

Court File No.: CV-23-00693758-00CL

ORIGINAL TRADERS ENERGY LTD. ET AL.

**FIRST REPORT OF KPMG INC.,
IN ITS CAPACITY AS MONITOR**

February 9, 2023

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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
ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC., OTE LOGISTICS LP, AND
ORIGINAL TRADERS ENERGY LP
(collectively the "OTE Group")

FIRST REPORT OF KPMG INC.
In its capacity as Monitor of the Applicants

FEBRUARY 9, 2023

I. INTRODUCTION

1. On January 30, 2023 (the “**Filing Date**”), OTE Group was granted relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) by Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The relief granted under the Initial Order included a stay of proceedings in favour of the Applicants (defined herein) from January 30, 2023, until February 9, 2023 (the “**Initial Stay Period**”); the appointment of KPMG Inc. as Monitor (“**KPMG**” or the “**Monitor**”); and other related relief. The Applicants' CCAA proceedings are referred to herein as the “**CCAA Proceedings**”.
2. OTE Logistics LP (“**OTE Logistics**”) and Original Traders Energy LP (“**OTE LP**” and together with OTE Logistics, the “**Limited Partnerships**”) are not Applicants in this proceeding, the Initial Order extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry on operations that are integral to the business of the Applicants. The Applicants similarly seek to have the protections granted in the Amended and Restated Initial Order extend to the Limited Partnerships. The terms “**OTE Group**” and “**Applicants**” throughout this report refer to the Applicants and Limited Partnerships collectively.
3. KPMG, in its capacity at that time as proposed Monitor, filed a report with the Court dated January 30, 2023 (the “**Pre-Filing Report**”) in support of the OTE Group’s application for the Initial Order. Copies of Court and other materials pertaining to the CCAA Proceedings are available on the Monitor’s Website, as defined below.
4. Capitalized terms used but not defined in this report are as defined in the Initial Order.
5. In accordance with the Initial Order, the Court is scheduled to hear a motion by the Applicants for further relief on February 9, 2023 (the “**Comeback Motion**”).
6. The principal purpose of the CCAA Proceedings is to stabilize the Applicants' business and to provide a forum to explore a plan of compromise or arrangement under the CCAA (a “**Plan**”) that would seek to maximize creditor and stakeholder recoveries. The OTE Group intends to move through the CCAA Proceedings expeditiously, with the goal of emerging as a going-concern business as soon as practicable.

II. PURPOSE OF REPORT

7. The purpose of the First Report of the Monitor (the “**First Report**”) is to provide information to the Court pertaining to:
 - (i) the activities of the OTE Group and the Monitor since the issuance of the Initial Order;
 - (ii) the OTE Group’s request for certain amendments to the Initial Order, as set out in the draft amended and restated initial order, included as part of the Company’s Motion Records for the within motion (the “**Amended and Restated Initial Order**”), including:
 - (a) extending the Stay period, as defined in the Initial Order, to April 28, 2023;
 - (b) amending the breadth of the Initial Stay as applied to regulators which have authority in respect of regulations pertaining to the fuel and/or gasoline industry (“**Regulators**” and each a “**Regulator**”) with certain provisions based upon discussions with the Ministry of Finance (the “**MOF**”); and
 - (c) Increasing the Directors' Charge (as defined below) to \$2,250,000.00.
 - (iii) the Monitor’s conclusions and recommendations.

III. TERMS OF REFERENCE

8. The First Report should be read in conjunction with the Affidavit of Scott Hill sworn January 27, 2023 (the “**Hill Affidavit**”), filed by the Applicants in support of the relief sought in the within motion, as certain information contained in the Hill Affidavit has not been included herein to avoid duplication.
9. In preparing the First Report, the Monitor has relied solely on information and documents provided by the Applicants and their advisors, including unaudited financial information, declarations and the Hill Affidavit (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the First Report, KPMG has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

10. Future orientated financial information contained in the Cash Flow Forecast is based on the Applicants' estimates and assumptions regarding future events. Actual results will vary from the information presented even if the hypothetical assumptions occur, and variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved.
11. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. BACKGROUND

12. Detailed information with respect to the OTE Group's business, operations, products and causes of insolvency is detailed extensively in the Hill Affidavit, and the Pre-Filing Report.
13. The First Report should also be read in conjunction with the second Affidavit of Scott Hill sworn February 7, 2023 (the "**Hill Comeback Affidavit**"), as certain information contained therein has not been included here in order to avoid unnecessary duplication.

V. MONITORS ACTIVITIES SINCE APPOINTMENT

14. The Monitor has established a website (<http://home.kpmg/ca/OTEGroup>) (the "**Monitor's Website**") and an email address (otegroup@kpmg.ca) and hotline (local: 416-468-7000/ toll free: 1-833-665-0666) for stakeholders to obtain information from the Monitor.
15. In accordance with the Initial Order, the following notices and documents have been posted on the Monitor's Website and/or sent to the OTE Group's stakeholders by the Monitor since the date of the Initial Order:
 - (i) the Application Record of OTE Group dated January 27, 2023;
 - (ii) the Report of KPMG in its capacity as Proposed Monitor dated January 30, 2023 (the "**Pre-Filing Report**");
 - (iii) the Service List;
 - (iv) a list showing the names and addresses of creditors of the OTE Group with claims greater than \$1,000 and the estimated amount of those claims; and
 - (v) a copy of the creditor notices.

16. The creditor notices regarding the CCAA Proceedings were also sent to all known creditors of the OTE Group within five days of the issuance of the Initial Order.
17. In accordance with the Initial Order and section 23(1)(a) of the CCAA, the Monitor published a notice in the *Globe and Mail* (National Edition) concerning the CCAA Proceedings, which ran on February 3, 2023 and will run again on February 10, 2023. A copy of the published notice is attached hereto at Appendix "A".
18. The Monitor, with the support of its legal advisors, has been working with the OTE Group, *inter alia*, with respect to the following:
 - (i) supporting OTE Group with managing relationships with key stakeholders, including customers and suppliers and implementing a communication plan to advise of the CCAA Proceedings;
 - (ii) meeting with OTE Group's employees and providing responses to frequently asked questions;
 - (iii) working with the OTE Group to implement procedures to monitor cash flows and making payment in accordance with the Initial Order;
 - (iv) responding to calls and enquiries from creditors and other stakeholders in connection with the CCAA Proceedings, including the MOF as noted below;
 - (v) filing prescribed documents with the Office of the Superintendent of Bankruptcy pursuant to the CCAA;
 - (vi) reviewing material filed with the Court in respect of the CCAA Proceedings;
 - (vii) sending letters to former directors, officers and others affiliated with the OTE Group and its directors and officers, based upon lists provided by the OTE Group, requesting that the Monitor be provided copies and/or access to books, record and/or any information pertaining to the OTE group;
 - (viii) reviewing pre-filing payments in accordance with the Pre-Filing Critical Supplier Payments budget; and
 - (ix) preparing this First Report.

VI. STATUS OF FUEL AND GAS LICENSES

19. At the time of the Initial Order, OTE Group had not come to a formal agreement with the MOF that would prevent the MOF from enforcing on certain of their rights and remedies to revoke the Gas Licenses and the Fuel Licenses. As noted in the Pre-Filing Report, any such enforcement would have material adverse consequences for the OTE Group, including the revocation of OTE Group's operational rights, which would severely harm or shut-down OTE Group's existing operations. If such actions were implemented by the MOF, it would impair the OTE Group's viability to continue as a going concern and would very likely derail any restructuring efforts.
20. Since the Filing Date, OTE Group and the MOF came to an agreement summarized in a letter dated February 1, 2023, from the MOF to OTE Group (the "**MOF Agreement**"). In the MOF Agreement, OTE Group was granted conditional time-limited Gas Licenses and Fuel Licenses for the period of February 1, 2023 to March 31, 2023, subject to the following terms:
 - (i) OTE Group having agreed to provide security in the amount of \$2 million, to be provided in two installments. OTE Group elected to provide security in the form of cash security. This security will be held for the purpose of compliance for the period of time after the date security was provided;
 - (ii) the MOF having received confirmation that the initial security instalment of \$500,00 (the "**Initial Installment**") has been sent via courier;
 - (iii) the second security instalment in the amount of \$1.5 million issued by certified cheque and made payable to the MOF; will be delivered from February 9, 2023, to no later than February 21, 2023, upon obtaining Court approval on the extension of the CCAA; and
 - (iv) OTE Group adheres to the returns and payment schedule for all monthly filings, post the commencement of CCAA Proceedings, in accordance with subsections 3.2(1) and 8(2) of the GTA and subsections 3.2(1) and 10(1) of the FTA.
21. As of the date of this report, the Monitor understands the OTE Group has provided the Initial Installment and has put all necessary procedures in place to comply with the remaining MOF Agreement terms. The Monitor notes that the OTE Group and the MOF have remained in continuing constructive discussions since the date of the Initial Order; however, given the unique circumstances facing the OTE Group, the Monitor is of the view that the MOF should continue to be stayed from exercising their rights and remedies in accordance with the Initial Order, provided that OTE Group

remains in compliance with the MOF Agreement, which will provide the OTE Group with a stable environment in which it can seek to restructure. The Monitor understands that counsel for the OTE Group and the MOF have worked out proposed language for the continuation of the stay in the Amended and Restated Initial Order, as described below.

22. As noted above, the MOF Agreement has extended Gas Licenses and Fuel Licenses to March 31, 2023. This timeline was agreed to by OTE Group and the MOF to align with the requested extension in these CCAA Proceedings, as noted below. It is important to note that the OTE Group, with the support of the Monitor, will continue discussions with the MOF on an appropriate extension past March 31, 2023, and in a manner that aligns with these CCAA Proceedings.
23. The Monitor understands that the OTE Group is proposing revisions to paragraphs 19 and 20 of the Amended and Restated Initial Order following discussions with counsel for the MOF to enable regulatory agencies to seek leave of the Court to vary the stay in relation to revocation of licenses held by any member of the OTE Group on ten days' notice and to clarify that the stay provisions do not prevent any government or regulatory agency or body from taking any action it deems necessary:
 - (i) to protect public or employee health and/or safety;
 - (ii) to address exigent environmental contamination, hazards or other adverse effects; or
 - (iii) to investigate and prosecute criminal and quasi-criminal offences under federal or provincial laws, but enforcement of monetary orders arising therefrom are stayed subject to further order of this Court.
24. The Monitor has reviewed the proposed revisions to paragraphs 19 and 20 of the Amended and Restated Initial Order and is satisfied that they are appropriate in the circumstances.

VII. DIRECTOR'S CHARGE

25. The Initial Order provided for a priority charge up to the maximum of \$250,000 to indemnify the Directors and Officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of these CCAA Proceedings (the “**Directors’ Charge**”) during the interim period prior to the granting of the Amended and Restated Initial Order. OTE Group is seeking an increase of this charge to a maximum of \$2,250,000.

26. The Directors and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent such coverage is insufficient to pay an indemnified amount. The Monitor understands that the Applicants maintains directors' and officers' liability insurance.
27. The amount of the Directors' Charge was calculated taking into consideration employee payroll, vacation pay and related expenses (including source deductions) as well as other employment-related liabilities that could attract potential liability for the Directors and Officers. In addition to employment-related liabilities, the increase in the Directors' Charge of \$2,000,000 is related to potential Directors and Officers liability as a result of currently estimated federal and provincial sales taxes for which the Directors and Officers could potentially have personal liability, depending upon statutory requirements, less any director's and officer's liability insurance coverage.
28. Based on the OTE Group's cash flow projections and as indicated in the chart below, the OTE Group estimates that their monthly revenue will be approximately \$22 million for February through April, 2023, which will result in a forecasted monthly sales tax liability of \$7.1 million during that same period. The increase in the Director's Charge of \$2,000,000 along with any director's and officer's liability insurance will provide partial coverage for potential Directors and Officers liability (subject to statutory requirements of the applicable taxing statutes) related to the estimated gross sales tax amounts.
29. The Applicants require the participation and experience of the Directors and Officers to continue operating the business of the OTE Group to ensure uninterrupted supply of fuel to the First Nations communities and to consider and develop a restructuring plan and facilitate the successful completion of the CCAA Proceedings. The Monitor believes that the Directors' Charge (both the amount and the priority ranking) is required and reasonable in the circumstances and will advise the Court if a change in the amount or priority ranking is required in the future.

VIII. EXTENSION OF THE STAY PERIOD

30. The Stay Period expires on February 9, 2023. OTE Group is seeking an extension of the Stay Period up to and including April 28, 2023.
31. The Monitor supports the Company's request for an extension of the Stay Period from February 9, 2023, up to and including April 28, 2023 for the following reasons:
 - (i) OTE Group has acted and continues to act in good faith and with due diligence;

- (ii) the extension will provide OTE Group with the opportunity to continue its review of its restructuring options with the assistance of counsel and the Monitor, including, among other things, exploring a potential Plan;
- (iii) the extension falls within the timeline provided by in the MOF Agreement;
- (iv) the extension will allow the Company to develop a claims process and obtain Court approval thereof; and
- (v) the granting of the extension should not materially prejudice any creditor. The OTE Group is projected to have sufficient funding to continue to operate in the normal course through the proposed stay extension period.

IX. MONITOR'S RECOMMENDATIONS

32. For the reasons set out in this First Report, the Monitor is of the view that the relief requested by OTE Group is both appropriate and reasonable. The Monitor is also of the view that granting the relief requested will provide OTE Group the best opportunity to complete a restructuring under the CCAA, thereby preserving value for the benefit of OTE Group's stakeholders.
33. Based on the foregoing, the Monitor respectfully recommends that this court approve the relief sought in the Amended and Restated Initial Order.

All of which is respectfully submitted this 9th day of February 2023.

KPMG Inc.
In its capacity as Monitor of
Original Traders Energy Group
And not in its personal or corporate capacity

Per:



Paul van Eyk
CPA, CA-IFA, CIRP, LIT, Fellow of INSOL
President



Duncan Lau
CPA, CMA, CIRP
Senior Vice President

Appendix “A”

ties about how the technology would work in a cold climate and it will take several years to assess those ahead of a decision to launch any related manufacturing in the region, he said.

Alstom, which took over Bombardier's train plants in La Pocatière, Que., Kingston and Thunder Bay as part of the acquisition, has been flexing its muscle in Canada of late as it tries to position itself as a partner of choice for governments trying to decarbonize their economies. The company is also

achieve carbon neutrality by 2050, is keen to see whether "green hydrogen" generated from its hydroelectric power is a viable way to help reduce greenhouse gas emissions for its transportation sector.

"Hydrogen will become important for heavy transport and for industrial processes," said Pierre Fitzgibbon, Minister of the Economy, Innovation and Energy. He said some 45 per cent of Quebec's greenhouse gas emissions come from transportation and about

Quebec will fund \$3-million of the \$8-million estimated cost of the four-month trial.

Head of CIBC's innovation banking arm announces plan to step down

JAMES BRADSHAW
INSTITUTIONAL INVESTING
REPORTER

The head of Canadian Imperial Bank of Commerce's burgeoning innovation banking unit, Mark McQueen, is leaving the bank.

Mr. McQueen announced his plans to step down as president and executive managing director of CIBC Innovation Banking on his personal blog on Thursday. He has been at the bank for five years, and wrote that "it's the appropriate time to chart my next adventure."

"I'm at the right age to still have time for one more great career, and I'm old enough to know what to do this time," Mr. McQueen said in an interview.

He said he has not decided what he will do next, but is interested in opportunities that could include an entrepreneurial ven-

ture, a corporate role or a public-service oriented position. CIBC has not yet revealed who will succeed him at the helm of CIBC Innovation Banking.

Mr. McQueen joined CIBC in 2018 through the bank's acquisition of Wellington Financial, a Toronto-based specialty finance firm he led that specialized in backing early- and mid-stage technology companies through a \$300-million fund.

Wellington served as a cornerstone for the launch of CIBC Innovation Banking, a revamped tech banking division that has ramped up the pace of its investments. It has added key bankers and helped spur rivals to bulk up their own tech banking services - for example, California-based Silicon Valley Bank set up shop in Canada, and Royal Bank of Canada has expanded and merged its tech banking and venture units to create its RBCx platform.

In recent years, CIBC capitalized on a boom for technology companies that attracted ballooning investments and soaring valuations. Over a three-year span, CIBC Innovation Banking expanded its loan book from \$400-million to \$2.9-billion and boosted profits before taxes from \$12-million to \$59-million, according to a presentation to investors last year. It then set a target to triple that profit-before-taxes number by 2025.

But that target was set just before a sharp downturn in tech began late in 2021. Since then, rising interest rates and high inflation have brought sky-high valuations crashing back down and created a drumbeat of layoffs as companies cut costs to conserve cash.

Mr. McQueen said in his blog that CIBC's innovation unit "committed more than \$10-billion in financing" to startups and growth companies over five years.

to make it work, which is not lost on the Legault government. "We're ahead of a lot of other

evaluates the viability of hydrogen rail propulsion for North America.

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LEGALS

COURT FILE NO. CV-23-00693758-00CL

IN THE 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 THE PLAN OF COMPROMISE OR ARRANGEMENT OF
ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC., OTE LOGISTICS
LP AND ORIGINAL TRADERS ENERGY LP (collectively, the "OTE Group")

Take notice that on January 30, 2023, the OTE Group commenced court-supervised restructuring proceedings under the *Companies' Creditors Arrangement Act* ("CCAA").

KPMG Inc. has been appointed by the Ontario Superior Court of Justice (Commercial List) (the "Court") as Monitor (the "Monitor") in the Company's CCAA proceedings pursuant to the Order of the Court dated January 30, 2023 (the "Initial Order").

Notice is hereby given that a copy of the Initial Order and the Company's application materials are posted on the Monitor's website at: <http://home.kpmg.ca/OTEGroup>

The Monitor will post additional relevant information and documentation related to these proceedings on the Monitor's website as they become available. Interested persons may contact the Monitor directly for further information at:

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