

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF SKYPOWER CORP.**

Applicant

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**MOTION RECORD**  
(returnable August 25, 2009)

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# **TAB 1**

**ONTARIO  
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OF SKYPOWER CORP.**

Applicant

**NOTICE OF MOTION  
(Returnable August 25, 2009)**

SkyPower Corp. (the "**Applicant**") will make a motion to a judge presiding over the Commercial List on Thursday, August 25, 2009, at 10:00 a.m. or as soon after that time as the motion can be heard at the Courthouse, 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** This Motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order, *inter alia*:
  - (a) approving a sale process in respect of the development business of SkyPower (the "**Development Business**") and SkyPower's 201 MW of XLE turbines and non-turbine related equipment (collectively, the "**XLE Turbines**");
  - (b) approving the engagement by the Applicant of Marathon Capital LLC, as financial advisor, to assist the Applicant in its sale process;

- (c) approving a key employee retention plan, in substantially the form described in the Affidavit of Kerry E. Adler sworn August 24, 2009, included at Tab 2 of the within Motion Record;
- (d) seeking amendments to the Initial CCAA Order (as defined below) relating to the protections granted to Fermeuse Wind Power Corp., SunE Sky First Light LP and SkyPower Lite Corp. therein; and
- (e) such further and other relief as the Applicant may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION** are as follows:

2. SkyPower is one of the leading independent, renewable energy developers in Canada. It is an industry leader with extensive expertise in developing large-scale wind, solar and other renewable energy power projects;
3. Pursuant to an Order of this Honourable Court dated August 12, 2009 (the “**Initial CCAA Order**”), SkyPower was granted protection pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”);
4. Prior to its CCAA filing, SkyPower, with the assistance of Marathon Capital LLC (“**Marathon**”), began a sale process for the Development Business and the XLE Turbines. As of the date of the CCAA filing, no sale transaction had been completed;
5. Pursuant to paragraph 54 of the Initial CCAA Order, SkyPower was required to apply to this Honourable Court for approval of a sale process in respect of the Development Business and the XLE Turbines on or before August 20, 2009. By Endorsement of

Madam Justice Pepall on August 20, 2009, the date for bringing the motion approving a sale process was extended to August 25, 2009;

6. SkyPower's intention is to continue to engage Marathon and proceed with and finalize its sale efforts for both the Development Business and the XLE Turbines with a view to maximizing value for all of its stakeholders;
7. In view of its extensive work to date, Marathon is best-positioned to continue to serve as SkyPower's advisor in the context of an orderly sale of SkyPower. Marathon has the institutional knowledge of SkyPower and the potential buyers;
8. SkyPower's employees and the relationships that they have forged with key stakeholders are fundamental aspects of the value of SkyPower's business such that their continued engagement will be key to successful outcomes for the business;
9. Accordingly, SkyPower seeks to implement a key employee retention plan (the "KERP") so as to preserve and protect SkyPower's ability to keep its most vital human resources in place;
10. The Board of Directors of SkyPower has approved the KERP;
11. Certain project lenders have raised concerns with the scope of the protections afforded Fermeuse Wind Power Corp. and SunE Sky First Light LP under the Initial CCAA Order. SkyPower has had discussions with counsel for such project lenders and is proposing to limit the application of the protections to address some of the concerns raised by these parties;
12. the provisions of the CCAA;

13. Rules 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure* (Ontario); and
14. such further and 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 Motion Record in connection with the within motion, filed, including the Affidavit of Kerry E. Adler sworn August 24, 2009;
2. the Affidavit of Kerry E. Adler sworn August 12, 2009, filed;
3. the First Report of the Monitor, filed; and
4. such further and other evidence as counsel may submit and this Honourable Court may admit.

Date: August 24, 2009

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKYPOWER CORP.

Court File No.: 09-8321-00CL

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

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(returnable August 25, 2009)**

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# **TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF SKYPOWER CORP.**

**AFFIDAVIT OF KERRY E. ADLER  
(sworn August 24, 2009)**

I, **KERRY E. ADLER**, of the City of Toronto, in the Province of Ontario,

**MAKE OATH AND SAY:**

1. I am the Chief Executive Officer and founder of SkyPower Corp. ("**SkyPower**").  
As such, I have personal knowledge of the matters to which I depose in this Affidavit. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, I believe it to be true.
2. This Affidavit is sworn in support of the motion by SkyPower for approval of, *inter alia*: (a) a sale process in respect of the development business of SkyPower (the "**Development Business**") and all or a significant number of SkyPower's 201 MW's of XLE turbines ("**XLE Turbines**") and non-turbine related equipment (collectively, with the XLE Turbines, the "**Turbine Inventory**"); and (b) a key employee retention plan, as described below.

3. All references herein are to Canadian dollars unless otherwise noted.

A. **OVERVIEW**

4. SkyPower is one of the leading independent, renewable energy developers in Canada. It is an industry leader with extensive expertise in developing large-scale wind, solar and other renewable energy power projects.

5. An overview of the corporate structure and business of SkyPower was included in my Affidavit sworn August 12, 2009 (the "**August 12 Affidavit**") filed with this Honourable Court. A copy of the August 12 Affidavit (with Exhibit "B" only) is attached as Exhibit "A" hereto.

B. **SALE PROCESS**

6. By Order dated August 12, 2009 (the "**Initial CCAA Order**"), this Honourable Court granted SkyPower protection pursuant to the *Companies' Creditors Arrangement Act*.

7. Pursuant to paragraph 54 of the Initial CCAA Order, SkyPower was required to apply to this Honourable Court for approval of a sale process in respect of the Development Business and the Turbine Inventory on or before August 20, 2009. By Endorsement of the Honourable Madam Justice Pepall on August 20, 2009, the date for bringing the motion approving a sale process has been extended to August 25, 2009. A copy of that Endorsement is attached as Exhibit "B" hereto.

8. Details of SkyPower's sale efforts to date and the role of Marathon Capital LLC ("**Marathon**") in assisting SkyPower with such efforts are included in Section G of the August 12 Affidavit.
9. Marathon is a leading financial advisory firm focused on delivering financial products and services to the global energy and infrastructure markets. The company specializes in the sale and financing of companies, projects and assets in these markets. Attached as Exhibit "B" to the August 12 Affidavit is a document provided to me by Marathon which details Marathon's qualifications and provides examples of successful transactions in the renewable energy industry in which it has been engaged.
10. SkyPower's intention is to continue to engage Marathon and proceed with and finalize its sale efforts for both the Development Business and the Turbine Inventory with a view to maximizing value for all of its stakeholders.
11. In view of its extensive work to date, I believe that Marathon is best-positioned to continue to serve as SkyPower's advisor in the context of an orderly sale of SkyPower. Marathon has the institutional knowledge of SkyPower and the potential buyers.
12. Marathon has advised that it is prepared to continue to act as SkyPower's advisor provided that it receives a charge over the assets and property of SkyPower to secure payment of its fees given SkyPower's financial circumstances.

13. Attached as Exhibit “C” is a form of engagement letter setting out the terms and conditions upon which SkyPower intends to retain Marathon (the “**Engagement Letter**”). SkyPower is requesting that this Honourable Court seal the Engagement Letter as the fee structure and fee ranges contemplated in the Engagement Letter could have a negative impact on the sale process and the bids received for the Development Business and/or the Turbine Inventory.
14. The initial term of the engagement as exclusive financial advisor to SkyPower will be four months with the ability to extend the term: (a) if a definitive purchase agreement has been executed between SkyPower and a third party purchaser prior to the expiry of the initial term of the engagement; (b) to mirror the maturity of the Applicant’s debtor-in-possession financing; and (c) for an additional two months by providing Marathon with written notice.
15. Pursuant to the Engagement Letter, Marathon would be entitled to:
  - (a) a work fee of \$25,000 payable on a monthly basis; and
  - (b) a base transaction fee and a variable transaction fee tied to the gross sale proceeds received by SkyPower upon the sale of the Development Business and the Turbine Inventory.((a) and (b) being collectively, the “**Transaction Fee**”).
16. SkyPower is seeking the approval of this Honourable Court of a charge securing the Transaction Fee. The proposed charge in favour of Marathon would rank subsequent to all other court-ordered charges.

C. **KERP**

17. As discussed in the August 12 Affidavit, SkyPower's employees and the relationships that they have forged with key stakeholders are fundamental aspects of the value of SkyPower's business such that their continued engagement will be key to successful outcomes for the business.
18. Accordingly, SkyPower seeks to implement a key employee retention plan (the "**KERP**") so as to preserve and protect SkyPower's ability to keep its most vital human resources in place. The Board of Directors of SkyPower has approved the KERP.
19. The aggregate amount of the KERP would be CAD\$1,872,000 (the "**Initial KERP Amount**"), plus 3% of gross proceeds generated from the sale of the Development Business and the Turbine Inventory above a certain floor amount that is set out in Exhibit "D" hereto (the "**Additional KERP Amount**" and collectively with the Initial KERP Amount, the "**Total KERP Amount**"). SkyPower is requesting that Exhibit "D" be sealed by this Honourable Court for the same reasons discussed above in respect of the Marathon Engagement Letter.
20. Allocation of the Total KERP Amount is determined by the Board of Directors, with review by, and approval of, the Monitor.
21. The Initial KERP Amount will be paid out as follows:
  - (a) 50% will be paid on the sale of the Development Business (either en bloc or all or substantially all of the assets in a series of transactions); and

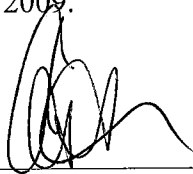
(b) 50% will be paid on the sale of all or substantially all of the XLE Turbines through one or more transactions,

save and except that the Initial KERP Amount will be deferred and paid out on the sale of the Development Business if the Development Business is sold after the Turbine Inventory.

22. If a KERP participant is terminated for cause or voluntarily leaves SkyPower prior to the payments being due, there will be no entitlement to any such amounts. If a KERP participant is terminated without cause at any time during the sales process, the KERP participant will be entitled to the Total KERP Amount allocated to them.

23. SkyPower seeks approval of a charge securing the Total KERP Amount. The charge for the Total KERP Amount would rank subsequent to all other court-ordered charges, save and except that the charge for the Total KERP Amount would rank prior to the charge granted in favour of Marathon in respect of the Transaction Fee.

SWORN before me at the City of  
Toronto in the Province of Ontario on  
August 24, 2009.



\_\_\_\_\_  
A Commissioner for taking affidavits



\_\_\_\_\_  
Kerry E. Adler  
Chief Executive Officer

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKYPOWER CORP.

Court File No: 09-831

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

Proceeding commenced at Toronto

**AFFIDAVIT OF KERRY E. ADLER**  
(sworn August 24, 2009)

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Lawyers for SkyPower Corp.

# **EXHIBIT “A”**

This is Exhibit A referred to in the  
affidavit of Kerry Adler  
sworn before me, this 24th  
day of August, 2009.

Court File No. \_\_\_\_\_

  
A COMMISSIONER FOR TAKING AFFIDAVITS

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**AFFIDAVIT OF KERRY E. ADLER  
(sworn August 12, 2009)**

I, **KERRY E. ADLER**, of the City of Toronto, in the Province of Ontario,

**MAKE OATH AND SAY:**

1. I am the Chief Executive Officer and founder of SkyPower Corp. ("**SkyPower**").  
As such, I have personal knowledge of the matters to which I depose in this Affidavit. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, I believe it to be true.
2. This Affidavit is sworn in support of the application (the "**Application**") by SkyPower pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an Order in substantially the form attached to the within Application Record.
3. All references herein are to Canadian dollars unless otherwise noted.

A. OVERVIEW

4. SkyPower is one of the leading independent, renewable energy developers in Canada. It is an industry leader with extensive expertise in developing large-scale wind, solar and other renewable energy power projects.
5. As described in more detail below, SkyPower is currently facing significant challenges as a result of a number of factors, including the bankruptcy of, its principal, indirect shareholder and funder, Lehman Brothers' Holdings Inc. (the "**Lehman Brothers**"). In all:
  - (a) SkyPower is currently unable to service its significant debt. It currently owes approximately \$214 million under its secured loan facility with a banking syndicate led by German bank, HSH Nordbank AG ("**HSH**"). A default under the loan facility was triggered in September, 2008 when Lehman Brothers filed for bankruptcy. The loan facility matured on March 31, 2009. While the banking syndicate agreed to forbear from enforcement to July 31 2009, it is no longer willing to extend the forbearance period. Subsequent to Lehman Brother's bankruptcy, it has been unable to invest the capital that it had previously committed to SkyPower, thus leaving SkyPower in dire financial straits. However, until recently, Lehman Brothers, in bankruptcy, has been able to provide funds in the form of debt to SkyPower for the use of paying lenders' forbearance fees, default rates of interest and for much reduced working capital. SkyPower owes approximately \$36.9 million to an affiliate of Lehman

Brothers, pursuant to working capital facilities provided by Lehman Brothers to SkyPower on a subordinated basis following Lehman Brother's bankruptcy.

- (b) As an advanced development company, SkyPower has just begun to generate revenue from two operating wind parks (Fermeuse, Newfoundland 27MW and Wolf Island 197 MW), but has no significant cash flow and no additional sources of funding available to fund its operations or to make payments on its outstanding indebtedness. HSH has advised that, at this juncture, it is also unable to provide any form of funding to SkyPower.
  - (c) Under an agreement with General Electric Energy ("GE"), SkyPower has agreed to buy 20 GE SLE wind turbines for its wind power projects and it has already paid GE approximately US\$16.2 million, being 40% of the purchase price. A further 50% of the purchase price for these turbines, being US\$20.6 million, is due and payable in four equal, monthly payments of approximately \$5.1 million with the first payment due September 11, 2009. SkyPower has no source of funding available to meet this obligation; and
  - (d) SkyPower has a payroll obligation of approximately \$486,000 payable on August 31, 2009, to be funded on August 27, 2009.
6. SkyPower requires immediate liquidity funding in the amount of US\$15 million to allow the company to meet its urgent obligations, preserve and protect its

valuable contracts, land applications, land options and its other project assets in order to urgently complete an orderly sale or recapitalization which will maximize value for all stakeholders.

7. SkyPower's need for protection is further precipitated by the necessity of preserving the value of its numerous projects that are in varying stages of development.

**B. CORPORATE STRUCTURE AND HISTORY**

8. SkyPower is a privately-held company that was incorporated under the laws of Canada in 2003.
9. SkyPower is a wholly-owned subsidiary of 1328392 Alberta ULC, an Alberta unlimited liability company (the "SkyPower Parent").
10. The SkyPower Parent is owned approximately 82.2% by Lehman Brothers (through its corporate affiliates), 4.2% by HSH and the remaining interest is owned by management and other minority shareholders.
11. A list of subsidiaries owned by SkyPower and its ownership interest therein is attached as Exhibit "A" to this Affidavit.

**C. OVERVIEW OF SKYPOWER'S BUSINESS**

**(i) Business Overview**

12. I founded SkyPower in 2003. It is headquartered in Toronto, Canada. SkyPower is one of the leading, independent renewable energy developers in Canada with

expertise in developing large-scale wind, solar and other renewable energy power projects. SkyPower drives all phases of project development, including exploration, construction and operation of wind and solar powered electricity generation projects.

13. SkyPower has experienced rapid growth since 2003 establishing a significant portfolio of geographically diverse, renewable energy projects at varying stages of development.
14. In November 2006, SkyPower entered into a 50/50 joint venture agreement with SunEdison LLC (“**SunEdison**”), a leading North American solar energy service provider, to develop, build, own and operate solar photovoltaic farms across Ontario. To date, the joint venture partners have secured PPAs (defined below) for 88 MW of solar projects across Ontario and are nearing completion of the construction of their first solar facility, the First Light 1 Solar Power Project (also described below).
15. SkyPower’s Canadian renewable energy portfolio consists of over 1,100MW of advanced stage wind projects, of which approximately 27MW are in operation and a further 91.5MW are in final stages of development for construction and commencement of commercial operations in 2010. The portfolio also consists of over 118MW of advanced stage solar projects, of which approximately 9MW are in construction and are expected to commence commercial operations in 2010. SkyPower has a significant number of other wind and solar projects at earlier development stages across Canada (all provinces other than Prince Edward

Island) and across more than 150 other project sites. In addition, SkyPower has projects in select regions outside Canada, including the United States, India, Israel and Panama.

16. SkyPower's portfolio currently supported by 172 installed meteorological towers located on over 45 project sites across Canada and in India. SkyPower currently owns, leases, licenses, accesses or uses, or holds options or applications to purchase, lease, license, access or use, approximately 6 million acres of irreplaceable private, Crown and/or First Nations' lands for its projects. SkyPower's land portfolio is one of its most valuable assets.

**(ii) Project Lifecycle**

17. The process for creating a wind or solar energy project from identification, through permitting and ultimately to commercial operation, is a very detailed and labour-intensive process. The process of development, from initial conception through to commercial operation, takes approximately two years for a solar project and up to three years for a wind project. During this period, SkyPower creates tremendous value by obtaining land rights, government permits and ordering substantial equipment for the project. However SkyPower requires substantial funding during the development process because it does not receive any revenue until the project is finished and electricity is created and sold. SkyPower requires protection under the CCAA in order to preserve the substantial value already created in many of its projects, as well as more than 20 projects currently undergoing environmental review process (and in particular those in the

more advanced stages of development) given the amount of time and resources expended on such projects. SkyPower has developed many positive relationships with regulatory authorities at the municipal, provincial and federal levels, and deep and extensive relationships and partnerships with First Nations and various contractors and consultants in the course of project development and landowners. I believe that there is far greater value available from a sale of the business of SkyPower as a whole, rather than trying to sell individual projects, because an *en bloc* sale will maintain the relationships and development steps that have already been undertaken and which overlap among existing projects. As well, given the relationships and partnerships built over the past 6 years, which are people/management based, it would be impossible to split the team on a project-by-project basis.

18. The first step for a wind or solar project is identifying land that may have sufficient resources (i.e. consistent wind or sun exposure) to support a viable project. This requires preliminary evaluations by SkyPower and its consultants of the existing biophysical, socio-economic and regulatory environments, as well as the electricity transmission and distribution facilities availability, to identify potential constraints. Discussions with landowners by SkyPower's land acquisition employees are also initiated, leading to negotiation and acquisition of paid options to lease or purchase land, depending on the project, or securing licences in the case of Crown lands or rights to use in the case of some First Nations land. SkyPower has developed experience and expertise dealing with

several different government land procurement agencies and with various First Nations throughout the country.

19. As land rights are obtained by SkyPower, its engineers and electrical consultants assist SkyPower to prepare a preliminary connection impact assessment for submission to the applicable utility to identify the anticipated connection capacity for the project. The utility will then advise of available capacities and if there are costs required to upgrade its transmission grid facilities to accept the anticipated additional capacity.
  
20. In the case of a proposed wind project, once SkyPower secures land rights, its wind analyst employees and its wind assessment consultants commence extensive studies of wind speeds and other climatic conditions on the land. SkyPower will build and install meteorological towers on the site to evaluate the viability of the wind resource for several years and to further refine its land selection. It is typical for SkyPower to obtain rights over large sections of land and then refine the proposed scope of the project to a smaller portion of the land that its studies reveal as having the best conditions for a successful wind park. A minimum of one year of meteorological tower data must be collected to conduct an accurate and bankable wind study. During the data collection period environmental studies are started and one year (4 seasons) of avian and bat studies are conducted by SkyPower's environmental consultant.

21. Less study time is required for solar energy projects because the solar resource can be determined largely by computer analysis in addition to some environmental studies.
22. In some provinces, the right to connect to the electricity transmission grid to sell power to the relevant power authority can only be obtained by participating in a procurement process typically run by a utility. This requires considerable work by SkyPower and its consultants to prepare its project to meet the procurement requirements of the power purchaser and to compile a bid package summarizing the project, the initial energy resource, environmental assessments, and project viability projections including preliminary project costs. If successful in a bidding process, or if the province allows connection to its electricity transmission grid as of right where transmission capacity exists, this is followed by negotiations with the power authority to enter into a power purchase agreement (a "PPA"). As described below, under Ontario's new statutory regime, there is no longer a requirement to bid. Instead SkyPower will simply be able to file an application for a contract which will be awarded based on a first come first serve basis to applicants who meet the applicable criteria.
23. A PPA is the vital document which provides SkyPower the right to sell and be paid for the electricity produced at a project site. For new projects under development, the PPA typically also sets the date by which a project must achieve commercial operation, failing which damages or termination may occur. This puts SkyPower under a strict timeline to obtain necessary approvals, complete construction and commence commercial operations. Therefore, a project must be

significantly advanced in the development process prior to SkyPower entering into a PPA.

24. Once SkyPower is committed to a project under a PPA, it can commence wider and more comprehensive environmental baseline studies (aquatic, terrestrial, socio-economic). Communication with landowners is continued and consultation with stakeholders such as the local community, First Nations, municipality, and federal and provincial regulators is increased. Based on information garnered from these processes, SkyPower prepares a preliminary project layout for the wind turbines or solar panels which speaks to the importance of having the land secured for the project.
25. SkyPower must select the actual turbine or solar panel type that it proposes to utilize for a project at an early stage. The proposed infrastructure for the project must be included in the PPA bid proposal and is required for environmental assessment and other approvals. At the same time, however, the strategic decision as to when SkyPower commits to purchase the turbines or panels is influenced by many other unrelated factors, such as currency exchanges, market demand and the 'carrying costs' of securing them in advance of construction.
26. A transmission capacity study must be conducted by the utility, transmission company or system operator responsible for managing and accepting SkyPower's electricity on the transmission lines. SkyPower and its technical consultants provide assistance based on how (i.e. voltage) and where SkyPower would like to connect the project to the transmission grid. The utility will then determine

whether SkyPower can connect its project to the transmission facilities as proposed or whether changes will be required. SkyPower must also assess and narrow proposed interconnection routes between the project substation and the point of connection with the utility and enter into discussions concerning the ownership of the interconnection transmission lines if this is not already determined by applicable regulations.

27. The regulatory approval process typically requires an environmental assessment at the provincial level, and potentially at the federal level if there is a federal trigger of interest. This process is run by SkyPower's employees, a large team at its environmental consultants and its legal advisors. This regulatory process requires consultation with the public, interested First Nations and other stakeholders. At the municipal level, zoning and by-law amendments are often required, as well as building permits and this requires extensive work with planning consultants, legal advisors and the municipality. With information from environmental studies based on preliminary project layouts (generation equipment, substations, access roads, etc.) and based on the feedback from the above-described consultations, a final layout is determined, environmental reports finalized and final approvals and permits sought from all levels of government.
28. Once final engineering and design is completed, major equipment is procured, all material environmental, municipal and connection approvals are obtained, and a contract is entered into for project construction. Project financing is secured based on the merits of the project and is essential to fund a project through construction to operation.

29. In preparation for final design and construction, SkyPower will either have an engineering consultant work with SkyPower's engineers to fully design and engineer the project and then put out to tender the construction contract, or it will put engineering, design and construction out as one 'EPC' tender. Either way, SkyPower prepares a tender process and bid package for the EPC or construction of the project, chooses a contractor and completes negotiation of the governing contract.
30. Construction is commenced with the objective of completing the project by the commercial operation date established in the PPA. For example, approximately 60-100 people (employees of SkyPower, the contractor, subcontractors, and EPC consultants) were required to construct each of the Fermeuse Wind Power Project and the First Light 1 Solar Power Project discussed below. Construction is very labour-intensive and typically lasts several seasons depending on the size of the park.
31. Once a project has achieved commercial operation and is generating power that is being sold to the power authority, it is in its operational phase. This phase requires employment of people in the local community, as well as in SkyPower's offices. In the case of a wind project, there would be up to ten local operational jobs generated, including a highly skilled engineer, a project manager as well as security and infrastructure and site maintenance jobs.
32. Dismantling a project even in its early stages is a significant undertaking. Dismantling and removal of meteorological towers and other equipment, site

restoration, termination of landowner agreements and management of stakeholder relationships are matters that need to be addressed in any project that would be dismantled. Given the wide geographic diversity and difficult terrain where these towers are located, dismantling and removal of these towers could exceed \$3 million.

33. Dismantling a project once it is sufficiently advanced would have significant cost consequences. For example, one of SkyPower's projects, referred to as the Rivière du Loup Wind Power Project, has been connected to Hydro Quebec, but wind turbines have not been installed. Dismantling of this project would require disconnection of the completed substation from Hydro Quebec, dismantling and removal of equipment installed at the site, removal of equipment stored at the site, including the wind turbines, and site restoration. Disconnection would require significant expense and coordination with Hydro Quebec because it requires disconnection from a 230 kV line and potentially shutting down one of the two main transmission lines between Rivière du Loup and Trois Pistoles, likely taking many weeks if not months. Dismantling costs for the Rivière du Loup Wind Power Project could exceed \$1 million.

**(iii) SkyPower's Significant Wind and Solar Power Projects**

34. Described below are SkyPower's most significant wind and solar power projects which have achieved advanced stages of development.

**(b) Digby Wind Power Project**

35. SkyPower has entered into a PPA and deposited \$750,000 as a security deposit with Nova Scotia Power Inc. to build, operate and sell power from a 30 MW wind park located on approximately 2,700 acres of private land in the municipality of Digby, Nova Scotia. The Digby Wind Power Project is in an advanced stage of development (Construction ready). SkyPower owns 50% of the project through a joint venture with Scotian Windfields Inc. of Nova Scotia.
36. The Digby Wind Power Project will be built with 20 GE 1.5 MW SLE turbines and will be connected to the grid controlled by Nova Scotia Power Inc. The environmental permitting process is nearing completion with an environmental assessment report currently under review by Nova Scotia Environment and the required municipal building permits have been obtained. SkyPower is preparing to commence construction in late 2009 so as to be fully operational providing renewable energy by September 2010.

**(c) Byran Wind Power Project**

37. In January 2009, SkyPower signed a 20-year PPA with the Ontario Power Authority (the "OPA") and deposited \$3.25 million as a security deposit to build, operate and sell power from a 64.5 MW project that is located on approximately 17,000 acres of private land in Prince Edward County near the town of Picton, Ontario. The Byran Wind Power Project is 100% owned by SkyPower.

38. Byran Wind Power Project is at an advanced stage of development. It will be built with 43 GE 1.5 MW XLE wind turbines and be connected to the grid controlled by Hydro One Networks Inc. SkyPower is currently completing the environmental assessment for this project.

*(d) Fermeuse Wind Power Project*

39. On December 13, 2007, SkyPower purchased from Canadian Hydro a 20-year PPA with Newfoundland and Labrador Hydro to build, operate and sell power from a 27 MW wind project that is located on approximately 1,100 acres of Crown land in Fermeuse, Newfoundland. SkyPower deposited \$675,000 as a security deposit with Newfoundland and Labrador Hydro.
40. The Fermeuse Wind Power Project consists of nine 3.0 MW, V90 Vestas wind turbines that are currently delivering power to the grid operated by Newfoundland Power. The project supplies enough electricity for approximately 7,000 households and is expected to generate approximately 86,000 MW hours of electricity annually. EnXco, a leading provider of operations and maintenance, has been contracted to manage the day-to-day operation.
41. The Fermeuse Wind Power Project achieved commercial operations on June 30, 2009 and therefore its construction financing has been converted to term debt. The project is held in a wholly-owned subsidiary of SkyPower, Fermeuse Wind Power Corp. (the "Fermeuse SPV") and is fully financed on a non-recourse basis with West LB. SkyPower has a \$19.2 million equity interest in the Fermeuse

Wind Power Project. Project debt for the Fermeuse Wind Power Project is currently \$43 million.

42. Expected annualized revenues for the Fermeuse Wind Power Project are approximately \$6.5 million.

*(e) First Light 1 Solar Power Project*

43. SunE Sky First Light 1, L.P., a limited partnership in which SkyPower owns a 50% interest, entered into a PPA with the OPA to build, operate and sell solar power with a fixed off-take rate of \$0.42 /kWh for a 20-year period. The First Light 1 Solar Power Project is a joint-venture development between SkyPower and SunEdison which is participating in the OPA's Renewable Energy Standard Offer Program ("RESOP"). It is one of the largest and most advanced solar projects in the country and is approximately 60 days away from full commercial operation.
44. This solar project is under construction on approximately 100 acres of private land in Lennox and Addington County, Ontario owned by SunE Sky First Light 1, LP. The First Light 1 Solar Power Project is expected to deliver approximately 9.04 MW of power annually. This project is in the final stages of construction and is expected to enter into commercial operation by the end of September 2009. Approximately 70 workers are employed in connection with work on site.
45. The project is fully financed with German bank, Norddeutsche Landesbank Girozentrale, New York Branch. SkyPower has given a limited guarantee in

respect of the project debt. The project debt is currently \$37.2 million and SkyPower's and SunEdison's equity in the project is currently approximately \$13.8 million.

46. Expected annualized revenues for the First Light 1 Solar Power Project are approximately approximately \$4.7 million.

**(iv) Community Benefits to Wind and Power Projects**

47. SkyPower's solar and wind projects in Canada are all located in rural areas. These communities often have a difficult time attracting investment and jobs. SkyPower's projects bring investment, training and economic growth to these communities in many ways, including:

- (a) Direct benefits in the form of jobs for local contractors during construction and operation. During project development, hundreds of environmental, technical, civil, electrical and design and construction consultants are employed. During construction many trades and construction jobs are generated for contractors and subcontractors. For example, approximately 60-70 people are required to construct the First Light 1 Solar Power Project. As noted above, once a project is operational, several permanent jobs are created for local residents. For the Fermeuse Wind Power Project alone, there will be as many as 10 local jobs created;
- (b) Indirect benefits in the form of increased business for the service industry (restaurants, hotels, gas stations), local suppliers and tourism;

- (c) Increased municipal tax revenue from improvements to the land. For example, the First Light 1 Solar Power Project (9.04 MW) is expected to generate additional municipal tax revenue of approximately \$24,500 on an annualized basis to the Township of Stone Mills;
- (d) Participating landowners receive an initial payment when they grant land options with SkyPower, a further payment if the option is exercised and receive annualized revenue when a project is operational. Similarly, landowners who host a wind turbine on their land also receive payments (\$5,000/year for 20 years on average) from SkyPower. These are important sources of incremental revenue for many of these landowners, farmers or First Nations who are counting on it to help them keep their land, to augment their uncertain agricultural or harvesting incomes, and to keep their families in the community. In larger projects, landowner gross revenue could amount to \$300,000 to \$500,000 per year for 20 years;
- (e) Community contributions and sponsorships by SkyPower. For example, SkyPower is the 'diamond' sponsor of the Digby Scallop Festival in the community in which the Digby Wind Power Project will be located. SkyPower makes these types of commitments to the communities in which it proposes to operate to assist in developing goodwill among local residents, politicians and the media, all of which will assist SkyPower in the development process. In addition, I think that it is important and appropriate for SkyPower to be committed to the local communities in which it operates and to demonstrate that commitment tangibly.

SkyPower are has often made available as much as \$100,000 - \$300,000 per year for these small communities or First Nations for much needed infrastructure or social programs.

48. The success of SkyPower and the successful development of its projects are very important to the viability of the renewable energy generation industry being promoted by provinces across Canada. In order to achieve the aggressive renewable energy generation targets set by many provinces, a healthy industry of independent renewable energy operators is required, and the provinces have encouraged the development of these operators. If independent operators begin to fail, it will make renewable energy generation appear unattractive to potential new Canadian independent operators and it will negatively impact the industry by raising threshold costs (i.e. the costs of security on RFP bids, the cost of financing) which will make it harder for the independent operators to compete with the larger utilities. This outcome would be contrary to governments' green industry objectives. For example, the First Light 1 Solar Power Project, when completed, will be the first solar park of its size in Canada and therefore has symbolic importance to the viability of the industry and government policy.

**(v) Employees, Contractors and Relations with First Nations**

49. SkyPower employs over 50 employees focused on renewable energy projects and indirectly, through its existing and proposed subcontractor arrangements, engages up to an additional 200-300 individuals. SkyPower's employees are not unionized and there are no pensions in place for the employees.

50. SkyPower has built constructive long-standing and cooperative relationships with First Nations based on mutual trust. SkyPower has six Memoranda of Understanding, or similar arrangements, to develop wind projects with First Nations and has also engaged with many First Nations in the course of the ongoing development of its wind projects. These relationships build the corporate goodwill and reputation of SkyPower with Aboriginal communities which is vital to the success of SkyPower's projects, many of which are located in remote areas where Aboriginal communities are present and whose interests are or may be affected.
51. If SkyPower's projects were halted, the important relationships of trust that a developer needs with First Nations would be jeopardized and First Nations may be denied the opportunities to participate in the tremendous socio-economic benefits associated with these projects, including direct revenue, investment in communities and direct jobs in construction and operation, as well as economic growth in the local communities.

**D. POSITIVE LEGISLATIVE CHANGES IMPACTING APPLICANT'S BUSINESS AND VALUE OF ITS DEVELOPMENT PORTFOLIO**

**(i) Green Energy Act, 2009**

52. In May 2009, the Ontario legislature passed the *Green Energy Act, 2009* (the "GEA"), a sweeping piece of legislation designed to make Ontario the North American leader in green energy. The GEA provisions and draft regulations proposed thereunder include provisions that are expected to expedite the

development of renewable energy projects in Ontario. In particular, the GEA calls for the creation of a Renewable Energy Feed-In Tariff Program and mandates the Right-to-Connect to local transmission grids. These legislative provisions provide mature projects with a right to receive PPAs and allow them to become operational in an accelerated manner.

53. Currently, project developers in Ontario have experienced a number of delays associated with obtaining the appropriate approvals to connect projects to transmission grids, including burdensome municipal zoning and by-law amendments. These delays have posed significant development challenges. Under the proposed regulations to GEA, a single Renewable Energy Approval (the “**REA**”) will be required in order to proceed with a project. The new regulations will provide certainty by establishing clear environmental and health standards and clear rules on setbacks – the distance between turbines and dwellings, property lines, roads and other human developments. The GEA and its draft regulations are welcomed by developers who currently must navigate through a system that requires a burdensome and uncertain process of approvals from all levels of government and regulatory agencies. The GEA is expected to be proclaimed into force at the same time the draft regulations are finalized, which is currently expected to be in the next 30-45 days.

**(ii) Renewable Energy Feed-in Tarrif Program – The Leading Renewable Energy Program in North America**

54. In concert with the GEA initiative, in March 2009, the OPA announced a new Renewable Energy Feed-In Tariff Program (“FIT”) Program in Ontario to establish a series of fixed prices that the OPA will pay renewable energy generators based on the source of renewable energy and nameplate capacity of a project. The FIT program effectively substantially increases the prices paid for renewable energy and gives SkyPower’s extensive project development pipeline in Ontario significant and expanded opportunities thereby enhancing the potential value and corresponding returns from its existing development pipeline.
55. The OPA is currently consulting on the proposed FIT Rules which are expected to be finalized as early as August, 2009.

**(iii) Discontinuance of RESOP**

56. SkyPower has a number of PPAs from the OPA which were offered to it pursuant to RESOP. RESOP has been discontinued (to be replaced by the FIT program) but the contracts already issued pursuant thereto remain in place. There is a three-year deadline for achieving commercial operation under a RESOP contract.
57. The OPA appreciates that developers have not been able to achieve the three-year deadline for a variety of reasons, including certain delays on the part of Hydro One in processing inter-connection applications. Accordingly, the OPA is extending holders of RESOP contracts the option of purchasing a one-year

extension of the commercial operation deadline by paying approximately \$200,000 per contract.

58. SkyPower intends to purchase these extensions to preserve the value of its assets as further detailed below.

**E. TURBINE SUPPLY ARRANGEMENTS**

59. In an effort to remain competitive in Canada and given the worldwide shortage of turbines in late 2007 and early 2008, SkyPower entered into a number of turbine supply agreements for the purchase of turbines for inventory for use in its several wind power projects which it is currently developing.

**(i) 300MW GE 1.5 SLE Wind Turbines**

60. In July 2007, SkyPower entered into a turbine supply agreement (the “**GE 2007 SLE Turbine Supply Agreement**”) with GE pursuant to which GE agreed to supply and deliver 200 (300 MW) 1.5 SLE wind turbines. The GE 2007 SLE Turbine Supply Agreement is a fixed price contract payable in U.S. dollars.
61. Concurrently with entering into the GE 2007 SLE Turbine Supply Agreement, Lehman Brothers provided a parent guarantee to GE for the positive difference, if any, between the then current termination payments under the GE 2007 SLE Turbine Supply Agreement and the aggregate cash deposits made to GE under such agreement.

62. Prior to Lehman Brothers' bankruptcy filing, SkyPower used equity funding provided by Lehman Brothers to make periodic payments to GE under the GE 2007 SLE Turbine Supply Agreement. As required under the agreement, SkyPower has paid 40% of the purchase price for these turbines. Another 50% of the purchase price of each turbine was to become due as each turbine was manufactured. GE's manufacturing of the turbines was scheduled to commence in January 2009. SkyPower received interim financing from Lehman Brothers to pay the remaining 50% of the purchase price for the first twenty-five turbines to be manufactured.
63. With the exception of 20 turbines, which were retained for the Digby Wind Power Project in order to preserve its value, SkyPower's right to acquire 180 of the turbines (270MW), together with its prepayments for those turbines, were ultimately sold to EDF EN Canada Inc. ("EDF") in an effort to reduce SkyPower's debt load obligations which it was struggling to meet after the bankruptcy of Lehman Brothers. EDF assumed the obligations under the GE SLE 2007 Turbine Supply Agreement in respect of those turbines. SkyPower retained the obligations, and the benefit of the 40% deposit it paid, in respect of the 20 turbines (30MW) that it retained.
64. It is expected that the 20 turbines (30MW) will be delivered by GE to SkyPower starting in May 2010.
65. There is an additional payment due to GE for these remaining turbines amounting to approximately US\$24.9 million in total. These payments are due as follows:

Current	US\$0.23 million
September 11, 2009	US\$5.15 million
October 9, 2009	US\$5.15 million
November 18, 2009	US\$5.15 million
December 11, 2009	US\$5.15 million

A final payment is due upon installation in the amount of approximately US\$5.15 million.

**(ii) 201MW GE 1.5 XLE Wind Turbines**

66. In December 2007, SkyPower acquired 201 MW of 1.5 MW GE XLE wind turbines from a third party in a fair market value transaction pursuant to which SkyPower paid to the seller approximately \$312 million and assumed the seller's approximately remaining payment obligations of approximately \$21.6 million under an existing turbine supply agreement with GE relating to the wind turbines (the "**GE XLE Turbine Supply Agreement**"). The cash portion of the purchase price was financed by the loan facility with the banking syndicate led by HSH described below.

67. The wind turbines are currently in storage in Quebec, Ontario and Minnesota.

68. As of the date hereof, the remaining outstanding payments due under each of the XLE turbine supply agreements with GE total approximately \$21.6 million.

**(iii) 27MW Vestas V90 3.0 Wind Turbines**

69. In November 2007, SkyPower entered into a Turbine Supply Agreement (the "**Vestas Turbine Supply Agreement**") with Vestas-Canadian Wind Technology

Inc. (“Vestas”) pursuant to which Vestas agreed to supply and deliver 27 MW of V90 3.0 wind turbines. The agreement is a fixed price contract payable in Canadian dollars.

70. Vestas has delivered the turbines for use in the Fermeuse Wind Project. These wind turbines are supported by a customary power curve guarantee, standard warranties and 5-year service and maintenance agreement with Vestas. The Vestas Turbine Supply Agreement has been assigned to the Fermeuse SPV with non-recourse financing, which was completed in September 2008. There are no further monies due to Vestas for the supply of the turbines.

**F. FUNDING OF BUSINESS**

***(a) Lehman Brothers Investment***

71. In June 2007, the principal investments division of Lehman Brothers acquired 50.1% of SkyPower. Lehman Brothers subsequently funded the expansion of SkyPower through additional equity infusions of US\$300 million. As a result of these investments Lehman Brothers now owns approximately 82.2% of SkyPower’s equity.
72. Lehman Brothers’ significant investment in SkyPower demonstrates its confidence in SkyPower’s business and the value that Lehman Brothers identified in it.
73. As part and parcel to the ongoing funding provided by Lehman Brothers, SkyPower kept Lehman Brothers apprised, on a weekly and often daily basis, of

all developments in the business, including its financial status, and subsequent to the Lehman Brothers bankruptcy, the status of SkyPower's sale and recapitalization process (discussed below).

*(b) Turbine Supply Loan*

74. In December 2007, SkyPower entered into a turbine supply loan (the "Turbine Supply Loan") with a syndicate of banks led by HSH. The banks provided up to \$250 million of proceeds to fund SkyPower's acquisition of the 201 MW of GE XLE turbines (the "XLE Turbines") referred to above. Availability under the loan was increased to \$280 million in February 2008 to add the payment obligations for the 27 MW of Vestas V90 turbines.
75. In September 2008, this facility was reduced to \$248 million in connection with the completion of the project financing for the Fermeuse Wind Power Project. At the time, \$234 million of the Turbine Supply Loan had been drawn against the XLE Turbines. The loan accrued interest at a rate of 2% plus the Canadian Bankers' Acceptance rate, which was fixed at 3.23% in underlying interest rate swaps at the time.
76. The Turbine Supply Loan is secured by, among other things, the XLE Turbines and certain assets relating to SkyPower's Canadian wind project portfolio. Lehman Brothers partially guaranteed the loan.

77. In March 2009, SkyPower, as part of its efforts to reduce its debt load, repaid approximately \$20 million on the Turbine Supply Loan with proceeds from the sale of 270MW of SLE turbines to EDF discussed above.

**G. RESTRUCTURING EFFORTS**

78. In May 2008, Lehman Brothers began a process to: (a) find a partner to assist in funding the next phase of SkyPower's growth; (b) sell a percentage of its interest in SkyPower; or (b) sell SkyPower's wind or solar business. This process was halted in August 2008 as a result of unfavourable market conditions and the subsequent Lehman Brothers bankruptcy.

79. As a result of its bankruptcy filing in September, 2008, Lehman Brothers renewed its pursuit of strategic alternatives for SkyPower in late 2008 and early 2009. As part of this initiative, SkyPower engaged Marathon Capital LLC ("Marathon") in September 2008 as its financial advisor with the objective of developing alternatives leading to the strategic sale or recapitalization of the company, including the possibility of: (a) a sale of its wind project assets; (b) a sale of its solar project assets; (c) a sale of the 200 GE 1.5 MW SLE turbines deliverable in 2009 and the GE 2007 SLE Turbine Supply Agreement; and (d) a sale of the XLE Turbines and a related service agreement, which are subject to the Turbine Supply Loan arrangements with the HSH lending syndicate and the GE XLE Turbine Supply Agreement.

80. Marathon advises that it is a leading financial advisory firm focused on delivering financial products and services to the global energy and infrastructure markets.

The company specializes in the sale and financing of companies, projects and assets in these markets. Attached as Exhibit "B" hereto is a brochure provided to me by Marathon which details Marathon's qualifications and provides examples of successful transactions in the renewable energy industry in which it has been engaged.

81. Marathon led a rigorous, marketing process to identify industry and financial players. Marathon contacted more than 240 potential investors globally in the second half of 2008 and first quarter of 2009 to assess their interest in various transactions in relation to SkyPower. Of the 243 investors contacted, 80 signed non-disclosure agreements to participate in the process.
82. Marathon has advised that based on market feedback it received, prospective buyers were of the view that SkyPower's turbine inventory and resulting GE and bank debt obligations was so significant that of the 80 parties that had signed non-disclosure agreements only potentially a handful had the financial capability to engage in a transaction of that magnitude, especially in the current financial market conditions. That is, in order to realize on SkyPower's development project assets, SkyPower must resolve the debt issues associated with its wind turbine. Few potential purchasers who might be interested in paying for SkyPower's development projects can take on a transaction of the magnitude of the turbine liability.
83. As a result of the foregoing, SkyPower believes that it is essential to the company's sale and recapitalization process for SkyPower bifurcate the turbines

from the development and operating assets so as to reduce the size of its turbine portfolio and the debt associated with its turbines.

84. Accordingly, SkyPower retained Credit Suisse to assist Marathon in executing an auction process to sell both the XLE and SLE turbines. As a result of the process, in March 2009, SkyPower sold 270 MW of SLE turbines to EDF, which reduced the total turbine debt by approximately 55%. SkyPower retained 30 MW (20 turbines) of SLE turbines for the Digby Wind Project, which is awaiting its final permits, prior to commencing construction.
85. Credit Suisse and Marathon have continued in earnest to pursue the sale of the XLE Turbines. The lending syndicate indicated that it was willing to finance a potential buyer of the Turbine XLE's on terms satisfactory to the syndicate. Therefore, Marathon and Credit Suisse brought the lending syndicate bids from wind developers with advanced stage projects who sought financing for the purchase of SkyPower's turbines. In addition, Marathon and Credit Suisse obtained bids from potential purchasers who were prepared to offer to pay cash for turbines.
86. Marathon and Credit Suisse also held discussions with several serious wind developer bidders for 150 MW of the 201 MW of XLE Turbines who required financing from the lending syndicate. The lending syndicate required that it engage in bilateral financing discussions with these final bidders. Ultimately, two offers emerged as the most attractive. The lending syndicate's credit approval process for at least one of these bidders has lasted more than two months and

remains unresolved. The status of the lending syndicate's credit approval process remains unknown to both the potential buyer and to SkyPower.

87. There are currently two other cash buyers in later stage discussions to purchase the XLE Turbines. Marathon is also engaged with parties who have confirmed that there would be renewed interest in the turbines and/or SkyPower development business, if the fundamental issues relating to the turbines, and issues relating to the Turbine Supply Loan, were addressed.
88. Should the relief requested be granted, SkyPower intends to continue and quickly finalize its sale efforts for both the turbines and the core development project business in the context of its CCAA proceedings with a view to maximizing enterprise value by selling both its turbine portfolio and its development business.
89. I firmly believe that SkyPower's core development project business is an attractive opportunity for financial or industry players. In view of its extensive work to date, I believe that Marathon is best-positioned to continue to serve as SkyPower's advisor in the context of an orderly sale of SkyPower. Marathon has the institutional knowledge of SkyPower and the potential buyers.
90. If the relief requested in the within application is granted, SkyPower intends to work with Marathon and the Monitor so as to be in a position to return before this Honourable Court within the next two weeks seeking approval for a sale process.

**H. EVENTS LEADING TO FINANCIAL CHALLENGES**

91. As discussed above, from June 2007 until its bankruptcy proceedings commenced in September, 2008, Lehman Brothers funded all the obligations of SkyPower under the Turbine Supply Loan and funded all SkyPower's working capital requirements by way of equity injections.
92. Following Lehman Brother's bankruptcy filing, SkyPower faced severe financial distress due to its need for ongoing funding for its periodic obligations under the Turbine Supply Loan and its turbine liability as well as its basic working capital requirements.
93. Additionally, the bankruptcy filing of Lehman Brothers immediately triggered a covenant default under the Turbine Supply Loan which could have allowed the lending syndicate to make demand for repayment of the loan facility. A demand notice was in fact received shortly after Lehman Brothers bankruptcy filing.
94. In November, 2008, SkyPower and Lehman Brothers negotiated a forbearance arrangement with HSH. The forbearance arrangement demonstrated the lenders' belief that value would be maximized by ensuring order and stability during any realization process for SkyPower. The initial forbearance agreement was for a limited time period and has been extended periodically since that time on terms negotiated with each extension such as payment of the banking syndicate's forbearance fees and payment of interest at default rates.
95. The Turbine Supply Loan matured in March 2009.

96. While Lehman Brothers' bankruptcy prevented it from making further equity advances to SkyPower, recognizing that SkyPower required basic working capital funding and that the value of Lehman Brothers' equity interest in SkyPower depended upon the ongoing funding of SkyPower's development projects through to fruition, Lehman Brothers, in bankruptcy, agreed to advance further funds to SkyPower by way of subordinated loans. As part of the forbearance arrangements agreed upon with HSH before and after March, 2009, Lehman Brothers has provided SkyPower additional funding by way of subordinated working capital loan in the aggregate amount of \$36.9 million, a large part of which was used to pay forbearance fees and legal fees of both the lenders and SkyPower as well as default interest fees.
97. HSH and Lehman Brothers agreed that Lehman Brothers could secure these loans against all of the assets of SkyPower, other than those pledged to the banking syndicate. As the lending syndicate has security over the bulk of SkyPower's wind turbines and wind development assets, Lehman Brothers' collateral consists principally of SkyPower's solar power assets and SkyPower's other fixtures, furniture and equipment. However, under the inter-lender terms agreed upon between HSH and Lehman Brothers, Lehman Brothers cannot take any enforcement action nor receive any repayment on its subordinated loans unless and until the Turbine Supply Loan is repaid in full.
98. Also as part of the forbearance arrangements, the lending syndicate required that SkyPower prepay interest for July, 2009. By July 31, 2009, SkyPower was required to have a definitive agreement signed for a deal that would see the

Turbine Supply Loan repaid, failing which the forbearance would terminate. By the last week of July, 2009, it was clear that the condition could not be satisfied. The lending syndicate offered to waive and extend the forbearance to August 15, 2009 provided that interest for July 31 through August 15, 2009 was prepaid. Lehman Brothers indicated it was willing to provide funds to SkyPower to fund the interest prepayment and would provide sufficient working capital for the forbearance period. However, Lehman Brothers later advised that it would not be making this advance to SkyPower.

99. Despite extensive discussions, Lehman Brothers and the lending syndicate have been unable to agree on terms for the continued funding of SkyPower.

**I. APPLICANT'S FINANCIAL POSITION**

100. Attached as Exhibit "C" hereto is a copy of the audited consolidated financial statements of SkyPower for the fiscal year ending December 31, 2008.
101. Attached as Exhibit "D" are unaudited consolidated financial statements for SkyPower for the period ending June 30, 2009.
102. As of July 31, 2009, SkyPower owned assets having an aggregate book value of \$299.8 million. SkyPower has the following principal assets at book value on an unaudited, non-consolidated basis as of July 31, 2009:
- (a) Deposits with GE for 1.5 SLE turbines in the amount of approximately \$16.9 million;

- (b) XLE Turbines with a book value of approximately \$222.5 million;
  - (c) Project Equipment and Accessories with a book value of approximately \$10.2 million;
  - (d) Project Development costs totalling approximately \$9.1 million (i.e. land rights, deferred development costs, deferred salary costs, project assets);
  - (e) Investments in subsidiaries with a book value of approximately \$28.4 million;
  - (f) Office equipment with a book value totalling approximately \$0.5 million;
  - (g) Meterological towers with a book value totalling approximately \$5.4 million; and
  - (h) Security deposit with utilities totalling approximately \$4.7 million.
103. SkyPower has the following liquid assets:
- (a) Cash and cash equivalents totalling approximately \$0.5 million; and
  - (b) Commodity tax and other receivables totalling approximately \$0.3 million.
104. SkyPower also has a claim against the estate of Lehman Brothers Special Finance Inc. (“LBSF”) in the United States totalling approximately US\$17.2 million arising from currency swap transactions engaged in with LBSF prior to its bankruptcy filing.

105. As of July 31, 2009, the unaudited, non-consolidated liabilities of SkyPower totalled approximately \$257.6 million. SkyPower's principal liabilities are as follows:

- (a) Current liabilities totalling approximately \$6.2 million;
- (b) Turbine Supply Loan with the lending syndicate totalling approximately \$213.9 million; and
- (c) Lehman Brothers subordinated loans totalling approximately \$36.9 million.

106. SkyPower's principal current commitments are as follows:

- (a) Amounts owed pursuant to the GE 2007 SLE Turbine Supply Agreement totalling approximately US\$24.9 million;
- (b) Amounts owed pursuant to the GLE XLE Turbine Supply Agreement totalling approximately \$21.6 million; and
- (c) Amounts owed under approved purchase orders by SkyPower totalling approximately \$1.5 million;

**J. FILING FOR PROTECTION**

**(i) Stay of Proceedings**

107. SkyPower does not have the funds to meet its liabilities as they come due and is insolvent. SkyPower has received a number of escalating telephone calls from

trade creditors. SkyPower urgently seeks a stay of proceedings to stabilize its operations, preserve its employee base which is critical to the business, and provide the opportunity to attempt to sell or recapitalize its business in an speedy but orderly manner to maximize value for all stakeholders.

108. Attached hereto and marked as Exhibit "E" is a copy of a cash flow projection for the 16-week period ending November 29, 2009 in respect of SkyPower. This cash flow projection indicates that, in the absence of any debtor-in-possession financing, SkyPower will have insufficient cash with which to operate after August 12, 2009. SkyPower's need for protection is immediate and urgent.
109. SkyPower is seeking to extend the stay of proceedings to SunE Sky First Light 1, L.P., the limited partnership that owns the First Light 1 Solar Power Project and Fermeuse Wind Power Corp., the entity that owns the Fermeuse Wind Power Projects. As discussed above, the Fermeuse Wind Power Project has achieved commercial operation and the First Light 1 Solar Power Project will be entering into commercial operation by the end of September 2009. Pursuant to the project financing arrangement with West LB, for the Fermeuse Wind Power Project and with German bank, Norddeutsche Landesbank Girozentrale, for the First Light 1 Solar Power Project, an insolvency filing of SkyPower could trigger a default under the project financing for these projects.
110. Accordingly, a stay of proceedings in respect of Fermeuse Wind Power Corp. and SunE Sky First Light 1, L.P. is necessary in order to preserve the value of these projects and ensure that commercial operations in respect of the Fermeuse Wind

Power Project continue undisrupted and ensure that the First Light 1 Solar Power Project achieves commercial operation.

111. SkyPower is also seeking to extend the stay of proceedings to SkyPower Lite Corp. which is an entity owned 51% by SkyPower and is fully financed by SkyPower. SkyPower Lite Corp. engages in solar rooftop installations. On Monday August 10, 2009, the landlord of the premises used by SkyPower Lite Corp. locked the premises making it inaccessible to employees as a result of a dispute relating to the leasing arrangements. The landlord also seized one of SkyPower's trucks. Accordingly, SkyPower Lite Corp. is in need of protection in order to ensure its operations continue undisrupted and to ensure that there are no negative consequences resulting in respect of SkyPower's solar projects as a result of SkyPower's financial circumstances.

**(ii) Debtor-in-Possession Financing**

112. SkyPower requires funding in order to advance its sale and/or recapitalization initiatives. CIM Group (the "**DIP Lender**") is prepared to advance a debtor-in-possession loan (the "**DIP Loan**").
113. A copy of a draft term sheet in respect of the proposed DIP Loan is attached as Exhibit "F".
114. The principal terms of the DIP Loan are as follows:

- the amount of the DIP Loan will be US\$15 million;

- the borrower under the DIP Loan will be SkyPower;
- the DIP Lender will have a first ranking charge over all of the assets of SkyPower;

115. SkyPower's cash needs are immediate and urgent. It needs access to the DIP Loan as soon as possible in order to move forward with an orderly sale process.

116. SkyPower intends to use the funding provided pursuant to the DIP Loan for principally the following purposes:

- (a) to make payment of outstanding and ongoing employee wages;
- (b) to make payment in respect of storage and maintenance costs for the GE XLE turbines currently in storage;
- (c) to proceed with and preserve its applications for rights to Crown land in Ontario for its various projects. Once its proposal for Crown land is accepted, it is anticipated that SkyPower will be required to make a payment in cash of approximately \$1.0 million within the cashflow forecast period;
- (d) to make payment of \$1.6 million to secure a one-year extension of the commercial operation deadline in respect of a number of RESOP contracts with the OPA. SkyPower requires an extension of these contracts in order to ensure that some of its most developed projects achieve commercial

operation and to preserve value in the substantial investments SkyPower has made to date in these projects;

- (e) to post security in the amount of approximately \$1.9 million pursuant to the FIT application process for projects under the GEA with the OPA for its ongoing projects. Given the abundance of SkyPower's land rights across Ontario and that it is well-advanced in the permitting process for several of its projects and has negotiated memoranda of understanding with partners for joint ventures for such projects, SkyPower believes that its prospects of obtaining new PPAs with the OPA are strong. Ontario is regarded by prospective purchasers as a critical location for power projects because of the renewable energy regime introduced under the authority of the GEA. Participating in these programs is the best way to realize value on the substantial project investments made by SkyPower to date.

117. SkyPower has canvassed at least five other potential DIP lenders, including HSH and Lehman Brothers. No one has been willing to extend a DIP loan to SkyPower without obtaining first priority security over all of SkyPower's assets. In addition to CIM Group, SkyPower received one other draft funding proposal in writing. Based on a number of factors, including without limitation, pricing, terms and conditions and the level of certainty of closing in a condensed timeframe, SkyPower determined that the terms of the DIP Loan offered by CIM Group were the most favourable terms that have been offered to SkyPower.

**(iii) Directors' Charges**

118. SkyPower's Board of Directors is comprised of five directors, representing a diverse base of business skills and experiences. These directors have considerable knowledge, financial experience in direct deals with the business of SkyPower. They have provided substantial direction to management on all key initiatives undertaken over the past several years. SkyPower is of the view that the continued participation of the existing directors and officers is fundamental and a key element to a successful sale of SkyPower.
119. The directors' and officers' liability insurance policy was set to expire on September 11, 2009. SkyPower has obtained an extension of the policy for the duration of the CCAA proceedings.
120. The Directors understand that they may risk personal liability for amounts that accrue in the CCAA proceedings for these employee-related liabilities and that SkyPower has no financial ability to indemnify the Directors should such personal liability accrue. I am advised by SkyPower's counsel and believe that insurance coverage, especially in the short term to fund immediate costs if directors or officers are sued personally, is uncertain. Insurers can challenge coverage in a number ways and, should they do so, the personal assets of directors and officers will be at risk pending the determination of the existence of coverage, scope of coverage issues or any other issues that an insurer might raise. There is little financial incentive for the Directors or the key operational employees and officers of SkyPower to remain at their positions during a sale process that will be

conducted for the financial benefit of the creditors and other stakeholders. Some of the Directors and officers have received legal and business advice to resign if they are not granted protection of a Directors' Charge as provided for in the draft Initial Order. I also believe that, given their experiences in the unique affairs and ongoing oversight of the business and the sale process, the services of the Directors and officers are absolutely necessary to a successful proceeding and that the Directors' Charge over all of the assets of SkyPower should therefore be granted.

121. SkyPower therefore requests a Directors' Charge in the amount of \$1.25 million.

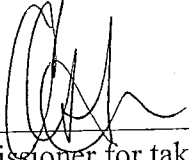
**(iv) KERP Charge**

122. As discussed above, SkyPower's employees and the relationships that they have forged with key stakeholders are fundamental aspects of the value of SkyPower's business. SkyPower will be returning to this Honourable Court shortly with a motion to implement a key employee retention plan so as to preserve and protect SkyPower's ability to keep its most vital human resources in place.

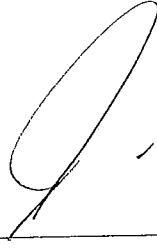
**(v) The Monitor**

123. SkyPower proposes that KPMG LLP be appointed monitor for this proceeding. KPMG LLP is not the auditor for SkyPower. KPMG LLP has consented to act as monitor and its written consent is being filed with this Honourable Court.

SWORN before me at the City of  
Toronto in the Province of Ontario on  
August 12, 2009.



\_\_\_\_\_  
A Commissioner for taking affidavits



\_\_\_\_\_  
Kerry Adler  
Chief Executive Officer

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKYPOWER CORP.

Court File No: \_\_\_\_\_

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

Proceeding commenced at Toronto

**AFFIDAVIT OF KERRY ADLER**  
(sworn August 12, 2009)

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