

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE
JUSTICE NEWBOULD

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FRIDAY, THE 28TH
DAY OF OCTOBER, 2016

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
9366016 CANADA INC.

Applicant

DISTRIBUTION AND CCAA TERMINATION ORDER

THIS MOTION made by 9366016 Canada Inc. (the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Ninth Report of Ernst & Young Inc. ("**EYI**") as the Court-appointed Monitor of the Applicant (the "**Monitor**") dated October 26, 2016 (the "**Ninth Report**") and the affidavits sworn in support of the approval of the fees and disbursements of the Monitor and its counsel, and on hearing the submissions of counsel for each of the Applicant, the Monitor and such other counsel as were present and wished to be heard, and on reading the affidavit of service, filed:

SERVICE

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

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Order of this Court granted February 10, 2015 (as amended, the “**Initial Order**”), and that the following terms shall have the following meanings for the purposes of this Order:

- (a) “**CCAA Proceedings**” means these proceedings in respect of (i) the Applicant from and after the Transition Date, and (ii) the Former Applicants prior to the Transition Date;
- (b) “**Charity**” means one or more registered charities with a primary focus on the provision of charitable activities in the City of Ottawa and surrounding region as determined by the Monitor in consultation with Goodmans LLP as counsel to the Applicant;
- (c) “**Claim**” means any right or claim of any Person against the Applicant, whether or not asserted, in connection with any indebtedness, liability or obligations of any kind whatsoever, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, including for greater certainty any “equity claim” as defined in the CCAA, (i) in existence on the Filing Date, or (ii) arising out of the restructuring, disclaimer, resiliation, termination or breach by the Applicant on or after the Filing Date of any contract, lease or agreement of any nature whatsoever (a “**Restructuring Period Claim**”);
- (d) “**Claimant**” means a Person with a Distribution Claim;
- (e) “**CWP**” means Canadian Water Projects Inc.;

- (f) **“CWP Claim”** means the unsecured Claim of CWP against the Applicant in the amount of \$21,673,250.50 as determined pursuant to the Global Settlement Agreement;
- (g) **“Directors and Officers”** means, collectively (i) any current or former director or officer of the Applicant, and (ii) any director or officer of the Former Applicants that served in such capacity during the period commencing six months prior to the Filing Date and ending immediately prior to the Transition Date, and includes, for greater certainty, the Chief Restructuring Officer appointed pursuant to the Initial Order;
- (h) **“Distributable Amount”** means the total amount of cash held by the Monitor in trust for the Applicant on the Distribution Date less the amount of the Reserve;
- (i) **“Distribution Date”** means the date set by the Monitor to effect the Distributions pursuant to this Order;
- (j) **“Distributions”** means the distributions of the Distributable Amount pursuant to this Order;
- (k) **“Filing Date”** means February 10, 2015;
- (l) **“Former Applicants”** means Plasco Energy Group Inc., Plasco Trail Road Inc. and Plasco Ottawa Inc.;
- (m) **“Global Settlement Agreement”** means the Global Settlement Agreement dated as of August 14, 2015 between the Former Applicants, the Applicant, NSPG and CWP;
- (n) **“Employee Claimants”** means former employees of the Applicant or the Former Applicants with Employee Claims;
- (o) **“Employee Claims”** means the Claims of Employee Claimants against the Applicant, as determined by the Monitor with the assistance of the Applicant and with the assistance of Representative Counsel with respect to Represented Parties;

- (p) “**NSPG**” means North Shore Power Group Inc.;
- (q) “**NSPG Claim**” means the unsecured Claim of NSPG against the Applicant in the amount of \$19,545,373.50 as determined pursuant to the Global Settlement Agreement;
- (r) “**Other Unsecured Claims**” means, collectively, unsecured Claims against the Applicant (i) as set out in the books and records of the Applicant and Former Applicants, and (ii) any other unsecured Claim against the Applicant as accepted by the Monitor prior to the Distribution Date, provided that the CWP Claim, the NSPG Claim, the Promissory Notes Claims and the Employee Claims shall not constitute Other Unsecured Claims;
- (s) “**Person**” means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government authority or agency, or any other entity, wherever situate or domiciled and whether or not having legal status;
- (t) “**Promissory Notes Claims**” means the aggregate of all Claims in respect of the Promissory Notes;
- (u) “**Promissory Notes**” means the unsecured convertible senior promissory notes issued by the Applicant in the principal amount of \$68,000,004.00;
- (v) “**Representative Counsel**” means Nelligan O’Brien Payne LLP and Shibley Righton LLP as co-counsel for the Represented Parties in the CCAA Proceedings;
- (w) “**Representation Order**” means the Order of this Court dated March 3, 2015 pursuant to which, *inter alia*, Representative Counsel was appointed as counsel for the Represented Parties in the CCAA Proceedings;
- (x) “**Represented Parties**” has the meaning given to it in the Representation Order;

- (y) “**Reserve**” means a reserve of funds in an amount determined by the Monitor, in consultation with the Applicant, sufficient for the payment following the Distribution Date of:
 - (i) the professional fees and disbursements of the Monitor, counsel to the Monitor, and counsel to the Applicant in connection with these CCAA Proceedings;
 - (ii) any outstanding claims secured by the Administration Charge, the Directors’ Charge and the KERP Charge;
 - (iii) any expense incurred by the Applicant that relates to the period after the Filing Date; and
 - (iv) any other contingent amounts appropriate in the circumstances to ensure the availability of sufficient funding to undertake and complete the orderly wind-down of the Applicant and all ancillary activities in connection therewith;
- (z) “**Restructuring Period Claims Bar Date**” means November 15, 2016; and
- (aa) “**Transition Date**” means September 25, 2015, being the date on which the Global Settlement Agreement became effective pursuant to its terms.

RESTRUCTURING PERIOD CLAIMS

3. **THIS COURT ORDERS** that any Person that does not deliver a proof of claim form in respect of a Restructuring Period Claim to the Monitor on or prior to the Restructuring Period Claims Bar Date shall not be entitled to a Distribution in respect of such Restructuring Period Claim and such Restructuring Period Claim shall be irrevocably barred and extinguished without any further act or notification.

4. **THIS COURT ORDERS** that, where a proof of claim form in respect of a Restructuring Period Claim is delivered to the Monitor on or prior to the Restructuring Period Claims Bar Date, the Monitor, in consultation with counsel to the Company, shall review such proof of claim and

shall either allow, partially allow or disallow such proof of claim for purposes of the Distribution. Where a proof of claim form in respect of a Restructuring Period Claim is allowed in its entirety, the Monitor need do nothing further and the Restructuring Period Claim as set out in the applicable proof of claim form shall be deemed to constitute a Restructuring Period Claim for Distribution purposes. Where a Restructuring Period Claim asserted in a proof of claim form is partially allowed or disallowed, the Person that delivered such proof of claim form shall be notified by the Monitor of the partial allowance or disallowance, as applicable, and the Monitor, with the assistance of counsel to the Applicant, shall attempt to resolve with such Person the validity and quantum of the asserted Restructuring Period Claim. Where any dispute is not resolved within a reasonable period of time as determined by the Monitor, the Monitor is authorized to bring the matter before this Court for determination.

DISTRIBUTIONS

5. **THIS COURT ORDERS** that the following Claims shall be allowed as against the Applicant for purposes of making Distributions to the Applicant's unsecured creditors (collectively, the "**Distribution Claims**"):

- (a) the CWP Claim;
- (b) the NSPG Claim;
- (c) the Promissory Notes Claims;
- (d) the Employee Claims; and
- (e) the Other Unsecured Claims.

6. **THIS COURT ORDERS** that on the Distribution Date, the Distributable Amount shall be distributed by the Monitor to the Claimants in accordance with the following:

- (a) each Claimant shall be entitled to a *pro rata* share of the Distributable Amount equal to the percentage that the value that such Claimant's Distribution Claim bears to the aggregate value of all Distribution Claims; and

- (b) the aggregate *pro rata* share of the Distributable Amount allocable to the Promissory Notes Claims pursuant to subparagraph 6(a) of this Order (the “**Redirected Distribution**”) shall, in lieu of distribution to the holders of such Promissory Notes Claims, be distributed to Employee Claimants, and each Employee Claimant shall be entitled, in addition to the Distribution to which it is entitled pursuant to subparagraph 6(a) of this Order, to a *pro rata* share of the Redirected Distribution equal to the value that such Employee Claimant’s Employee Claim bears to the aggregate value of all Employee Claims.

7. **THIS COURT ORDERS** that the Monitor is authorized to rely on the books and records of the Applicant as necessary in connection with the performance of the Monitor’s duties and obligations hereunder, including with respect to the determination and valuation of Distribution Claims and the addresses of Claimants for the purpose of making Distributions.

8. **THIS COURT ORDERS** that the Monitor is hereby authorized, directed and empowered to take any further steps and actions that it deems necessary or desirable to undertake and complete the Distributions.

9. **THIS COURT ORDERS** that if any Claimant’s Distribution is returned as undeliverable or remains uncashed (an “**Undeliverable Distribution**”), no further Distribution to such Claimant shall be made unless and until the Monitor is notified by such Claimant of such Claimant’s current address, at which time such Distribution shall be made to such Claimant. All claims for Undeliverable Distributions must be made on or before the date that is six months following the Distribution Date (the “**Distribution Deadline**”), after which date any entitlement with respect to such Undeliverable Distribution shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any federal or provincial law to the contrary. The aggregate of all Undeliverable Distributions remaining following the occurrence of the Distribution Deadline shall be paid by the Monitor to Charity.

10. **THIS COURT ORDERS** that any amount received following the Distribution Date by the Applicant, or the Monitor in trust for the Applicant, in connection with the wind-up of Plasco China Limited (Hong Kong), Chengdu Plasco Energy Technology Co. Ltd. (People’s Republic of China) or Beijing Plasco Technology Co. Ltd. (People’s Republic of China) shall be paid to

Charity by the Monitor promptly upon the receipt of such amount by the Monitor and, for greater certainty, any amount received in respect of the wind-up of such entities prior to the Distribution Date shall form part of the Distributable Amount to be distributed to Claimants pursuant to the terms of this Order.

11. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these CCAA Proceedings;
- (b) the assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) and any order issued pursuant to such petition; or
- (c) any provisions of any federal or provincial legislation,

the Distributions shall be binding on any trustee in bankruptcy or receiver that may be appointed and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

RELEASE

12. **THIS COURT ORDERS** that the Applicant, the Directors and Officers, and the Company’s present and former direct and indirect shareholders, employees and advisors, and the Monitor (collectively, the “**Released Parties**”) are hereby forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, recoveries, and obligations of whatever nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the date of this Order in

respect of the Applicant, the Former Applicants, the business, operations, assets, property and affairs of the Applicant or the Former Applicant wherever or however conducted or governed, the administration and/or management of the Applicant or the Former Applicants, and the CCAA Proceedings (collectively, the “**Released Claims**”), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph 12 shall waive, discharge, release, cancel or bar (i) the rights of Claimants to receive a Distribution pursuant to the terms of this Order, (ii) any claim against the Directors and Officers that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or (iii) any claim against the Company that is not permitted to be released pursuant to section 19(2) of the CCAA.

MONITOR PROTECTIONS

13. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the Initial Order, the Monitor shall not be liable for any act or omission on the part of the Monitor pertaining to the discharge of its duties under this Order, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA, any other federal or provincial applicable law or the Initial Order.

14. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order and without in any way limiting the protections for the Monitor as set forth in this Order, the Initial Order and the CCAA, (a) the Monitor shall have no obligation to make any Distribution or other payment pursuant to this Order unless the Monitor is in receipt of, or holds in trust for the Applicant, adequate funds to effect any such payment, and (b) the Monitor shall have no liability to any Person as a result of a Claim of such Person not being recognized as a Distribution Claim for purposes of this Order or as a result of such Person not receiving a Distribution pursuant to this Order, save and except for any liability arising out of any gross negligence or wilful misconduct on the part of the Monitor.

15. **THIS COURT ORDERS** that any Distributions under this Order shall not constitute a “distribution” for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 107 of the *Corporations Act Tax* (Ontario), section 22 of the

Retail Sales Tax (Ontario), section 117 of the *Taxation Act, 2007* (Ontario) or any other similar federal, provincial or territorial tax legislation (collectively, the “**Tax Legislation**”), and that the Monitor in making any such Distributions is not “distributing”, nor shall be considered to “distribute” nor to have “distributed”, such funds for the purpose of the Tax Legislation, and the Monitor shall not incur any liability under the Tax Legislation in respect of its making any payments ordered or permitted under this Order, and is hereby forever released and discharged from any claims against it under or pursuant to the Tax Legislation or otherwise at law, arising in respect of Distributions or other payments under this Order and any claims of this nature are hereby forever barred.

APPROVAL OF MONITOR’S ACTIVITIES

16. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to or on the date hereof in relation to (a) the Applicant, (b) the Former Applicants, and (c) these CCAA Proceedings are hereby ratified and approved.

17. **THIS COURT ORDERS** that the Pre-Filing Report of the Monitor dated February 10, 2015, the First Report of the Monitor dated March 2, 2015, the Second Report of the Monitor dated April 24, 2015, the Third Report of the Monitor dated July 16, 2015, the Fourth Report of the Monitor dated September 22, 2015, the Fifth Report of the Monitor dated February 15, 2016, the Sixth Report of the Monitor dated March 29, 2016, the Seventh Report of the Monitor dated June 1, 2016, the Eighth Report of the Monitor dated September 28, 2016 and the Ninth Report and the activities and conduct of the Monitor described in each of such reports are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS OF THE MONITOR

18. **THIS COURT ORDERS** that the fees and disbursements of the Monitor in the amount of \$493,910.99 (for the period from February 3, 2015 to September 23, 2016 inclusive, and including harmonized sales tax) and the Monitor’s fees and disbursements, estimated not to exceed \$35,000, to complete its remaining duties and the administration of these CCAA Proceedings, all as set out in the affidavit of Greg Adams and the Ninth Report, are hereby approved.

19. **THIS COURT ORDERS** that the fees and disbursements of Stikeman Elliott LLP, in its capacity as counsel to the Monitor, in the amount of \$197,929.54 (for the period from February 6, 2015 to August 31, 2016 inclusive, and including harmonized sales tax) and its fees and disbursements, estimated not to exceed \$30,000, in connection with the completion by counsel to the Monitor of its remaining duties and the administration of these CCAA Proceedings, all as set out in the affidavit of Ashley Taylor and the Ninth Report, are hereby approved.

TERMINATION OF CCAA PROCEEDINGS

20. **THIS COURT ORDERS** that upon the filing of a certificate of the Monitor substantially in the form attached hereto as Schedule "A" certifying that the Distributions have been made pursuant to the terms of this Order and that the Applicant has confirmed to the Monitor that all matters to be attended to in connection with the CCAA Proceedings have been completed, the CCAA Proceedings shall be terminated without any further act or formality (the "**CCAA Termination Time**").

21. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge and the KERP Charge shall be and are hereby terminated, released and discharged at the CCAA Termination Time.

DISCHARGE OF THE MONITOR

22. **THIS COURT ORDERS AND DECLARES** that effective at the CCAA Termination Time, the Monitor shall be and is hereby discharged as Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Time, save and except for any obligation to pay to Charity pursuant to the terms of this Order (a) the aggregate of all Undeliverable Distributions remaining following the Distribution Deadline, and (b) amounts received by the Monitor in connection with the wind-down of the Chinese Subsidiaries.

23. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA Proceedings, and the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the benefit of,

any of the rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Order of this Court in the CCAA Proceedings or otherwise, all of which are expressly continued and confirmed, including, without limiting the generality of the foregoing, in connection with any payment by the Monitor to Charity following the CCAA Termination Time.

EXTENSION OF THE STAY OF PROCEEDINGS

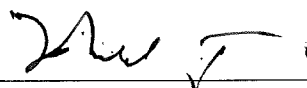
24. **THIS COURT ORDERS** that the Stay Period (as defined in and used throughout the Initial Order) be and is hereby extended to and including the earlier of: (a) the CCAA Termination Time, and (b) March 31, 2017.

GENERAL

25. **THIS COURT ORDERS** that the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to the Distributions and other matters proposed herein.

26. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant and Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and the Monitor and their respective agents as may be necessary or desirable to give effect to this Order, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 28 2016

PER / PAR:



Schedule A – Form of Monitor’s Certificate

Court File No. CV-15-10869-00CL

**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
9366016 CANADA INC.**

Applicant

MONITOR’S CERTIFICATE

RECITALS

A. Ernst & Young Inc. was appointed as the Monitor of the Applicant in the within CCAA Proceedings pursuant to an Order of the Ontario Superior Court of Justice (the “**Court**”) dated February 10, 2015 (as amended, the “**Initial Order**”).

C. Pursuant to the Order of this Court dated October 28, 2016 (the “**Distribution and CCAA Termination Order**”), the Monitor shall be discharged and the CCAA Proceedings shall be terminated upon the filing of this Monitor’s Certificate with the Court.

D. Unless otherwise indicated herein, capitalized terms used in this Monitor’s Certificate shall have the meanings given to them in the Distribution and CCAA Termination Order.

THE MONITOR CERTIFIES the following:

1. The Distributions have been made pursuant to the terms of the Distribution and CCAA Termination Order.
2. The Applicant has confirmed to the Monitor that all matters to be attended to in connection with the CCAA Proceedings have been completed.

ACCORDINGLY, the CCAA Termination Time as defined in the CCAA Termination Order has occurred.

DATED at Toronto, Ontario this _____ day of _____, 201____.

**Ernst & Young Inc., in its capacity as
Monitor of the Applicant, and not in its
personal capacity**

Per: _____

Name:

Title:

**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 9366016 CANADA INC.**

Court File No.: CV-15-10869-00CL

Applicant

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

Proceeding commenced at Toronto

**DISTRIBUTION AND CCAA TERMINATION
ORDER**

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