

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

Contents

- I. INTRODUCTION 3
- II. RESTRICTIONS..... 3
- III. PURPOSE OF THIS REPORT 4
- IV. BACKGROUND INFORMATION..... 5
- V. ASSETS 7
- VI. CREDITORS..... 7
- VII. CASH FLOW PROJECTIONS 8
- VIII. INTERIM FINANCING 11
- IX. INTERIM FINANCING RECOMMENDATION..... 13
- X. SALE PROCESS..... 13
- XI. ADMINISTRATION CHARGE..... 18
- XII. REQUEST FOR AN EXTENSION OF TIME FOR FILING A PROPOSAL 19
- XIII. CONCLUSION AND RECOMMENDATION 20

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

APPENDIX "A"

April 17, 2020

To the Creditors of KMW Energy Inc. (“**KMW**” or the “**Company**”), Estate # 35-2638322

Please take notice that on April 11, 2020, KMW filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to Section 50.4(1) of Part III, Division I of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and MNP Ltd. (“**MNP**”) was appointed as the proposal trustee (the “**Trustee**”). Please find enclosed the following:

1. The NOI, filed on April 11, 2020;
2. A list of the names of the known creditors with claims of \$250 or more and the amounts of their claims (the “**Creditor Listing**”);
3. The consent of the Trustee to act in these proposal proceedings; and
4. The Certificate of Filing of the NOI.

Suppliers and other service providers should contact their normal representative of KMW with respect to the terms of payment for goods and/or services that are to be provided to the Company going forward (after April 11, 2020).

Pursuant to Section 50.4(8) of the BIA, KMW has thirty (30) days, unless such time period is extended by the Court, to file a proposal with the Trustee. During these proposal proceedings there is a stay of proceedings, and as such:

- no person may terminate or amend any agreement with the Company, or claim an accelerated payment, or a forfeiture of the term, under any agreement with KMW, by reason only that the Company is insolvent or by reason of the filing of the NOI, pursuant to Section 65.1(1) of the BIA; and
- no creditor has any remedy against any of KMW or its property or shall commence or continue any action, execution, or other proceedings against the Company without leave of the Court, pursuant to Section 69(1) of the BIA.

We recognize the amounts reflected as being due to you on the Creditor Listing may vary from your records. However, at this time, the Trustee is not looking to receive nor are creditors required to file a proof of claim in connection with their claim and these proposal proceedings. At a later date and once a proposal has been filed by the Company, the Trustee will provide you with further information regarding these proposal proceedings, including the date for the meeting of creditors to consider the proposal and a proof of claim form, so that you may then submit and prove your claim. Copies of notices, reports of the Trustee and other relevant publicly available information concerning these proposal proceedings can be found at the Trustee’s website at: www.mnpdebt.ca/KMWEnergy

If you have any questions concerning the foregoing or require any additional information, please contact Jessie Hue at 416-515-5006 or by email at KMWEnergy@mnp.ca.

Yours truly,

MNP LTD.
Trustee acting in re: the Proposal of
KMW Energy Inc.
Per:



Sheldon Title, CPA, CA, CIRP, LIT

Encl.

District of:
Division No. -
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the matter of the proposal of
KMW Energy Inc.
of the City of London
in the Province of Ontario

Take notice that:

1. I, KMW Energy Inc., an insolvent person, state, pursuant to subsection 50.4(1) of the Act, that I intend to make a proposal to my creditors.
2. MNP Ltd. of 300 - 111 Richmond Street West, Toronto, ON, M5H 2G4, a licensed trustee, has consented to act as trustee under the proposal. A copy of the consent is attached.
3. A list of the names of the known creditors with claims of \$250 or more and the amounts of their claims is also attached.
4. Pursuant to section 69 of the Act, all proceedings against me are stayed as of the date of filing of this notice with the official receiver in my locality.

Dated at the City of Toronto in the Province of Ontario, this 10th day of April 2020.



KMW Energy Inc.
Insolvent Person

To be completed by Official Receiver:

Filing Date

Official Receiver

District of:
 Division No. -
 Court No.
 Estate No.

- FORM 33 -
 Notice of Intention To Make a Proposal
 (Subsection 50.4(1) of the Act)

In the matter of the proposal of
 KMW Energy Inc.
 of the City of London
 in the Province of Ontario

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Advanced Turbine Support	6280 SW 103rd St. Gainesville FL 32608 USA		66,931.77
Arthur J. Gallagher	400 - 250 York St. CitiPlaza London ON N6A 6K2		116,933.71
Arthur J. Gallagher US	PO Box 57194, Station A Toronto ON M5W 5M5		2,149.80
Barry Windsor	629 Oxford St. E London ON N5Y 3J2		2,273.66
BBI International, Inc.	304 - 308 2nd Ave. N. Grand Forks ND 58203 USA		2,287.39
Bell Canada	PO Box 9000, Stn Don Mills North York ON M3C 2X7		1,406.11
Bell Conferencing Inc.	5099 Creekbank Road B4 Mississauga ON L4W 5N2		542.57
Bell Mobility	PO Box 5102 Burlington ON L7R 4R7		920.38
Bell-Camp Manufacturing Inc.	543925 Clarke Rd Ingersoll ON N5C 3K5		312,956.52
Cameron Crane & Riggers Inc	6380 Glanworth Dr London ON N6L 1J4		5,516.10
D.R. Robinson Fabricating Ltd.	1 Industrial Road St. Mary's ON N4X 1B3		71,209.78
Damper Technology Canada	2050 Degenais Blvd. West Laval QC H7L 5W2		59,672.03
Danstoker	Industrivej Nord 13 Herning 7400 Denmark		165,071.79
Davis Martindale LLP	373 Commissioners Road W. London ON N6J 1Y4		19,243.90
DHL Express (Canada), Ltd.	18 Parkshore Drive Brampton ON L6T 5M1		4,618.48

District of:
 Division No. -
 Court No.
 Estate No.

- FORM 33 -

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 (Subsection 50.4(1) of the Act)

In the matter of the proposal of
 KMW Energy Inc.
 of the City of London
 in the Province of Ontario

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Diamond Canapower	75 Savage Drive Cambridge ON N1T 1S5		341,082.21
Dominion Automation Inc	1670 Bishop St N Unit C Cambridge ON N1R 7J3		8,990.85
Echo Janitorial Services	39 Ponderosa Crescent London ON N6E 2L4		746.90
Ecotherma Energie Inc.	750 111 Rue Saint-Georges Quebec QC G5Y 3J7		56,145.18
Elmer's Fighting Supply Inc.	7635 Hwy 21, R.R. #2 Allenford ON N0H 1A0		12,227.45
ELTT Automation AB	Box 904 Ljungby 34118 Sweden		69,720.61
Enbridge Gas	PO Box 4001 STN A Toronto ON M5W 0G2		558.46
Energy Resources Group, Inc.	23 Commerce Park Way Farmington NH 03835 USA		37,406.52
EthosEnergy Field Services, LLC	3444 East Pasadena Freeway Pasadena TX 77503 USA		109,261.45
EverMark Automation	450 Trudeau Dr, Unit #1 Sarnia ON N7S 4V1		240,695.74
Flextech Industries	948 East Nusbaum Place Clinton MO 64735 USA		108,908.87
FLS Transportation Services Limited	400 Sainte-Croix Avenue Montreal QC H4N 3L4		7,875.00
Franklin Empire	639 Sovereign Rd London ON N5V 4K8		5,001.33
Georges River Energy	506 Main St. S Searsmont ME 04973 USA		14,959.45

District of:
Division No. -
Court No.
Estate No.

- FORM 33 -
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(Subsection 50.4(1) of the Act)

In the matter of the proposal of
KMW Energy Inc.
of the City of London
in the Province of Ontario

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Gösta Carlsons Isoleringsfirma i Hässleholm AB	Ängdalavägen 18 Hässleholm 28133 Sweden		28,606.88
Heidelberg Metal Inc.	2916 Lobsinger Line Heidelberg ON N0B 2M1		7,394.70
HRS Services ULC	575 Clyde Ave. Suite 420 Mountain View CA 94043-2272 USA		8,891.14
Hydraulique Nes	945 Route 111 Est La Sarre QC J9Z 2X2		44,476.74
Instrumart	35 Green Mountain Drive S. Burlington VT 05403 USA		3,666.13
Invensys Systems Canada - Sylvan Automation	1129 Vanier Road Sarnia ON N7S 3Y6		30,030.88
JET Fluid Systems Inc.	3 - 125 McBrine Place Kitchener ON N2R 1G4		310.75
JM Stoffteknik AB	Johannelundsg. 34 Boras 50640 Sweden		275.32
Les Produits Forestiers D&G Ltee	500-2590, Boul. Laurier, Tour Belle Cour Quebec QC G1V 4M6		2,253.12
Les Soudures Lebel	2332 Rue Commerciale Sud Temiscouata-Sur-Le-Lac QC G0L 1X0		24,558.66
London Business Machines Inc.	13 - 540 Clarke Road London ON N5V 2C7		406.80
London Hydro	111 Horton St London ON N6A 4J8		550.72
Luc Alvarez, ing.	337 Baie-de-la-mine Guigues QC J0Z 2G0		3,781.49
Manitoulin Transport Inc.	154 Hwy 540B Gore Bay ON P0P 1H0		8,104.05

District of:
 Division No. -
 Court No.
 Estate No.

- FORM 33 -
 Notice of Intention To Make a Proposal
 (Subsection 50.4(1) of the Act)

In the matter of the proposal of
 KMW Energy Inc.
 of the City of London
 in the Province of Ontario

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Maple Systems Inc.	120 - 808 134th Street SW Everett WA 98204 USA		5,658.12
Matrix Group Publishing Inc.	309 Youville St Winnipeg MB R2H 2S9		4,039.75
Maverick Machine & Hydraulics ULC	1633 Trinity Drive Mississauga ON L5T 1K4		6,918.62
Miller Thomson LLP KITCHENER	300 - 295 Hagey Blvd. Waterloo ON N2L 6R5		559.35
Miller Thomson LONDON	255 Queens Ave., Suite 2010 London ON N6A 5R8		52,357.56
NORARC Steel Fabricators	331567 Highway 11 N. Earlton ON P0J 1E0		2,778,084.92
Nordstrong Equipment Limited	5895 Ambler Drive Mississauga ON L4W 5B7		150,333.50
Novatherm Energy Inc	922 Lionel-Boulet Varennes QC J3X 1P7		73,149.42
Paul Dan Maconnerie Inc.	29, rue Robert Mont Saint-Gregoire QC J0J 1K0		75,676.80
Petro-Canada	PO Box 8500 Don Mills ON M3C 3B2		353.76
PPC Industries	3000 East Marshall Longview TX 75601 USA		379,927.65
Process Equipment Barron Industries	2770 Welborn Street Pelham AL 35124 USA		76,332.23
Purolator Courier Ltd.	PO Box 4800 Stn Main Concord ON L4K 0K1		1,230.92
Rentech Boiler Systems (US)	5025 E. Business 20 Abilene TX 79601 USA		654,280.88
Revenue Canada Quebec	CP 8025 succursale Desjardines Montreal QC H5B 0A8		1,020.89

District of:
Division No. -
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- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the matter of the proposal of
KMW Energy Inc.
of the City of London
in the Province of Ontario

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Rome Transportation Inc.	U2 - 100 Campbell Ave. Kitchener ON N2H 4X8		4,192.50
Scheuch GmbH	Weierfing 68 4971 Austria		352,521.00
SEW-Eurodrive Canada	210 Walker Drive Bramalea ON L6T 3W1		38,070.29
Shelley Automation	41 Coldwater Rd Toronto ON M3B 1Y8		703.26
Sulzer Pumps	5065 rue Levy St., Saint-Laurent QC H4R 2N9		8,797.93
Super Radiator Coils	104 Peavey Rd Chaska MN 55318-2324 USA		161,658.37
Sven Jinert AB	Kristianstads v. 59 Hassleholm 28122 Sweden		1,482.56
T R Miles, Technical Consultants, Inc.	5475 SW Arrow Wood Lane Portland OR 97225 USA		2,149.80
Taylor Fluid Systems Inc.	81 Griffith Rd. Stratford ON N5A 6W1		394.81
Transfab Energie	760, Chemin Olivier Levis QC G7A 2N2		4,053.00
Växjö Hydraulservice AB	Hammerdals v 7 A Vaxjo 35246 Sweden		12,990.09
VE Collective Inc.	3760 14th Avenue, Suite 302 Markham ON L3R 3T7		25,651.00
Wabi Iron and Steel Corp.	330 Broadwood Ave. New Liskeard ON P0J 1P0		68,409.07
Wajax Industrial Components	PO Box 11790 Dep 26 Succursale Centre Ville Montreal QC H3C 0C4		29,592.02
Wells Foundry	1250 Florence Street London ON N5W 2N4		31,472.88

District of:
Division No. -
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the matter of the proposal of
KMW Energy Inc.
of the City of London
in the Province of Ontario

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Westburne Ontario	600 Little Simcoe Street London ON N5Z 1P4		824.13
Z-Teknik AB	Hansatorpsvägen 8 Ljungby 34132 Sweden		21,878.95
Total			7,033,387.42



KMW Energy Inc.
Insolvent Person

- Proposal Consent -

In the matter of the proposal of
KMW Energy Inc.
of the City of London
in the Province of Ontario

To whom it may concern,

This is to advise that we hereby consent to act as trustee under the Bankruptcy and Insolvency Act for the proposal of KMW Energy Inc..

Dated at the City of Toronto in the Province of Ontario, this 10th day of April 2020.



MNP Ltd. - Licensed Insolvency Trustee
300 - 111 Richmond Street West
Toronto ON M5H 2G4
Phone: (416) 596-1711 Fax: (416) 323-5242



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 05 - London
Court No. 35-2638322
Estate No. 35-2638322

In the Matter of the Notice of Intention to make a
proposal of:

KMW Energy Inc.
Insolvent Person

MNP LTD / MNP LTÉE
Licensed Insolvency Trustee

Date of the Notice of Intention: April 11, 2020

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 14, 2020, 12:42

E-File/Dépôt Electronique

Official Receiver

Federal Building - London, 451 Talbot Street, Suite 303, London, Ontario, Canada, N6A5C9, (877)376-9902

Canada

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

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

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

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

MNP LTD.
300-111 Richmond Street West
Toronto, ON M5H 2G4

Sheldon Title
Tel: (416) 263-6945
Fax: (416) 323-5242
Email: sheldon.title@mnp.ca