APPLICANT MNP LTD.

DOCUMENT **SERVICE LIST**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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File No.: 0021752.00047

(Updated February 7, 2023)

PARTY	REPRESENTATIVE
<p>MNP Ltd. 1500, 640 – 5th Avenue SW Calgary, Alberta T2P 3G4</p> <p>Victor P. Kroeger Email: vic.kroeger@mnp.ca</p> <p>Seamus Boyle Email: seamus.boyle@mnp.ca</p>	<p><i>Counsel for MNP Ltd.</i></p> <p>MLT Aikins LLP 2100 Livingston Place 222 3 Ave SW Calgary, Alberta T2P 0B4</p> <p>Ryan Zahara Email: rzahara@mltaikins.com</p>
<p>Alter NRG Corp.</p> <p>Sunshine Kaidi New Energy Group Ltd.</p> <p>Harvest International New Energy Co. Ltd.</p>	<p><i>Counsel for Alter NRG Corp., Sunshine Kaidi New Energy Co. Ltd., and Harvest International New Energy Co. Ltd.</i></p> <p>Gardiner Roberts LLP 22 Adelaide Street West Suite 3600 Toronto, Ontario M5H 4E3</p> <p>Chris Besant Email: cbesant@grllp.com</p>
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<p>SCREO Calgary Suburban Inc. 4000, 421 – 7 Avenue SW Calgary, Alberta T2P 4K9</p>	<p><i>Counsel for SCREO Calgary Suburban Inc.</i></p> <p>BrownLee LLP 2200 Commerce Place 10155 – 102 Street Edmonton, Alberta T5J 4G8</p> <p>Elizabeth J. Robert Email: erobert@brownleelaw.com</p>
<p>Canada Revenue Agency Prairie Region (Calgary) 220 – 4 Avenue SE Calgary, Alberta T2G OL1</p> <p>Fax: 403.264.5843 Fax: 403.299.3507</p> <p>E-mail: alb.fc@justice.gc.ca</p>	<p>Department of Justice National Litigation Sector Prairie Regional Office (Edmonton) 10423 - 101 Street NW 3rd Floor, Epcor Tower Edmonton, Alberta T5H 0E7</p> <p>Fax: 780.495.3319</p> <p>E-mail: alb.fc@justice.gc.ca agc_pgc_alberta@justice.gc.ca</p>

Schedule "B" – Proposed Form of Discharge and Distribution Order

COURT FILE NUMBER 2101-02279

COURT COURT OF KING'S BENCH
OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE RECEIVERSHIP OF ALTER
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-and-

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APPLICANT MNP LTD.

DOCUMENT **ORDER (Distribution and Discharge)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **MLT AIKINS LLP**
2100 Livingston Place
222 - 3rd Avenue S.W.
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Solicitors: Ryan Zahara/Kaitlin Ward
Telephone: 403.693.5420/4311
Email: rzahara@mltaikins.com / kward@mltaikins.com
Fax Number: 403.508.4349
File No.: 0021752.00047

DATE ON WHICH ORDER WAS PRONOUNCED: SEPTEMBER 1, 2023

LOCATION WHERE ORDER WAS PRONOUNCED: CALGARY, ALBERTA

NAME OF THE JUSTICE WHO MADE THIS ORDER: JUSTICE K.G. NIELSEN

UPON THE APPLICATION of MNP Ltd., in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertakings, property and assets of Alter NRG Corp. (the "**Debtor**") for an Order for the final distribution of proceeds, approval of the Receiver's fees and disbursements, approval of the Receiver's activities and discharge of the Receiver; **AND UPON** hearing read the Fourth Report of the Receiver, dated August 25, 2023 (the "**Fourth**

Report”) and the Affidavit of Service of Joy Mutuku; **AND UPON** hearing counsel for the Receiver and any interested party present; **AND UPON** being satisfied that it is appropriate to do so, **IT IS ORDERED THAT:**

Service

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

Receiver’s Activities

2. The Receiver’s accounts for fees and disbursements, and the accounts of the Receiver’s legal counsel, MLT Aikins LLP, for its fees and disbursements, as set out in paragraph 30 and Appendix “H” to the Fourth Report, are hereby approved without the necessity of a formal passing of its accounts.
3. The Receiver's activities as set out in the Fourth Report and the Statement of Receipts and Disbursements as attached in Appendix “I” to the Fourth Report, are hereby ratified and approved.

Final Distribution and Discharge

4. The Receiver is authorized and directed to make the Final Distribution as defined and outlined in paragraphs 23-28 of the Fourth Report.
5. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.

6. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
7. Upon the Receiver filing with the Clerk of the Court a sworn Affidavit of a licensed Trustee employed by the Receiver confirming that all matters set out in the Fourth Report, including those items in paragraph 31, have been completed, then the Receiver shall be discharged as Receiver of the Debtor, provided however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.
8. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by Facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
9. Service of this Order on any party not attending this application is hereby dispensed with.

Honourable Justice K.G. Nielsen, ACJ
Justice of the Court of King's Bench of Alberta