

Province: British Columbia
Division No. 03 - Vancouver
Court No. B - 240355
Estate No. 11-3105465

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
LOOP ENERGY INC.**

CROWE MACKAY & COMPANY LTD., PROPOSAL TRUSTEE

SECOND REPORT TO COURT

October 23, 2024

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I. INTRODUCTION

1. On July 17, 2024 (the "**Filing Date**"), Loop Energy Inc. (the "**Company**") filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to subsection 50.4(1) of the *Bankruptcy and the Insolvency Act* R.S.C.1985, c. B-3 (the "**BIA**") and Crowe MacKay and Company Ltd. consented to act as Trustee under the Proposal (the "**Proposal Trustee**").
2. Pursuant to section 50.4(8) of the BIA, the initial stay period in the proposal proceedings is from July 17, 2024 to August 16, 2024 (the "**Stay Period**"). The Court granted an extension (the "**First Extension**") of the stay of proceedings and deadline to file a proposal to September 30, 2024. On this same date, the Court also granted an administration charge up to a maximum of \$200,000, an interim financing charge of \$600,000, and a director and officer charge up to a maximum of \$100,000.
3. The Court also approved the Company's plan to carry out a sale and investment solicitation process (the "**SISP**"), which would allow the Proposal Trustee, in consultation with the Company and its management to sell the Company and/or its business assets. The deadline to submit a bid was September 6, 2024 (the "**Bid Deadline**"). Particulars of the SISP and the bids received as at the Bid Deadline are discussed in greater detail below.
4. On September 25, 2024, the Court granted an extension (the "**Second Extension**") to the stay of proceedings and deadline to file a proposal to October 18, 2024. On this same date, the Court also granted an additional interim financing and related charge of \$25,000.
5. On October 17, 2024, the Court granted a further extension (the "**Third Extension**") to the stay of proceedings and deadline to file a proposal to November 12, 2024. On this same date, the Court also granted an additional interim financing and related charge of \$75,000.
6. This report (the "**Second Report**") should be read in conjunction with the Proposal Trustee's First Report to Court dated July 29, 2024 (the "**First Report**"), the Letters from the Proposal Trustee to support the Second extension and Third extension (defined below), along with the Company's Notice of Application dated October 28, 2024 (the "**Application**") to, among other things, approve the sale of the Company's assets, undertakings and properties to the Purchaser (defined below).
7. The Proposal Trustee has made the materials related to these proceedings available on its website at: <https://crowemackayco.ca/project/loop-energy-inc/>.

II. PURPOSE OF REPORT

8. The purpose of the Second Report is to provide this Honourable Court and the Company's stakeholders with the following:

- a. a summary of the activities of the Proposal Trustee since the date of the First Report;
- b. an update on the Company's activities since the date of the First Report;
- c. an update on the Proposal Trustee's monitoring of the Company's weekly cash flows, and the Variance Analysis (defined below) of same;
- d. information pertaining to the SISP undertaken, as well as the Proposal Trustee's recommendation on the acceptance of the Superior Bid (defined below); and,
- e. the Proposal Trustee's conclusions and recommendations on the relief sought.

III. TERMS OF REFERENCE

9. In preparing this Second Report, the Proposal Trustee has necessarily relied upon unaudited financial and other information provided by the Company, the Company's books and records, and discussions with management of the Company, Mr. Paul Cataford, Mr. Ben Nyland, and Mr. Daryl Musselman ("**Management**") (collectively, the "**Information**").
10. The Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants Handbook. Accordingly, the Proposal Trustee expresses no opinion and does not provide any other form of assurance on the accuracy and/or completeness of any information used to prepare this Second Report.
11. Certain of the information referred to in this Second Report consists of financial forecasts and/or projections prepared by the Company. An examination or review of the financial forecasts/projections and procedures as outlined by the Chartered Professional Accountants of Canada has not been performed by the Proposal Trustee. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions of future events and conditions that are not ascertainable, actual results may vary and the variations could be material.

IV. ACTIVITIES OF THE COMPANY

12. Since the First Report, the Company's Management have engaged in, among other things, the following activities:
 - a. attended meetings with the Proposal Trustee to discuss the affairs of the Company, as well as the options available;
 - b. prepared and filed a projected cashflow statement for the 8-week period from September 18, 2024 to November 13, 2024 which, along with assumptions on or around September 23, 2024;

- c. prepared and filed an amended projected cashflow statement for the 5-week period from October 9, 2024 to November 12, 2024 which, along with assumptions on or around October 15, 2024
- d. prepared and filed a court application for the Second Extension and Third Extension, as well as for additional interim financing and related charges.
- e. engaged with Teralta Hydrogen Solutions Inc. ("**Teralta**" and/or the "**Lender**") to seek to obtain additional interim financing to ensure sufficient liquidity during these proceedings; and,
- f. assisted the Proposal Trustee with the SISP, including the following:
 - i. preparing a list of potentially interested parties;
 - ii. preparing marketing materials for the SISP, including a teaser letter;
 - iii. preparing a virtual data room, and uploading numerous documents and information to same;
 - iv. answering inquiries from interested parties; and,
 - v. other various matters.

V. **ACTIVITIES OF THE PROPOSAL TRUSTEE**

- 13. Since the First Report, the Proposal Trustee has engaged in, among other things, the following activities:
 - a. participated in various discussions, correspondence and meetings with the Company and its legal counsel relating to matters relevant to the proposal proceedings including, but not limited to, the following:
 - i. various restructuring scenarios and options including, but not limited to, a, traditional SISP, reverse vesting order vs. traditional vesting order, and proposal filing;
 - ii. efforts made by the Company to solicit interest from numerous parties to either invest in, or outright purchase the Company or its assets;
 - iii. matters relating to various leases;
 - iv. communications with and concerns raised by various stakeholders;
 - v. variances in cash flow projections; and,
 - vi. the SISP.
 - b. assisted the Company with the planning and execution of the SISP including, but not limited to, the following:
 - i. prepared a list of prospective parties which includes companies in a same or similar industry;

- ii. coordinated distribution of teaser letter outlining the opportunity to prospective purchasers;
 - iii. created a data room with various documents to assist interested parties in assessing the opportunity;
 - iv. numerous discussions and correspondence with prospective parties with respect of the opportunity, SISP process, and other matters;
 - v. prepared and coordinated the execution of non-disclosure agreements to parties wishing to access the data room;
 - vi. provided interested parties access to the data room, and assisted with any questions thereafter;
 - vii. preparation of the sealed bid package and distributing to interested parties who had signed the non-disclosure agreement;
 - viii. conducted follow-up telephone calls and emails to interested parties reminding them of the opportunity and deadline to submit a bid;
 - ix. assessed the various bids received, and prepared an analysis of same; and,
 - x. other matters.
- c. monitored the Company's financial affairs and activities on a weekly basis and investigated any material variances;
- d. prepared two (2) letters dated September 23, 2024 and October 15, 2024 to Mr. Jonathan Williams (the "**Letters**"), in his capacity as counsel for the Company, with respect to the Proposal Trustee's support of the Second Extension and the Third Extension respectively.
- e. prepared this Second Report; and,
- f. other matters of a general and specific nature not otherwise referred to above.

VI. CASH FLOW VARIANCE ANALYSIS

14. The Proposal Trustee and the Company prepared an actual to budget cash flow variance analysis ("**Variance Analysis**") for the period July 9, 2024 to October 1, 2024. The Variance Analysis is summarized in the following table:

	TOTAL Budget	TOTAL Actual	Total Variance
RECEIPTS			
Sale of Asset	\$ 212,000	\$ 212,800	\$ 800
Other receipts	60,500	170,064	109,564
DIP Loan	600,000	600,000	-
TOTAL RECEIPTS	\$ 872,500	\$ 982,864	\$ 110,364
DISBURSEMENTS			
DIP Loan Fees & Expenses	\$ 65,000	\$ 65,000	\$ -
DIP Loan Interest	11,869	7,995	3,875
Insurance (D&O and P&C)	35,000	33,020	1,980
Leases	266,000	271,200	(5,200)
Payroll and Contractors	119,650	122,960	(3,310)
Payroll Remittance	30,917	12,338	18,579
Proposal/NOI costs	242,000	183,450	58,550
Utilities and Other Op Costs	62,450	68,375	(5,925)
Contingency	75,700	42,439	33,261
TOTAL DISBURSEMENTS	\$ 908,586	\$ 806,776	\$ 101,810
NET CHANGE	(36,086)	176,087	(8,554)
Cash, beginning	86,116	95,720	
Cash, ending	\$ 50,030	\$ 271,807	\$ 221,777

15. The Proposal Trustee has reviewed the Variance Analysis and discussed the Company's ongoing operations with Management. The Proposal Trustee is not aware of any material variances nor is the Proposal Trustee aware of any matters that may otherwise be considered a material adverse change.

VII. SALES AND INVESTMENT SOLICITATION PROCESS

16. Pursuant the First Extension Order, the Company was authorized to, with the assistance of the Proposal Trustee, market any and all of the Company's assets, undertakings and properties (the "**Assets**") which included, among other things, advertising and soliciting offers in respect of the Assets or any part or parts thereof and negotiating such terms and conditions of sale as the Proposal Trustee considers appropriate.
17. The Proposal Trustee worked alongside with the Company to plan and execute a comprehensive SISP. Below is a summary of the efforts made by the Proposal Trustee and the Company:
- a. compiled a comprehensive list of potential parties, including companies identified by management as having potential interest, as well as those operating in the same or related industries;

- b. advertised on a weekly basis, for a number of weeks, in the insolvency industry newsletter: Insolvency Insider;
 - c. gathered and compiled documents relevant to the SISP and prepared a data room for prospective parties to gain access;
 - d. prepared a non-disclosure agreement for prospective parties to execute in order to gain access into the data room;
 - e. emailed a teaser letter with information regarding the SISP and the bidding process to at least seventy-nine (79) parties;
 - f. followed up with emails to the various aforesaid parties reminding them of the opportunity and deadline to submit a bid/proposal;
 - g. received at least fifteen (15) responses to the teaser and advertisement from various parties expressing an interest in the opportunity;
 - h. coordinated the execution of non-disclosure agreements with at least fifteen (15) parties and provided them with access to the data room;
 - i. attended to numerous emails and telephone calls from prospective purchasers; and,
 - j. received six (6) offers prior to the Bid Deadline.
18. One of the six offers could not be considered due to the absence of the required 10% deposit.
19. Of the five remaining bids received, three were from bidders who submitted offers on specific assets of the Company. The bids were made for the following assets and corresponding amounts:
 - a. Bid #1 – Certain lab equipment, office equipment, and clean room - \$20,000;
 - b. Bid #2 – Certain lab equipment - \$100,000; and,
 - c. Bid #3 – Certain lab equipment - \$12,000.
20. The remaining two bids were structured as follows:
 - a. Bid #4 – 100% Share purchase – This bid offered no cash consideration but proposed the exchange of common shares in a publicly traded entity, along with additional warrants to purchase further common shares. Due to the numerous conditions attached to the offer and therefore significant uncertainty related to its completion as well as uncertainty relating to the realization of value from the shares

given factors such as limited trading volume and other potential trading restrictions on the shares, Management and its counsel did not approve this bid. The Proposal Trustee was advised by the Company's legal counsel that this bid was reviewed with the largest unsecured creditor, Pacific Economic Development Canada ("**Pacifican**") who advised that they did not believe this bid to be acceptable. Accordingly, for the above reasons, the Proposal Trustee rejected this bid.

- b. Bid #5 – A bid of \$700,000 (\$100,000 in cash and \$600,000 in credit bid) was submitted by the DIP lender, Teralta, to acquire 100% of Loop's shares through a Court-approved reverse vesting order ("**RVO**"). The Proposal Trustee received a wire deposit of \$70,000, representing 10% of the bid, on or around the Bid Deadline.
21. The Proposal Trustee is of the opinion that Bid #5 from Teralta in the approximate amount of \$700,000 (including the credit bid in the approximate amount of \$600,000) is the superior bid (the "**Superior Bid**") for the following reasons:
- a. offers the highest certainty for the highest gross recovery;
 - b. includes a credit bid by Teralta;
 - c. the RVO preserves, maintains and maximizes going concern value associated with retaining certain leased premises where the physical assets are presently located;
 - d. retains the benefit of certain Company contracts, including terms contained in former employment contracts related to employee confidentiality;
 - e. retains the benefit of ownership of numerous patents and trademarks created and registered by the Company;
 - f. retains the potential value and benefit associated with substantial accrued Scientific Research and Experimental Development ("**SRED**") tax credits;
 - g. retains the potential value and benefit associated with substantial accrued corporate tax losses and other potential tax attributes;
 - h. Company stakeholders may benefit from maintaining the business as a going concern including former employees who may be able to regain their employment as well as suppliers who may retain their relationship with the Company which can have positive impacts on the local economy.
22. A copy of the Teralta bid cover letter is attached hereto as **Appendix "A"**. A copy of the current version of the subscription agreement, following negotiations amongst the parties is attached hereto as **Appendix "B"**.

23. As previously noted, Teralta's bid of \$700,000 was considered the superior offer. However, it included certain conditions, the most significant being the requirement for the **RVO**. This order would allow the Company to:
- a. retain its assets free and clear of all encumbrances, claims, and liabilities, except for permitted encumbrances, if any;
 - b. retain its 44 granted and pending patents that are still active as well as 56 registered and pending trademarks. As discussed in the First Report, Management does not believe the patents have any significant realizable value without, amongst other things, the knowledge, know-how, software, assembly and testing instructions and processes and specific plant configuration. The RVO will allow preservation of the value of these assets;
 - c. maintain the provisions of employee contracts, including confidentiality and non-compete clauses, to protect the Company's competitiveness in the industry; and,
 - d. preserve the tax attributes of the Company, which as of the December 31, 2023 audited financial statements, shows the following:
 - i. Canadian non-capital losses of \$84,472,000 (Cdn);
 - ii. Chinese non-capital losses of \$7,240,000 (Cdn);
 - iii. Scientific Research and Experimental Development expenditure (SRED) pool \$13,601,000 (Cdn).
24. In considering the Superior Bid, the Proposal Trustee notes that most of the Company's value exists in the synergies created by its inventory, fixed assets, and intangible assets - including intellectual property such as patents and trademarks - being maintained in the current corporate entity as a going concern.
25. The Company's inventory and fixed assets, which include specialized raw materials for fuel cell production, manufacturing equipment, testing and lab equipment, and leasehold assets, are highly specialized and Management believes will be difficult to liquidate. Management advised that it previously received two (2) offers, prior to the Filing Date, for certain Company assets, valued at \$75,000 and \$50,000 respectively, representing only a fraction of their original cost. As noted above, the Proposal Trustee also received three (3) offers for various assets totalling just \$132,000.
26. As discussed above, the Proposal Trustee and Management believe that the Company's intellectual property, including patents and trademarks, would have little realizable value without the Company continuing as a going concern.
27. Therefore the Proposal Trustee does not believe a liquidation process following bankruptcy would generate significantly more value than the offers received. In the event of bankruptcy, the Proposal Trustee does not anticipate any recoveries for unsecured creditors. The Proposal Trustee is of the view that an RVO, as set out in the Superior Bid, is necessary to optimize the value to stakeholders.

VIII. FACTORS TO CONSIDER FOR A REVERSE VESTING ORDER

28. To assist this Honourable Court in evaluating the merits of the RVO, the Proposal Trustee has outlined the key questions that the Courts may consider, as established in the *Harte Gold* decision.

Why is the RVO necessary in this case?

29. The RVO is necessary to preserve the going-concern value of the business, which is largely tied to synergies between its intellectual property (patents, trademarks), specialized equipment, and tax attributes (including non-capital losses and SRED tax credits). Without the RVO, these assets would be difficult, if not impossible, to liquidate or monetize in isolation. The RVO ensures the business can continue operating, thus preserving more value than a simple asset sale or liquidation.

Does the RVO structure produce an economic result at least as favorable as any other viable alternative?

30. The RVO structure produces a superior economic result. A liquidation or sale of specific assets (which had offers totaling only \$132,000 during the SISP) would have resulted in minimal recoveries. By contrast, the RVO enables the business to continue as a going concern, securing a higher recovery of \$700,000, which includes \$100,000 in cash and \$600,000 in credit bid, far exceeding the alternatives. It also preserves valuable intangible assets and tax attributes that would otherwise be lost.

Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?

31. No stakeholder is disadvantaged under the RVO structure. The Proposal Trustee highlights that, in a bankruptcy scenario, unsecured creditors would likely receive no recoveries, and the Company would cease operations, eliminating any potential future economic benefits. In contrast, the RVO structure offers stakeholders improved outcomes, including the possibility of former employees regaining employment, suppliers maintaining business relationships, and positive impacts on the local economy from the Company's continued operations.

Does the consideration being paid for the debtor's business reflect the importance and value of the licenses and permits (or other intangible assets) being preserved under the RVO structure?

32. The consideration reflects the value of preserving intangible assets. The business's value is largely tied to its patents, trademarks, and tax attributes, which have little realizable value in a liquidation scenario but are preserved through the RVO. The \$700,000 bid

provided the highest recovery to the Company and was by far the superior bid compared to the other offers received.

33. In the *Harte Gold* decision, the Court also considered the factors outlined in Section 36(3) of the *Companies' Creditors Arrangement Act*, which are relevant when evaluating the merits of an RVO under the BIA.

Whether the process leading to the proposed sale or disposition was reasonable in the circumstances?

34. The process was reasonable, as evidenced by the comprehensive SISP carried out by the Proposal Trustee and the Company. This included advertising, contacting 79 potential bidders, establishing the VDR, and eventually receiving six offers. The steps taken were appropriate to maximize the sale potential.

Whether the Monitor approved the process leading to the proposed sale or disposition?

35. The Proposal Trustee worked closely with Management throughout the process and approved the structure. It was determined that Teralta's bid was the superior offer based on several factors, including recovery certainty and the preservation of the business as a going concern.

Whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy?

36. The Proposal Trustee is of the view that an RVO provides the best price available for the assets and as a results provides a better recovery for stakeholders than liquidation or bankruptcy, as highlighted by the limited value of individual asset bids and the substantial preservation of value achieved through the RVO.

The extent to which the creditors were consulted?

37. The largest unsecured creditor, Pacifican, was consulted on the other remotely competitive bid (Bid #4) and expressed that they did not find it acceptable.

The effects of the proposed sale or disposition on the creditors and other interested parties?

38. The proposed sale under the RVO structure provides greater recoveries to creditors and stakeholders than other alternatives, such as asset liquidation. It also maintains the possibility of future employment for former employees and continued business for suppliers.

Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value?

39. The consideration is reasonable and fair when compared to the market value of the assets under other scenarios. The assets are highly specialized and are only of interest to a relatively small number of prospective purchasers. Previous bids for specific assets only totaled \$132,000, whereas the RVO bid of \$700,000 includes the value of retaining patents, tax credits, and going-concern synergies that would otherwise be lost. This ensures a higher overall recovery as a result of the price being a reasonable determination of the market value for the assets.

IX. PROPOSAL TRUSTEE'S RECOMMENDATIONS

40. The Proposal Trustee has the following comments in respect to the Company's application:
- a. the Company has been acting in good faith and with due diligence;
 - b. the Company has taken substantive steps, in consultation with the Proposal Trustee, to advance the SISP as well as the closing of the Superior Bid;
 - c. an RVO, as set out in the Superior Bid, is necessary in order to preserve the value of the assets, intellectual property, employee contract provisions, and tax attributes and therefore the value of the Company;
 - d. the Superior Bid offers the greatest recovery to the Company's stakeholders.
41. For the above reasons, the Proposal Trustee respectfully recommends that this Honourable Court grant an Order for the relief sought by the Company.

DATED AT the City of Vancouver, in the Province of British Columbia, this 23rd day of October 2024.

Crowe MacKay & Company Ltd.

in its capacity as Licensed Insolvency Trustee of the Proposal of
Loop Energy Inc. and not in its personal capacity

Per:

Mr. Jonathan McNair, CPA, CA, CIRP, LIT
(Chartered Insolvency & Restructuring Professional)