

Clerk's Stamp

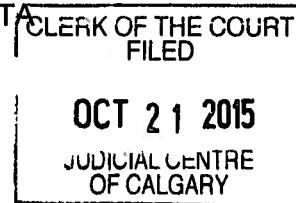
COURT FILE NO. 1401-05914

COURT COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

APPLICANT CP ENERGY MARKETING LP

RESPONDENT KYOTO FUELS CORPORATION



IN THE MATTER OF THE BANKRUPTCY OF  
KYOTO FUELS CORPORATION, a corporation  
incorporated pursuant to the laws of the Province  
of Alberta

**DOCUMENT APPLICATION FOR BANKRUPTCY ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Norton Rose Fulbright Canada LLP  
400 3<sup>rd</sup> Avenue SW, Suite 3700  
Calgary, Alberta T2P 4H2  
Phone: +1 403.267.8222  
Fax: +1 403.264.5973  
Email: kyle.kashuba@nortonrosefulbright.com

Attention: Kyle D. Kashuba  
File No. 01139306-0007

**NOTICE TO RESPONDENT(S):**

This Application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the Application is heard as shown below:

Date: Wednesday, October 28, 2015  
Time: 10:00 a.m.  
Where: Calgary Courts Centre  
Before Whom: Mr. Justice A.D. Macleod, of the Commercial List

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. Abridging, if necessary, the time for service of this Application and deeming service to be good and sufficient.
2. An Order in substantially the same form as that attached as Schedule "A" to this Application, declaring and adjudging that:
  - 2.1 Kyoto Fuels Corporation ("**Kyoto**"), a corporation incorporated pursuant to the laws of the Province of Alberta, be adjudged bankrupt and that a Bankruptcy Order be made in respect of the property of Kyoto;
  - 2.2 Ernst & Young Inc. be appointed as trustee in bankruptcy of Kyoto; and
  - 2.3 CP Energy Marketing LP ("**Capital Power**") be granted costs of the within Application on a full indemnity, solicitor and his own client basis.
3. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

**Grounds for making this Application:**

4. Kyoto is an insolvent person within the meaning of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and has at some time during the year immediately preceding the filing of this Application resided or carried on business in the City of Lethbridge, in the Province of Alberta, and whose current address is RR #8 S2 C24, Lethbridge, AB T1J 4P4, within the jurisdiction of this Honourable Court.
5. Capital Power as lender entered into a series of loan agreements with Kyoto, pursuant to which Capital Power agreed to provide Kyoto as borrower with certain credit facilities and advance funds all on the terms set out therein and all in related and amending documents, and Capital Power made various loans to Kyoto from time to time.
6. Kyoto agreed to repay the principal and interest advanced from time to time by Capital Power, and failed to repay the said indebtedness.
7. As at April 25, 2014, the total indebtedness outstanding under the loan agreements was approximately \$6,231,860 in principal, plus interest, associated costs, fees and

disbursements with additional interest and other charges accrued and accruing thereon at the rates and on the terms established by the loan agreements.

8. Following the issuance of demands for payment by Capital Power, Kyoto sought creditor protection under the *Companies' Creditors Arrangement Act* ("CCAA") and obtained a CCAA Initial Order in Alberta Court of Queen's Bench Action No. 1401-04022 on April 30, 2014. Ernst & Young Inc. ("EY") was appointed Monitor.
9. On May 29, 2014, Capital Power sought and obtained a lifting of the stay of proceedings in the Kyoto CCAA proceedings, and a Receivership Order was granted by Mr. Justice P.R. Jeffrey in respect of the property, undertakings and assets of Kyoto. EY was appointed Receiver over Kyoto.
10. EY in its capacity as Receiver has sold the majority of the assets of Kyoto, and certain distributions have been made to Kyoto's creditors.
11. The Kyoto receivership proceedings remain ongoing as at the present date.
12. As at the date of the hearing of this Application, Kyoto is justly and truly indebted to Capital Power in the approximate sum of \$6,231,860 plus interest and costs continuing to accrue.
13. Within the 6 months preceding the filing of this Application for Bankruptcy Order, Kyoto has failed to meet its liabilities generally as they become due in that Kyoto has failed to pay its obligations to Capital Power and others, such obligations which exceed \$1,000.
14. Bob Taylor of Ernst & Young Inc., of the City of Calgary, in the Province of Alberta, is a person qualified to act as trustee in bankruptcy of the property of Kyoto and has agreed to act as such, and is acceptable to Capital Power, a creditor of Kyoto that is owed the following:

CREDITOR	ADDRESS	AMOUNT OF DEBT
Capital Power	200 - 401, 9 Ave SW, Calgary, AB T2P 3C5	\$6,231,860

15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Material or evidence to be relied on:**

16. All pleadings, proceedings, orders, affidavits, reports and other materials filed in Alberta Court of Queen's Bench Action Nos. 1401-04022 and 1401-05914, and in particular the Receivership Order granted by Mr. Justice P.R. Jeffrey dated May 29, 2014.
17. The Affidavit of Verification of Matthew Rudakewich of Capital Power sworn October 21, 2015, filed.
18. The proposed form of Order attached hereto as Schedule "A".
19. The inherent jurisdiction of this Honourable Court to control its own process.
20. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

21. Part 6, Division 7, and in particular Rules 3.2 and 6.47(e) and (f), and, *Bankruptcy and Insolvency General Rules*, CRC 1985, c 368, as amended and in particular Rules 11, 69, 72 and 83, thereof, and such further and other Rules as counsel may advise and that this Honourable Court may permit

**Applicable Acts and Regulations:**

22. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, as amended, and in particular, Part II, sections 42, 43, 45 and 46, thereof, the *Judicature Act*, RSA 2000, c J-2, as amended, and such further and other Acts and Regulations as counsel may advise and that this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

23. None.

**How the Application is proposed to be heard or considered:**

24. Oral submissions by counsel at an Application in Justice Chambers as agreed and scheduled by counsel, scheduled to be heard on Wednesday, October 28, 2015 at 10:00 a.m. before the Honourable Mr. Justice A.D. Macleod, of the Commercial List.

**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.****WARNING**

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

## Schedule "A" to the Application filed October 21, 2015

COURT FILE NO. 1401-05914 Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

APPLICANT CP ENERGY MARKETING LP

RESPONDENT KYOTO FUELS CORPORATION

IN THE MATTER OF KYOTO FUELS  
CORPORATION, a corporation incorporated  
pursuant to the laws of the Province of Alberta

### DOCUMENT **BANKRUPTCY ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Norton Rose Fulbright Canada LLP  
400 3<sup>rd</sup> Avenue SW, Suite 3700  
Calgary, Alberta T2P 4H2  
Phone: +1 403.267.8222  
Fax: +1 403.264.5973  
Email: kyle.kashuba@nortonrosefulbright.com

Attention: Kyle D. Kashuba  
File No. 01139306-0007

DATE UPON WHICH ORDER WAS PRONOUNCED: Wednesday, October 28, 2015  
NAME OF REGISTRAR WHO MADE THIS ORDER: Mr. Justice A.D. Macleod  
LOCATION OF HEARING: Calgary, Alberta

### **BANKRUPTCY ORDER**

**UPON THE APPLICATION FOR BANKRUPTCY ORDER** being made by CP Energy Marketing LP (the "**Applicant**"), having an office at 1200 - 401, 9 Ave SW, Calgary, AB T2P 3C5, a creditor of Kyoto Fuels Corporation ("**Kyoto**"), having an office at RR #8 S2 C24, Lethbridge, AB T1J 4P4, filed on October 21, 2015; **AND UPON** having read the Application for Bankruptcy Order and the Affidavit of Verification of Matthew Rudakewich sworn October 21,

2015 and filed October 21, 2015; **AND UPON** reading the consent of Ernst & Young Inc. to act as trustee in bankruptcy of the estate of Kyoto; **AND UPON** hearing counsel for the Applicant, and from any other interested parties who may be present; **AND UPON** it appearing that all interested and affected parties have been served with notice of this Application; **AND UPON** it appearing to the Court that the following act of bankruptcy has been committed:

- (a) the debt owing by Kyoto to the Applicant exceeds \$1,000; and
- (b) within the 6 months preceding the date of filing of the Application for Bankruptcy Order, Kyoto ceased to meet its liabilities generally as they become due.

**THE COURT IS CONVINCED AND HEREBY ORDERS AND DECLARES THAT:**

1. Service of the notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this Application, and the time for service of this Application is abridged to that actually given.
2. Kyoto, a corporation incorporated pursuant to the laws of the Province of Alberta, be and is hereby adjudged bankrupt and that a Bankruptcy Order is hereby made against Kyoto.
3. Ernst & Young Inc. be and is hereby appointed as trustee of the estate of the bankrupt Kyoto, without security.
4. The costs of and incidental to this Application and of this Order be paid to the Applicant, on a full indemnity, solicitor and his own client basis, out of the assets of the estate of the bankrupt Kyoto, forthwith after taxation thereof.

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Justice of the Alberta Court of Queen's Bench